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**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**  
WASHINGTON, D.C. 20549  
**FORM 10-Q**

**QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the quarterly period ended December 31, 2013

OR

**TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from                      to                      .

Commission file number 001-34003

**TAKE-TWO INTERACTIVE SOFTWARE, INC.**

(Exact Name of Registrant as Specified in Its Charter)

<b>Delaware</b>	<b>51-0350842</b>
(State or Other Jurisdiction of Incorporation or Organization)	(I.R.S. Employer Identification No.)

<b>622 Broadway</b>	
<b>New York, New York</b>	
(Address of principal executive offices)	<b>10012</b>
	(Zip Code)

Registrant's Telephone Number, Including Area Code: **(646) 536-2842**

Indicate by check mark whether the Registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes  No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes  No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer," and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer       Accelerated filer       Non-accelerated filer       Smaller reporting company

(Do not check if a  
smaller reporting company)

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes  No

As of January 31, 2014, there were 98,013,610 shares of the Registrant's Common Stock outstanding.

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(All other items in this report are inapplicable)

**PART I. FINANCIAL INFORMATION****Item 1. Financial Statements**

**TAKE-TWO INTERACTIVE SOFTWARE, INC.**  
**CONDENSED CONSOLIDATED BALANCE SHEETS**

(in thousands, except per share amounts)

	December 31, 2013	March 31, 2013
	(Unaudited)	
<b>ASSETS</b>		
Current assets:		
Cash and cash equivalents	\$ 972,170	\$ 402,502
Accounts receivable, net of allowances of \$129,422 and \$64,081 at December 31, 2013 and March 31, 2013, respectively	189,519	189,596
Inventory	45,035	30,218
Software development costs and licenses	92,767	198,955
Prepaid expenses and other	246,165	44,881
Total current assets	1,545,656	866,152
Fixed assets, net	38,768	25,362
Software development costs and licenses, net of current portion	101,075	95,241
Goodwill	226,835	225,992
Other intangibles, net	5,297	8,827
Other assets	67,720	56,265
Total assets	\$ 1,985,351	\$ 1,277,839
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
Current liabilities:		
Accounts payable	\$ 42,850	\$ 79,932
Accrued expenses and other current liabilities	598,437	228,916
Deferred revenue	51,366	26,919
Liabilities of discontinued operations	827	1,232
Total current liabilities	693,480	336,999
Long-term debt	448,737	335,202
Other long-term liabilities	21,135	17,087
Liabilities of discontinued operations, net of current portion	—	556
Total liabilities	1,163,352	689,844
Commitments and contingencies		
Stockholders' equity:		
Preferred stock, \$.01 par value, 5,000 shares authorized	—	—
Common stock, \$.01 par value, 200,000 shares authorized; 104,787 and 93,743 shares issued and 88,549 and 93,743 outstanding at December 31, 2013 and March 31, 2013, respectively	1,048	937
Additional paid-in capital	944,010	832,460

Retained earnings (accumulated deficit)	<b>151,562</b>	(240,830)
Treasury stock, at cost (16,238 common shares at December 31, 2013)	<b>(276,836)</b>	—
Accumulated other comprehensive income (loss)	<b>2,215</b>	(4,572)
Total stockholders' equity	<b>821,999</b>	587,995
Total liabilities and stockholders' equity	<b>\$ 1,985,351</b>	\$1,277,839

See accompanying Notes.

**TAKE-TWO INTERACTIVE SOFTWARE, INC.**

**CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS (Unaudited)**

(in thousands, except per share amounts)

	Three months ended December 31,		Nine months ended December 31,	
	2013	2012	2013	2012
Net revenue	\$ 1,863,869	\$ 415,773	\$ 2,155,360	\$ 914,996
Cost of goods sold	1,119,734	216,299	1,306,039	561,517
Gross profit	744,135	199,474	849,321	353,479
Selling and marketing	70,476	60,724	213,419	205,582
General and administrative	34,718	32,880	110,601	106,891
Research and development	29,233	22,369	76,624	57,001
Depreciation and amortization	3,413	2,509	9,837	7,828
Total operating expenses	137,840	118,482	410,481	377,302
Income (loss) from operations	606,295	80,992	438,840	(23,823)
Interest and other, net	(5,949)	(8,094)	(26,018)	(23,562)
Loss on extinguishment of debt	—	—	(9,014)	—
Gain on convertible note hedge and warrants, net	—	—	3,461	—
Income (loss) from continuing operations before income taxes	600,346	72,898	407,269	(47,385)
Provision for income taxes	21,902	2,021	14,804	4,947
Income (loss) from continuing operations	578,444	70,877	392,465	(52,332)
(Loss) income from discontinued operations, net of taxes	(18)	488	(73)	368
Net income (loss)	\$ 578,426	\$ 71,365	\$ 392,392	\$ (51,964)
Earnings (loss) per share:				
Continuing operations	\$ 5.88	\$ 0.76	\$ 4.02	\$ (0.61)
Discontinued operations	—	—	—	—
Basic earnings (loss) per share	\$ 5.88	\$ 0.76	\$ 4.02	\$ (0.61)
Continuing operations	\$ 4.69	\$ 0.66	\$ 3.29	\$ (0.61)
Discontinued operations	—	—	—	—
Diluted earnings (loss) per share	\$ 4.69	\$ 0.66	\$ 3.29	\$ (0.61)

See accompanying Notes.

**TAKE-TWO INTERACTIVE SOFTWARE, INC.****CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME (LOSS)****(Unaudited)****(in thousands)**

	<b>Three Months Ended December 31,</b>		<b>Nine Months Ended December 31,</b>	
	<b>2013</b>	<b>2012</b>	<b>2013</b>	<b>2012</b>
Net income (loss)	<b>\$ 578,426</b>	\$ 71,365	<b>\$ 392,392</b>	\$ (51,964)
Other comprehensive (loss) income:				
Foreign currency translation adjustment	<b>(474)</b>	(360)	<b>6,518</b>	(42)
Change in unrealized gains on cash flow hedges, net	<b>67</b>	449	<b>269</b>	618
Other comprehensive (loss) income	<b>(407)</b>	89	<b>6,787</b>	576
Comprehensive income (loss)	<b>\$ 578,019</b>	\$ 71,454	<b>\$ 399,179</b>	\$ (51,388)

See accompanying Notes.

**TAKE-TWO INTERACTIVE SOFTWARE, INC.**

**CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS (Unaudited)**

(in thousands)

	Nine Months Ended December 31,	
	2013	2012
<b>Operating activities:</b>		
Net income (loss)	<u>\$ 392,392</u>	<u>\$ (51,964)</u>
Adjustments to reconcile net income (loss) to net cash provided by operating activities:		
Amortization and impairment of software development costs and licenses	252,229	189,319
Depreciation and amortization	9,837	7,828
Loss (gain) from discontinued operations	73	(368)
Amortization and impairment of intellectual property	3,375	6,678
Stock-based compensation	57,594	22,778
Deferred income taxes	(5,487)	24
Amortization of discount on Convertible Notes	17,507	13,971
Amortization of debt issuance costs	1,510	1,521
Loss on extinguishment of debt	9,014	—
Gain on convertible note hedge and warrants, net	(3,461)	—
Other, net	(414)	735
Changes in assets and liabilities, net of effect from purchases of businesses:		
Accounts receivable	77	(49,206)
Inventory	(14,817)	(7,210)
Software development costs and licenses	(151,275)	(150,479)
Prepaid expenses, other current and other non-current assets	(205,948)	(498)
Deferred revenue	24,447	12,484
Accounts payable, accrued expenses and other liabilities	345,174	47,072
Net cash used in discontinued operations	(1,034)	(1,223)
Net cash provided by operating activities	<u>730,793</u>	<u>41,462</u>
<b>Investing activities:</b>		
Purchase of fixed assets	(23,455)	(12,317)
Payments in connection with business combinations, net of cash acquired	(1,000)	—
Net cash used in investing activities	<u>(24,455)</u>	<u>(12,317)</u>
<b>Financing activities:</b>		
Repurchase of common stock	(276,836)	—
Proceeds from issuance of 1.00% Convertible Notes	283,188	—
Payment for extinguishment of 4.375% Convertible Notes	(165,999)	—
Proceeds from termination of convertible note hedge transactions	84,429	—
Payment for termination of convertible note warrant transactions	(55,651)	—
Payment of debt issuance costs for the issuance of 1.00% Convertible Notes	(2,815)	—
Net cash used in financing activities	<u>(133,684)</u>	<u>—</u>
Effects of foreign currency exchange rates on cash and cash equivalents	(2,986)	(701)
Net increase in cash and cash equivalents	<u>569,668</u>	<u>28,444</u>
Cash and cash equivalents, beginning of year	<u>402,502</u>	<u>420,270</u>



Cash and cash equivalents, beginning of year	<u>70,902</u>	<u>720,212</u>
Cash and cash equivalents, end of period	<u>\$ 972,170</u>	<u>\$ 448,723</u>

See accompanying Notes.

**TAKE-TWO INTERACTIVE SOFTWARE, INC.**

**Notes to Unaudited Condensed Consolidated Financial Statements**

**(Dollars in thousands, except share and per share amounts)**

**1. BASIS OF PRESENTATION AND SIGNIFICANT ACCOUNTING POLICIES**

Take-Two Interactive Software, Inc. (the "Company," "we," "us," or similar pronouns) was incorporated in the state of Delaware in 1993. We are a leading developer, publisher and marketer of interactive entertainment for consumers around the globe. The Company develops and publishes products through its two wholly-owned labels Rockstar Games and 2K. Our products are designed for console systems, handheld gaming systems and personal computers, including smart phones and tablets, and are delivered through physical retail, digital download, online platforms and cloud streaming services.

**Basis of Presentation**

The accompanying Unaudited Condensed Consolidated Financial Statements include the accounts of the Company and its wholly-owned subsidiaries and reflect all normal and recurring adjustments necessary for the fair presentation of our financial position, results of operations and cash flows. All material inter-company accounts and transactions have been eliminated in consolidation. The preparation of these Unaudited Condensed Consolidated Financial Statements in conformity with accounting principles generally accepted in the United States requires management to make estimates and assumptions that affect the amounts reported in these Unaudited Condensed Consolidated Financial Statements and accompanying notes. As permitted under U.S. generally accepted accounting principles, interim accounting for certain expenses, including income taxes, are based on full year assumptions when appropriate. Actual results could differ materially from those estimates.

Certain information and footnote disclosures normally included in financial statements prepared in accordance with U.S. generally accepted accounting principles have been omitted pursuant to the rules and regulations of the Securities and Exchange Commission ("SEC"), although we believe that the disclosures are adequate to make the information presented not misleading. These Unaudited Condensed Consolidated Financial Statements and accompanying notes should be read in conjunction with our annual consolidated financial statements and the notes thereto, included in our Annual Report on Form 10-K for the year ended March 31, 2013.

Certain reclassifications have been made to prior period amounts to conform to the current period presentation.

**Discontinued Operations**

In February 2010, we completed the sale to SYNnex Corporation ("Synnex") of our Jack of All Games third party distribution business, which primarily distributed third party interactive entertainment software, hardware and accessories in North America. The financial information of our distribution business has been classified as discontinued operations in these Unaudited Condensed Consolidated Financial Statements for all of the periods presented. See Note 2 for additional information regarding discontinued operations. Unless otherwise noted, amounts and disclosures throughout the Notes to Unaudited Condensed Consolidated Financial Statements relate to the Company's continuing operations.

**TAKE-TWO INTERACTIVE SOFTWARE, INC.**

**Notes to Unaudited Condensed Consolidated Financial Statements (Continued)**

**(Dollars in thousands, except share and per share amounts)**

**1. BASIS OF PRESENTATION AND SIGNIFICANT ACCOUNTING POLICIES (Continued)**

**Financial Instruments**

The carrying amounts of our financial instruments, including cash and cash equivalents, accounts receivable, accounts payable and accrued liabilities, approximate fair value because of their short maturities. We consider all highly liquid instruments purchased with original maturities of three months or less to be cash equivalents. At December 31, 2013 and March 31, 2013 we had \$179,381 and \$7,489, respectively, of cash on deposit reported as a component of prepaid expenses and other in the accompanying Condensed Consolidated Balance Sheets because its use was restricted.

As of December 31, 2013, the estimated fair value of the Company's 1.75% Convertible Notes due 2016 and the Company's 1.00% Convertible Notes due 2018 was \$289,775 and \$306,993, respectively. See Note 8 for additional information regarding our Convertible Notes. The fair value was determined using observable market data for the Convertible Notes and its embedded option feature.

We transact business in various foreign currencies and have significant sales and purchase transactions denominated in foreign currencies, subjecting us to foreign currency exchange rate risk. From time to time, we use hedging programs in an effort to mitigate the effect of foreign currency exchange rate movements.

***Cash Flow Hedging Activities***

We use foreign currency forward contracts to mitigate foreign currency exchange rate risk associated with forecasted transactions involving non-functional currency denominated expenditures. These contracts, which are designated and qualify as cash flow hedges, are accounted for as derivatives whereby the fair value of the contracts is reported as either assets or liabilities on our Condensed Consolidated Balance Sheets. The effective portion of gains or losses resulting from changes in the fair value of these hedges is initially reported, net of tax, as a component of accumulated other comprehensive income (loss) in stockholders' equity. The gross amount of the effective portion of gains or losses resulting from changes in the fair value of these hedges is subsequently reclassified into cost of goods sold or research and development expenses, as appropriate, in the period when the forecasted transaction is recognized in our Condensed Consolidated Statements of Operations. In the event that the gains or losses in accumulated other comprehensive income (loss) are deemed to be ineffective, the ineffective portion of gains or losses resulting from changes in fair value, if any, is reclassified to interest and other, net, in our Condensed Consolidated Statements of Operations. In the event that the underlying forecasted transactions do not occur, or it becomes probable that they will not occur, within the defined hedge period, the gains or losses on the related cash flow hedges are reclassified from accumulated other comprehensive income (loss) to interest and other, net, in our Condensed Consolidated Statements of Operations. During the reporting periods presented, all forecasted transactions occurred, and therefore, there were no such gains or losses reclassified into interest and other, net. We do not enter into derivative financial contracts for speculative or trading purposes. At December 31, 2013 and March 31, 2013, we had \$2,802 and \$7,906, respectively, of forward contracts outstanding to buy foreign currencies in exchange for U.S. dollars all of which have maturities of less than one year. As of December 31, 2013 and March 31, 2013, the fair value of these outstanding forward contracts was immaterial and is included in prepaid expenses and other. The fair value of these outstanding forward contracts is estimated based on the prevailing exchange rates of the various hedged currencies as of the end of the period.

**TAKE-TWO INTERACTIVE SOFTWARE, INC.**

**Notes to Unaudited Condensed Consolidated Financial Statements (Continued)**

**(Dollars in thousands, except share and per share amounts)**

**1. BASIS OF PRESENTATION AND SIGNIFICANT ACCOUNTING POLICIES (Continued)**

***Balance Sheet Hedging Activities***

We use foreign currency forward contracts to mitigate foreign currency exchange rate risk associated with non-functional currency denominated cash balances and inter-company funding loans, non-functional currency denominated accounts receivable and non-functional currency denominated accounts payable. These transactions are not designated as hedging instruments and are accounted for as derivatives whereby the fair value of the contracts is reported as either assets or liabilities on our Condensed Consolidated Balance Sheets, and gains and losses resulting from changes in the fair value are reported in interest and other, net, in our Condensed Consolidated Statements of Operations. We do not enter into derivative financial contracts for speculative or trading purposes. At December 31, 2013 and March 31, 2013, we had \$178,975 and \$55,397, respectively, of forward contracts outstanding to sell foreign currencies in exchange for U.S. dollars all of which have maturities of less than one year. For the three months ended December 31, 2013 and 2012, we recorded a loss of \$7,196 and a gain of \$1,016, respectively, related to foreign currency forward contracts in interest and other, net on the Condensed Consolidated Statements of Operations. For the nine months ended December 31, 2013 and 2012, we recorded a loss of \$17,463 and a gain of \$1,260, respectively, related to foreign currency forward contracts in interest and other, net on the Condensed Consolidated Statements of Operations. As of December 31, 2013, the fair value of these outstanding forward contracts was immaterial and is included in prepaid expenses and other. As of March 31, 2013, the fair value of these outstanding forward contracts was immaterial and is included in accrued expenses and other current liabilities. The fair value of these outstanding forward contracts is estimated based on the prevailing exchange rates of the various hedged currencies as of the end of the period.

**Revenue Recognition**

***Revenue Arrangements with Multiple Deliverables***

We enter into multiple element revenue arrangements in which we may provide a combination of game software, additional content, maintenance or support. Assuming all other recognition criteria are met, for our software and software-related multiple element arrangements, we determine the fair value of each delivered and undelivered element using vendor-specific objective evidence ("VSOE") and allocate the total price among the various elements. Absent VSOE, revenue is deferred until the earlier of the point at which VSOE of fair value exists for any undelivered element or until all elements of the arrangement have been delivered. However, if the only undelivered element is maintenance and support, the entire arrangement fee is recognized ratably over the performance period. For arrangements which require that revenue recognition is deferred, the cost of goods sold is deferred and recognized as the related net revenue is recognized. Deferred cost of goods sold includes product costs, software development costs and royalties, internal royalties and licenses. Changes in assumptions or judgments or changes to the elements in a software arrangement could cause a material increase or decrease in the amount of revenue that we report in a particular period. We determine VSOE for each element based on historical stand-alone sales to third parties. In determining VSOE, we require that a substantial majority of the selling prices for a product or service fall within a reasonably narrow pricing range.

**TAKE-TWO INTERACTIVE SOFTWARE, INC.**

**Notes to Unaudited Condensed Consolidated Financial Statements (Continued)**

**(Dollars in thousands, except share and per share amounts)**

**1. BASIS OF PRESENTATION AND SIGNIFICANT ACCOUNTING POLICIES (Continued)**

**Recently Issued Accounting Pronouncements**

*Reclassification of Accumulated Other Comprehensive Income*

In February 2013, new guidance was issued requiring new disclosures about reclassifications from accumulated other comprehensive income to net income. This new guidance requires an entity to provide information about the amounts reclassified out of accumulated other comprehensive income by component. In addition, an entity is required to present, either on the face of the statement where net income is presented or in the notes, significant amounts reclassified out of accumulated other comprehensive income by the respective line items of net income but only if the amount reclassified is required under U.S. GAAP to be reclassified to net income in its entirety in the same reporting period. For other amounts that are not required under U.S. GAAP to be reclassified in their entirety to net income, an entity is required to cross-reference to other disclosures required under U.S. GAAP that provide additional detail about those amounts. The new guidance is effective prospectively for annual and interim periods beginning after December 15, 2012 (April 1, 2013 for the Company). The adoption of this new guidance did not have a material impact on our Condensed Consolidated Financial Statements and the required disclosures are provided in Note 10.

*Presentation of Unrecognized Tax Benefits*

In July 2013, new guidance was issued requiring that entities that have an unrecognized tax benefit and a net operating loss carryforward or similar tax loss or tax credit carryforward in the same jurisdiction as the uncertain tax position present the unrecognized tax benefit as a reduction of the deferred tax asset for the loss or tax credit carryforward rather than as a liability when the uncertain tax position would reduce the loss or tax credit carryforward under the tax law. The disclosure requirements will be effective for annual periods (and interim periods within those annual periods) beginning after December 15, 2013 (April 1, 2014 for the Company), and will require prospective application. Early adoption is permitted. We are currently evaluating the impact on our Condensed Consolidated Financial Statements from the adoption of this guidance.

**2. DISCONTINUED OPERATIONS**

In February 2010, we completed the sale of our Jack of All Games third party distribution business, which primarily distributed third party interactive entertainment software, hardware and accessories in North America, for approximately \$44,000, including \$37,250 in cash, subject to purchase price adjustments, and up to an additional \$6,750 subject to the achievement of certain items, which were not met. In April 2011, we settled on the purchase adjustments and as a result the purchase price was lowered by \$1,475. Consequently, the net purchase price after the settlement was \$35,775. The sale has allowed us to focus our resources on our publishing operations. The financial information of our distribution business has been classified as discontinued operations in the Unaudited Condensed Consolidated Financial Statements for all of the periods presented. The following is a summary of the

**TAKE-TWO INTERACTIVE SOFTWARE, INC.****Notes to Unaudited Condensed Consolidated Financial Statements (Continued)****(Dollars in thousands, except share and per share amounts)****2. DISCONTINUED OPERATIONS (Continued)**

liabilities of discontinued operations primarily related to a liability for a lease assumption without economic benefit less estimates of sublease income. The lease matures on September 30, 2014.

	<u>December 31, 2013</u>	<u>March 31, 2013</u>
Liabilities of discontinued operations:		
Current:		
Accrued expenses and other current liabilities	\$ 827	\$ 1,232
Total current liabilities	827	1,232
Other non-current liabilities	—	556
Total liabilities of discontinued operations	<u>\$ 827</u>	<u>\$ 1,788</u>

**3. MANAGEMENT AGREEMENT**

In March 2007, we entered into a management services agreement (as amended, the "Management Agreement") with ZelnickMedia Corporation ("ZelnickMedia"), whereby ZelnickMedia provides us with certain management, consulting and executive level services. In May 2011, we entered into a new management agreement (the "New Management Agreement") with ZelnickMedia, which upon effectiveness, superseded and replaced the Management Agreement pursuant to which ZelnickMedia will continue to provide management, consulting and executive level services to the Company through May 2015. As part of the New Management Agreement, Strauss Zelnick, the President of ZelnickMedia, continues to serve as Executive Chairman and Chief Executive Officer and Karl Slatoff, a partner of ZelnickMedia, serves as President. The New Management Agreement provides for the annual management fee to remain at \$2,500, subject to annual increases in the amount of 3% over the term of the agreement, and the maximum annual bonus was increased to \$3,500 from \$2,500, subject to annual increases in the amount of 3% over the term of the agreement, based on the Company achieving certain performance thresholds. In consideration for ZelnickMedia's services, we recorded consulting expense (a component of general and administrative expenses) of \$1,591 and \$2,446 for the three months ended December 31, 2013 and 2012, respectively, and \$4,774 and \$4,635 for the nine months ended December 31, 2013 and 2012, respectively.

Pursuant to the Management Agreement, in August 2007, we issued stock options to ZelnickMedia to acquire 2,009,075 shares of our common stock at an exercise price of \$14.74 per share, which vested over 36 months and expire 10 years from the date of grant. In November 2013, we entered into an amendment to the stock option agreement permitting ZelnickMedia to exercise the stock options on a "net exercise" basis. As of December 31, 2013 and March 31, 2013, all of the stock options are outstanding. In June 2008, pursuant to the Management Agreement, we granted 600,000 shares of restricted stock to ZelnickMedia that vested annually over a three year period and 900,000 shares of market-based restricted stock that could have vested over a four year period through June 2012, provided that the Company's Total Shareholder Return (as defined in the relevant grant agreements) was at or higher than the 75<sup>th</sup> percentile of the NASDAQ Industrial Index measured annually on a cumulative basis. Because the price of our common stock did not achieve its performance targets, the 900,000 shares of market-based restricted stock were forfeited in June 2012.

**TAKE-TWO INTERACTIVE SOFTWARE, INC.**

**Notes to Unaudited Condensed Consolidated Financial Statements (Continued)**

**(Dollars in thousands, except share and per share amounts)**

**3. MANAGEMENT AGREEMENT (Continued)**

In addition, pursuant to the New Management Agreement, we granted 1,100,000 shares of restricted stock to ZelnickMedia that will vest annually through April 1, 2015 and 1,650,000 shares of market-based restricted stock that will be eligible to vest through April 1, 2015, based on the Company's Total Shareholder Return (as defined in the relevant grant agreements) relative to the Total Shareholder Return of the companies that constitute the NASDAQ Composite Index measured annually on a cumulative basis. To earn all of the shares of market-based restricted stock, the Company must perform at the 75th percentile, or top quartile, of the NASDAQ Composite Index. Each reporting period, we remeasure the fair value of the unvested portion of the shares of market-based restricted stock granted to ZelnickMedia. The unvested portion of the shares of restricted stock granted pursuant to the New Management Agreement as of December 31, 2013 and March 31, 2013 was 1,894,750 and 2,169,750 shares, respectively. For the three months ended December 31, 2013 and 2012, we recorded a gain of \$1,528 and an expense of \$1,613, respectively, of stock-based compensation (a component of general and administrative expenses) related to the shares of restricted stock granted pursuant to the New Management Agreement. For the nine months ended December 31, 2013 and 2012, we recorded an expense of \$4,592 and \$2,354, respectively, of stock-based compensation (a component of general and administrative expenses) related to the shares of restricted stock granted pursuant to the New Management Agreement.

**4. FAIR VALUE MEASUREMENTS**

We follow a three-level fair value hierarchy that prioritizes the inputs used to measure fair value. This hierarchy requires entities to maximize the use of "observable inputs" and minimize the use of "unobservable inputs." The three levels of inputs used to measure fair value are as follows:

- Level 1—Quoted prices in active markets for identical assets or liabilities.
- Level 2—Observable inputs other than quoted prices included in Level 1, such as quoted price for markets that are not active or other inputs that are observable or can be corroborated by observable market data.
- Level 3—Unobservable inputs that are supported by little or no market activity and that are significant to the fair value of the assets or liabilities. This includes certain pricing models, discounted cash flow methodologies and similar techniques that use significant unobservable inputs.

The table below segregates all assets that are measured at fair value on a recurring basis (which is measured at least annually) into the most appropriate level within the fair value hierarchy based on the inputs used to determine the fair value at the measurement date.

	December 31, 2013	Quoted prices in active markets for identical assets (level 1)	Significant other observable inputs (level 2)	Significant unobservable inputs (level 3)	Balance Sheet Classification
Money market funds	\$ 550,588	\$ 550,588	\$ —	\$ —	Cash and cash equivalents
Bank-time deposits	\$ 81,127	\$ 81,127	\$ —	\$ —	Cash and cash equivalents

**TAKE-TWO INTERACTIVE SOFTWARE, INC.**

**Notes to Unaudited Condensed Consolidated Financial Statements (Continued)**

**(Dollars in thousands, except share and per share amounts)**

**5. INVENTORY**

Inventory balances by category are as follows:

	<u>December 31, 2013</u>	<u>March 31, 2013</u>
Finished products	\$ 44,351	\$ 28,026
Parts and supplies	684	2,192
<b>Inventory</b>	<b>\$ 45,035</b>	<b>\$ 30,218</b>

Estimated product returns included in inventory at December 31, 2013 and March 31, 2013 were \$3,799 and \$1,505, respectively.

**6. SOFTWARE DEVELOPMENT COSTS AND LICENSES**

Details of our capitalized software development costs and licenses are as follows:

	<u>December 31, 2013</u>		<u>March 31, 2013</u>	
	<u>Current</u>	<u>Non-current</u>	<u>Current</u>	<u>Non-current</u>
Software development costs, internally developed	\$ 61,458	\$ 41,261	\$ 178,297	\$ 38,592
Software development costs, externally developed	27,530	59,814	10,469	53,649
Licenses	3,779	—	10,189	3,000
<b>Software development costs and licenses</b>	<b>\$ 92,767</b>	<b>\$ 101,075</b>	<b>\$ 198,955</b>	<b>\$ 95,241</b>

Software development costs and licenses as of December 31, 2013 and March 31, 2013 included \$169,753 and \$270,488, respectively, related to titles that have not been released. During the nine months ended December 31, 2013, we recorded \$41,777 of software development impairment charges (a component of cost of goods sold).

**7. ACCRUED EXPENSES AND OTHER CURRENT LIABILITIES**

Accrued expenses and other current liabilities consist of the following:

	<u>December 31, 2013</u>	<u>March 31, 2013</u>
Software development royalties	\$ 349,882	67,046
Income tax payable and deferred tax liability	64,098	53,261
Compensation and benefits	42,839	31,358
Marketing and promotions	42,136	21,601
Licenses	35,267	12,268
Sales tax liability	24,517	3,950
Rent and deferred rent obligations	8,445	8,456
Professional fees	6,500	7,733
Deferred consideration for acquisitions	1,498	2,498
Other	23,255	20,745
<b>Accrued expenses and other current liabilities</b>	<b>\$ 598,437</b>	<b>\$ 228,916</b>



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**TAKE-TWO INTERACTIVE SOFTWARE, INC.****Notes to Unaudited Condensed Consolidated Financial Statements (Continued)****(Dollars in thousands, except share and per share amounts)****8. DEBT*****Credit Agreement***

In October 2011, we entered into a Second Amended and Restated Credit Agreement (the "Credit Agreement") which amended and restated our July 2007 Credit Agreement. The Credit Agreement provides for borrowings of up to \$100,000 which may be increased by up to \$40,000 pursuant to the terms of the Credit Agreement, and is secured by substantially all of our assets and the equity of our subsidiaries. The Credit Agreement expires on October 17, 2016. Revolving loans under the Credit Agreement bear interest at our election of (a) 1.50% to 2.00% above a certain base rate (4.75% at December 31, 2013), or (b) 2.50% to 3.00% above the LIBOR Rate (approximately 2.67% at December 31, 2013), with the margin rate subject to the achievement of certain average liquidity levels. We are also required to pay a monthly fee on the unused available balance, ranging from 0.375% to 0.50% based on availability. We had no outstanding borrowings at December 31, 2013 and March 31, 2013.

Availability under the Credit Agreement is restricted by our United States and United Kingdom based accounts receivable and inventory balances. The Credit Agreement also allows for the issuance of letters of credit in an aggregate amount of up to \$25,000.

Information related to availability on our Credit Agreement is as follows:

	<u>December 31,</u> <u>2013</u>	<u>March 31,</u> <u>2013</u>
Available borrowings	<b>\$ 98,336</b>	<b>\$ 73,565</b>
Outstanding letters of credit	<b>1,664</b>	<b>1,664</b>

We recorded interest expense and fees related to the Credit Agreement of \$160 for the three months ended December 31, 2013 and 2012 and \$479 for the nine months ended December 31, 2013 and 2012.

The Credit Agreement contains covenants that substantially limit us and our subsidiaries' ability to: create, incur, assume or be liable for indebtedness; dispose of assets outside the ordinary course of business; acquire, merge or consolidate with or into another person or entity; create, incur or allow any lien on any of their respective properties; make investments; or pay dividends or make distributions (each subject to certain limitations); or optionally prepay any indebtedness (subject to certain exceptions, including an exception permitting the redemption of the Company's unsecured convertible senior notes upon the meeting of certain minimum liquidity requirements). In addition, the Credit Agreement provides for certain events of default such as nonpayment of principal and interest, breaches of representations and warranties, noncompliance with covenants, acts of insolvency, default on indebtedness held by third parties and default on certain material contracts (subject to certain limitations and cure periods). The Credit Agreement also contains a requirement that we maintain an interest coverage ratio of more than one to one for the trailing twelve month period, if certain average liquidity levels fall below \$30,000. As of December 31, 2013, we were in compliance with all covenants and requirements outlined in the Credit Agreement.

**TAKE-TWO INTERACTIVE SOFTWARE, INC.**

**Notes to Unaudited Condensed Consolidated Financial Statements (Continued)**

**(Dollars in thousands, except share and per share amounts)**

**8. DEBT (Continued)**

***4.375% Convertible Notes Due 2014***

In June 2009, we issued \$138,000 aggregate principal amount of 4.375% Convertible Notes due 2014 (the "4.375% Convertible Notes"). The issuance of the 4.375% Convertible Notes included \$18,000 related to the exercise of an over-allotment option by the underwriters. Interest on the 4.375% Convertible Notes was paid semi-annually in arrears on June 1<sup>st</sup> and December 1<sup>st</sup> of each year, and commenced on December 1, 2009. The 4.375% Convertible Notes were scheduled to mature on June 1, 2014, unless earlier redeemed or repurchased by the Company or converted. As further described below, on June 12, 2013, we issued a notice of redemption calling all of our outstanding 4.375% Convertible Notes for redemption on August 29, 2013.

The 4.375% Convertible Notes were convertible at an initial conversion rate of 93.6768 shares of our common stock per \$1 principal amount of 4.375% Convertible Notes (representing an initial conversion price of approximately \$10.675 per share of common stock for a total of approximately 12,927,000 underlying conversion shares) subject to adjustment in certain circumstances. Holders could have converted the 4.375% Convertible Notes at their option prior to the close of business on the business day immediately preceding December 1, 2013 only if certain conditions were met. Upon conversion, the 4.375% Convertible Notes could have been settled, at our election, in cash, shares of our common stock, or a combination of cash and shares of the Company's common stock.

We recorded approximately \$3,410 of banking, legal and accounting fees related to the issuance of the 4.375% Convertible Notes which were capitalized as debt issuance costs and were being amortized to interest and other, net over the term of the 4.375% Convertible Notes.

At any time on or after June 5, 2012, the Company could have redeemed all of the outstanding 4.375% Convertible Notes for cash, but only if the last reported sale of our common stock for 20 or more trading days in a period of 30 consecutive trading days ending on the trading day prior to the date we provided notice of redemption to holders of the 4.375% Convertible Notes exceeded 150% of the conversion price in effect on each such trading day. This condition was met on June 12, 2013. The redemption price equaled 100% of the principal amount of the 4.375% Convertible Notes to be redeemed, plus all accrued and unpaid interest (including additional interest, if any) to, but excluding, the redemption date.

On June 12, 2013, we issued a notice of redemption calling all of our outstanding 4.375% Convertible Notes, in the aggregate principal amount of \$138,000, for redemption on August 29, 2013 at a redemption price of \$1 per \$1 principal amount, plus accrued and unpaid interest up to, but not including, the redemption date (the period from June 12, 2013 to August 29, 2013 is the "Notice Period"). Holders who elected to convert during the Notice Period were entitled to make-whole shares in addition to such shares they would otherwise be entitled to receive upon conversion. The notice of redemption specified that we would settle any 4.375% Convertible Notes surrendered for conversion in connection with the redemption on a combination settlement basis by paying cash up to a cash amount equal to \$166,000 in the aggregate of converted notes and delivering shares of our common stock in respect of the amount, if any, by which our conversion obligation exceeded such cash amount. During the Notice Period, \$137,993 of 4.375% Convertible Notes were converted for \$165,992 in cash and 3,217,000 shares of our common stock. On August 29, 2013, we paid \$7 in cash and we redeemed \$7 of

**TAKE-TWO INTERACTIVE SOFTWARE, INC.**

**Notes to Unaudited Condensed Consolidated Financial Statements (Continued)**

**(Dollars in thousands, except share and per share amounts)**

**8. DEBT (Continued)**

4.375% Convertible Notes. During the nine months ended December 31, 2013, we recorded a loss on extinguishment, net of capitalized debt issuance costs, totaling \$9,014 related to these transactions.

In connection with the offering of the 4.375% Convertible Notes, we entered into convertible note hedge transactions which were expected to reduce the potential dilution to our common stock upon conversion of the 4.375% Convertible Notes. The transactions included options to purchase approximately 12,927,000 shares of common stock at \$10.675 per share, expiring on June 1, 2014, for a total cost of approximately \$43,600, which was charged to additional paid-in capital.

Separately, the Company entered into warrant transactions with a strike price of \$14.945 per share. The warrants covered approximately 12,927,000 shares of the Company's common stock and were scheduled to expire on August 30, 2014, for total proceeds of approximately \$26,300, which was credited to additional paid-in capital.

On June 12, 2013, the Company entered into Unwind Agreements with respect to the convertible note hedge transactions and Unwind Agreements with respect to the warrant transactions with each of the hedge counterparties (collectively, the "Unwind Agreements"). Pursuant to the terms of the Unwind Agreements, and in connection with the Company's issuance of a notice of redemption for all the 4.375% Convertible Notes, the Company had the right to deliver a notice to the hedge counterparties, prior to the redemption date set forth in such redemption notice, designating an early termination date for the convertible note hedge transactions and warrant transactions. The hedge counterparties owed a cash payment to the Company as a result of the early termination of the convertible note hedge transactions that was calculated based on its current fair market value. The Company owed a cash payment to the warrant holders, as applicable, as a result of the early termination of the warrant transactions that was calculated based on its current fair market value. As a result of the Unwind Agreements, the convertible note hedge transactions and warrant transactions were accounted for as derivatives whereby the fair values of these transactions were reported as a convertible note hedge receivable and as a convertible note warrant liability with an offsetting impact to additional paid-in capital. Gains and losses on the derivatives resulting from their unwinding were reported in gain on convertible note hedge and warrants, net, in our Condensed Consolidated Statements of Operations. In August 2013, the payment received from unwinding the associated convertible note hedge transactions resulted in proceeds to us of \$84,429, offset by \$55,651 we paid the warrant holders.

During the nine months ended December 31, 2013, we recorded a gain of approximately \$17,259 resulting from the unwinding of our convertible note hedge transactions and a loss of approximately \$13,798 resulting from the unwinding of our convertible note warrant transactions to gain on convertible note hedge and warrants, net, in our Condensed Consolidated Statements of Operations.

**TAKE-TWO INTERACTIVE SOFTWARE, INC.**

**Notes to Unaudited Condensed Consolidated Financial Statements (Continued)**

**(Dollars in thousands, except share and per share amounts)**

**8. DEBT (Continued)**

The following table provides additional information related to our 4.375% Convertible Notes:

	<b>March 31, 2013</b>
Additional paid-in capital	\$ 42,018
Principal amount of 4.375% Convertible Notes	\$ 138,000
Unamortized discount of the liability component	12,819
Net carrying amount of 4.375% Convertible Notes	\$ 125,181
Carrying amount of debt issuance costs	\$ 797

The following table provides the components of interest expense related to our 4.375% Convertible Notes:

	<b>Three Months Ended December 31,</b>		<b>Nine Months Ended December 31,</b>	
	<b>2013</b>	<b>2012</b>	<b>2013</b>	<b>2012</b>
Cash interest expense (coupon interest expense)	\$ —	\$ 1,509	\$ 2,516	\$ 4,527
Non-cash amortization of discount on 4.375% Convertible Notes	—	2,425	4,358	7,045
Amortization of debt issuance costs	—	171	284	512
Total interest expense related to 4.375% Convertible Notes	\$ —	\$ 4,105	\$ 7,158	\$ 12,084

**1.75% Convertible Notes Due 2016**

On November 16, 2011, we issued \$250,000 aggregate principal amount of 1.75% Convertible Notes due 2016 (the "1.75% Convertible Notes"). Interest on the 1.75% Convertible Notes is payable semi-annually in arrears on June 1<sup>st</sup> and December 1<sup>st</sup> of each year, commencing on June 1, 2012. The 1.75% Convertible Notes mature on December 1, 2016, unless earlier repurchased by the Company or converted. The Company does not have the right to redeem the 1.75% Convertible Notes prior to maturity.

The 1.75% Convertible Notes are convertible at an initial conversion rate of 52.3745 shares of our common stock per \$1 principal amount of 1.75% Convertible Notes (representing an initial conversion price of approximately \$19.093 per share of common stock for a total of approximately 13,094,000 underlying conversion shares) subject to adjustment in certain circumstances. Holders may convert the 1.75% Convertible Notes at their option prior to the close of business on the business day immediately preceding June 1, 2016 only under the following circumstances: (1) during any fiscal quarter commencing after March 31, 2012, if the last reported sale price of the common stock for at least 20 trading days (whether or not consecutive) during a period of 30 consecutive trading days ending on the last trading day of the preceding fiscal quarter is greater than or equal to 130% of the applicable conversion price on each applicable trading day; (2) during the five business day period after any 10 consecutive trading day period (the "measurement period") in which the trading price per \$1 principal amount of 1.75% Convertible Notes for each day of that measurement period was less than 98% of the product of the last reported sale price of our common stock and the applicable conversion rate on each

**TAKE-TWO INTERACTIVE SOFTWARE, INC.****Notes to Unaudited Condensed Consolidated Financial Statements (Continued)****(Dollars in thousands, except share and per share amounts)****8. DEBT (Continued)**

such day; or (3) upon the occurrence of specified corporate events. On and after June 1, 2016 until the close of business on the business day immediately preceding the maturity date, holders may convert their 1.75% Convertible Notes at any time, regardless of the foregoing circumstances. Upon conversion, the 1.75% Convertible Notes may be settled, at our election, in cash, shares of our common stock, or a combination of cash and shares of the Company's common stock.

Upon the occurrence of certain fundamental changes involving the Company, holders of the 1.75% Convertible Notes may require us to purchase all or a portion of their 1.75% Convertible Notes for cash at a price equal to 100% of the principal amount of the notes to be purchased, plus accrued and unpaid interest (including additional interest, if any) to, but excluding, the fundamental change purchase date.

The indenture governing the 1.75% Convertible Notes contains customary terms and covenants and events of default. If an event of default (as defined therein) occurs and is continuing, the Trustee by notice to the Company, or the holders of at least 25% in aggregate principal amount of the 1.75% Convertible Notes then outstanding by notice to the Company and the Trustee, may, and the Trustee at the request of such holders shall, declare 100% of the principal of and accrued and unpaid interest (including additional interest, if any) on all the 1.75% Convertible Notes to be due and payable. In the case of an event of default arising out of certain bankruptcy events, 100% of the principal of and accrued and unpaid interest (including additional interest, if any), on the 1.75% Convertible Notes will automatically become due and payable immediately. As of December 31, 2013, we were in compliance with all covenants and requirements outlined in the indenture governing the 1.75% Convertible Notes.

The 1.75% Convertible Notes are senior unsecured obligations and rank senior in right of payment to our existing and future indebtedness that is expressly subordinated in right of payment to the 1.75% Convertible Notes; equal in right of payment to our existing and future indebtedness that is not so subordinated; effectively junior in right of payment to any of our secured indebtedness to the extent of the value of the assets securing such indebtedness; and structurally junior to all existing and future indebtedness incurred by our subsidiaries.

In accounting for the \$6,875 of banking, legal and accounting fees related to the issuance of the 1.75% Convertible Notes, we allocated \$5,428 to the liability component and \$1,447 to the equity component. Debt issuance costs attributable to the liability component are being amortized to interest and other, net over the term of the 1.75% Convertible Notes, and issuance costs attributable to the equity component were netted with the equity component in additional paid-in capital.

The following table provides additional information related to our 1.75% Convertible Notes:

	<u>December 31, 2013</u>	<u>March 31, 2013</u>
Additional paid-in capital	\$ <b>51,180</b>	\$ 51,180
Principal amount of 1.75% Convertible Notes	\$ <b>250,000</b>	\$ 250,000
Unamortized discount of the liability component	<b>32,576</b>	39,979
Net carrying amount of 1.75% Convertible Notes	\$ <b>217,424</b>	\$ 210,021
Carrying amount of debt issuance costs	\$ <b>2,988</b>	\$ 3,821

**TAKE-TWO INTERACTIVE SOFTWARE, INC.****Notes to Unaudited Condensed Consolidated Financial Statements (Continued)****(Dollars in thousands, except share and per share amounts)****8. DEBT (Continued)**

The following table provides the components of interest expense related to our 1.75% Convertible Notes:

	Three Months Ended December 31,		Nine Months Ended December 31,	
	2013	2012	2013	2012
Cash interest expense (coupon interest expense)	\$ 1,094	\$ 1,094	\$ 3,282	\$ 3,282
Non-cash amortization of discount on 1.75% Convertible Notes	2,509	2,347	7,403	6,926
Amortization of debt issuance costs	274	288	833	874
Total interest expense related to 1.75% Convertible Notes	\$ 3,877	\$ 3,729	\$ 11,518	\$ 11,082

**1.00% Convertible Notes Due 2018**

On June 18, 2013, we issued \$250,000 aggregate principal amount of 1.00% Convertible Notes due 2018 (the "1.00% Convertible Notes" and together with the 4.375% Convertible Notes and the 1.75% Convertible Notes, the "Convertible Notes"). The 1.00% Convertible Notes were issued at 98.5% of par value for proceeds of \$246,250. Interest on the 1.00% Convertible Notes is payable semi-annually in arrears on July 1<sup>st</sup> and January 1<sup>st</sup> of each year, commencing on January 1, 2014. The 1.00% Convertible Notes mature on July 1, 2018, unless earlier repurchased by the Company or converted. The Company does not have the right to redeem the 1.00% Convertible Notes prior to maturity. The Company also granted the underwriters a 30-day option to purchase up to an additional \$37,500 principal amount of 1.00% Convertible Notes to cover overallocments, if any. On July 17, 2013, the Company closed its public offering of \$37,500 principal amount of the Company's 1.00% Convertible Notes as a result of the underwriters exercising their overallocation option in full on July 12, 2013, bringing the total proceeds to \$283,188.

The 1.00% Convertible Notes are convertible at an initial conversion rate of 46.4727 shares of our common stock per \$1 principal amount of 1.00% Convertible Notes (representing an initial conversion price of approximately \$21.52 per share of common stock for a total of approximately 13,361,000 underlying conversion shares) subject to adjustment in certain circumstances. Holders may convert the 1.00% Convertible Notes at their option prior to the close of business on the business day immediately preceding January 1, 2018 only under the following circumstances: (1) during any fiscal quarter commencing after September 30, 2013, if the last reported sale price of the common stock for at least 20 trading days (whether or not consecutive) during a period of 30 consecutive trading days ending on the last trading day of the preceding fiscal quarter is greater than or equal to 130% of the applicable conversion price on each applicable trading day; (2) during the five business day period after any 10 consecutive trading day period (the "measurement period") in which the trading price per \$1 principal amount of 1.00% Convertible Notes for each day of that measurement period was less than 98% of the product of the last reported sale price of our common stock and the applicable conversion rate on each such day; or (3) upon the occurrence of specified corporate events. On and after January 1, 2018 until the close of business on the business day immediately preceding the maturity date, holders may convert their 1.00% Convertible Notes at any time, regardless of the foregoing circumstances. Upon conversion,

**TAKE-TWO INTERACTIVE SOFTWARE, INC.**

**Notes to Unaudited Condensed Consolidated Financial Statements (Continued)**

**(Dollars in thousands, except share and per share amounts)**

**8. DEBT (Continued)**

the 1.00% Convertible Notes may be settled, at our election, in cash, shares of our common stock, or a combination of cash and shares of the Company's common stock.

Upon the occurrence of certain fundamental changes involving the Company, holders of the 1.00% Convertible Notes may require us to purchase all or a portion of their 1.00% Convertible Notes for cash at a price equal to 100% of the principal amount of the notes to be purchased, plus accrued and unpaid interest (including additional interest, if any) to, but excluding, the fundamental change purchase date.

The indenture governing the 1.00% Convertible Notes contains customary terms and covenants and events of default. If an event of default (as defined therein) occurs and is continuing, the Trustee by notice to the Company, or the holders of at least 25% in aggregate principal amount of the 1.00% Convertible Notes then outstanding by notice to the Company and the Trustee, may, and the Trustee at the request of such holders shall, declare 100% of the principal of and accrued and unpaid interest (including additional interest, if any) on all the 1.00% Convertible Notes to be due and payable. In the case of an event of default arising out of certain bankruptcy events, 100% of the principal of and accrued and unpaid interest (including additional interest, if any), on the 1.00% Convertible Notes will automatically become due and payable immediately. As of December 31, 2013, we were in compliance with all covenants and requirements outlined in the indenture governing the 1.00% Convertible Notes.

The 1.00% Convertible Notes are senior unsecured obligations and rank senior in right of payment to our existing and future indebtedness that is expressly subordinated in right of payment to the 1.00% Convertible Notes; equal in right of payment to our existing and future indebtedness that is not so subordinated; effectively junior in right of payment to any of our secured indebtedness to the extent of the value of the assets securing such indebtedness; and structurally junior to all existing and future indebtedness incurred by our subsidiaries.

We separately account for the liability and equity components of the 1.00% Convertible Notes in a manner that reflects the Company's nonconvertible debt borrowing rate. We estimated the fair value of the 1.00% Convertible Notes to be \$225,567, upon issuance of our 1.00% Convertible Notes, assuming a 6.15% non-convertible borrowing rate. The carrying amount of the equity component was determined to be approximately \$57,621 by deducting the fair value of the liability component from the net proceeds of the 1.00% Convertible Notes. The excess of the principal amount of the liability component over its carrying amount is amortized to interest and other, net over the term of the 1.00% Convertible Notes using the effective interest method. The equity component is not remeasured as long as it continues to meet the conditions for equity classification. In accounting for the \$2,815 of banking, legal and accounting fees related to the issuance of the 1.00% Convertible Notes, we allocated \$2,209 to the liability component and \$606 to the equity component. Debt issuance costs attributable to the liability component are being amortized to interest and other, net over the term of the 1.00% Convertible Notes, and issuance costs attributable to the equity component were netted with the equity component in additional paid-in capital.



**TAKE-TWO INTERACTIVE SOFTWARE, INC.****Notes to Unaudited Condensed Consolidated Financial Statements (Continued)****(Dollars in thousands, except share and per share amounts)****8. DEBT (Continued)**

The following table provides additional information related to our 1.00% Convertible Notes:

	<u>December 31, 2013</u>
Additional paid-in capital	\$ <u>57,621</u>
Principal amount of 1.00% Convertible Notes	\$ 287,500
Unamortized discount of the liability component	<u>56,187</u>
Net carrying amount of 1.00% Convertible Notes	\$ <u>231,313</u>
Carrying amount of debt issuance costs	\$ <u>1,951</u>

The following table provides the components of interest expense related to our 1.00% Convertible Notes:

	<u>Three Months Ended</u> <u>December 31, 2013</u>	<u>Nine Months Ended</u> <u>December 31, 2013</u>
Cash interest expense (coupon interest expense)	\$ 718	\$ 1,541
Non-cash amortization of discount on 1.00% Convertible Notes	2,702	5,746
Amortization of debt issuance costs	<u>121</u>	<u>258</u>
Total interest expense related to 1.00% Convertible Notes	\$ <u>3,541</u>	\$ <u>7,545</u>

**TAKE-TWO INTERACTIVE SOFTWARE, INC.**

**Notes to Unaudited Condensed Consolidated Financial Statements (Continued)**

**(Dollars in thousands, except share and per share amounts)**

**9. EARNINGS (LOSS) PER SHARE ("EPS")**

The following table sets forth the computation of basic and diluted EPS (shares in thousands):

	Three Months Ended December 31,		Nine Months Ended December 31,	
	2013	2012	2013	2012
<b>Computation of Basic EPS:</b>				
Net income (loss)	\$ 578,426	\$ 71,365	\$ 392,392	\$ (51,964)
Less: net income allocated to participating securities	(77,857)	(5,808)	(42,482)	—
Net income (loss) for basic EPS calculation	\$ 500,569	\$ 65,557	\$ 349,910	\$ (51,964)
Total weighted average shares outstanding—basic	98,290	93,338	97,529	85,382
Less: weighted average participating shares outstanding	(13,230)	(7,596)	(10,559)	—
Weighted average common shares outstanding—basic	85,060	85,742	86,970	85,382
Basic EPS	\$ 5.88	\$ 0.76	\$ 4.02	\$ (0.61)
<b>Computation of Diluted EPS:</b>				
Net income (loss)	\$ 578,426	\$ 71,365	\$ 392,392	\$ (51,964)
Less: net income allocated to participating securities	(61,200)	(5,808)	(32,412)	—
Add: interest expense, net of tax, on Convertible Notes	7,418	7,834	26,221	—
Net income (loss) for diluted EPS calculation	\$ 524,644	\$ 73,391	\$ 386,201	\$ (51,964)
Weighted average shares outstanding—basic	85,060	85,742	86,970	85,382
Add: dilutive effect of common stock equivalents	26,752	26,021	30,304	—
Weighted average common shares outstanding—diluted	111,812	111,763	117,274	85,382
Diluted EPS	\$ 4.69	\$ 0.66	\$ 3.29	\$ (0.61)

The Company incurred a net loss for the nine months ended December 31, 2012; therefore, the basic and diluted weighted average shares outstanding exclude the impact of unvested share-based awards that are considered participating restricted stock and all common stock equivalents because their impact would be antidilutive.

Our unvested restricted stock rights (including restricted stock units, time-based and market-based restricted stock awards) are considered participating restricted stock since these securities have non-forfeitable rights to dividends or dividend equivalents during the contractual period of the award, and thus require the two-class method of computing EPS. The calculation of EPS for common stock shown above excludes the income attributable to the unvested restricted stock rights from the numerator and excludes the dilutive impact of those awards from the denominator. For the nine months ended December 31, 2012, we had approximately 7,754,000 of unvested share-based awards that are considered participating restricted stock which are excluded due to the net loss for that period.

The Company defines common stock equivalents as unexercised stock options, common stock equivalents underlying the Convertible Notes (see Note 8) and warrants outstanding during the period. Common stock equivalents are measured using the treasury stock method, except for the Convertible Notes, which are assessed for their impact on diluted EPS using the more dilutive of the treasury stock



**TAKE-TWO INTERACTIVE SOFTWARE, INC.****Notes to Unaudited Condensed Consolidated Financial Statements (Continued)****(Dollars in thousands, except share and per share amounts)****9. EARNINGS (LOSS) PER SHARE ("EPS") (Continued)**

method or the if-converted method. Under the provisions of the if- converted method, the Convertible Notes are assumed to be converted and the underlying conversion shares included in the denominator of the EPS calculation and the interest expense, net of tax, recorded in connection with the Convertible Notes is added back to the numerator.

In connection with the issuance of our 4.375% Convertible Notes in June 2009, the Company purchased convertible note hedges (see Note 8) which were excluded from the calculation of diluted EPS because their impact was always considered antidilutive since the call option would be exercised by the Company when the exercise price was lower than the market price. Also in connection with the issuance of our 4.375% Convertible Notes, the Company entered into warrant transactions (see Note 8). On June 12, 2013, the Company entered into Unwind Agreements with respect to the convertible note hedge transactions and Unwind Agreements with respect to the warrant transactions with each of the hedge counterparties (see Note 8).

Other common stock equivalents excluded from the diluted EPS calculation were unexercised stock option awards of approximately 2,009,000 for the nine months ended December 31, 2012 due to the net loss for that period. For the three months ended December 31, 2012, the Company excluded from its diluted EPS calculation approximately 2,009,000 of common stock equivalents which were antidilutive because the common stock equivalents' exercise prices exceeded the average fair market value of the Company's common stock.

For the three and nine months ended December 31, 2013, we issued approximately 238,000 and 8,010,000 shares, respectively, of common stock in connection with restricted stock awards and we canceled approximately 58,000 and 161,000 shares, respectively, of unvested restricted stock awards

**10. ACCUMULATED OTHER COMPREHENSIVE INCOME (LOSS)**

The following table provides the components of accumulated other comprehensive income (loss):

	Nine Months Ended December 31, 2013		
	Foreign currency translation adjustments	Unrealized gain on derivative instruments	Total
Balance at March 31, 2013	\$ (4,916)	\$ 344	\$ (4,572)
Other comprehensive income before reclassifications	6,518	269	6,787
Amounts reclassified from accumulated other comprehensive income (loss)	—	—	—
Balance at December 31, 2013	\$ 1,602	\$ 613	\$ 2,215

**TAKE-TWO INTERACTIVE SOFTWARE, INC.**

**Notes to Unaudited Condensed Consolidated Financial Statements (Continued)**

(Dollars in thousands, except share and per share amounts)

**10. ACCUMULATED OTHER COMPREHENSIVE INCOME (LOSS) (Continued)**

	<b>Nine Months Ended December 31, 2012</b>		
	<b>Foreign currency translation adjustments</b>	<b>Unrealized gain on derivative instruments</b>	<b>Total</b>
Balance at March 31, 2012	\$ 6,674	\$ 59	\$ 6,733
Other comprehensive income before reclassifications	(42)	618	576
Amounts reclassified from accumulated other comprehensive income (loss)	—	—	—
Balance at December 31, 2012	<u>\$ 6,632</u>	<u>\$ 677</u>	<u>\$ 7,309</u>

**11. SEGMENT AND GEOGRAPHIC INFORMATION**

We operate in one reportable segment in which we are a publisher of interactive software games designed for console systems, handheld gaming systems and personal computers, including smart phones and tablets, that are delivered through physical retail, digital download, online platforms and cloud streaming services. Our reporting segment is based upon our internal organizational structure, the manner in which our operations are managed and the criteria used by our Chief Executive Officer, our chief operating decision maker ("CODM") to evaluate performance. The Company's operations involve similar products and customers worldwide. We are centrally managed and the CODM primarily uses consolidated financial information supplemented by sales information by product category, major product title and platform to make operational decisions and assess financial performance. Our business consists of our Rockstar Games and 2K labels which have been aggregated into a single reportable segment (the "publishing segment") based upon their similar economic characteristics, products and distribution methods. Revenue earned from our publishing segment is primarily derived from the sale of internally developed software titles and software titles developed on our behalf by third-parties.

We attribute net revenue to geographic regions based on product destination. Net revenue by geographic region was as follows:

	<b>Three Months Ended December 31,</b>		<b>Nine Months Ended December 31,</b>	
	<b>2013</b>	<b>2012</b>	<b>2013</b>	<b>2012</b>
<b>Net revenue by geographic region:</b>				
United States	<b>\$ 819,095</b>	\$ 271,555	<b>\$ 982,353</b>	\$ 530,642
Europe	<b>745,658</b>	87,788	<b>838,489</b>	243,600
Canada and Latin America	<b>157,898</b>	26,018	<b>173,205</b>	70,878
Asia Pacific	<b>141,218</b>	30,412	<b>161,313</b>	69,876
<b>Total net revenue</b>	<b><u>\$ 1,863,869</u></b>	<u>\$ 415,773</u>	<b><u>\$ 2,155,360</u></b>	<u>\$ 914,996</u>

**TAKE-TWO INTERACTIVE SOFTWARE, INC.**

**Notes to Unaudited Condensed Consolidated Financial Statements (Continued)**

(Dollars in thousands, except share and per share amounts)

**11. SEGMENT AND GEOGRAPHIC INFORMATION (Continued)**

Net revenue by product platform was as follows:

	Three Months Ended December 31,		Nine Months Ended December 31,	
	2013	2012	2013	2012
<b>Net revenue by product platform:</b>				
Console	<b>\$ 1,803,107</b>	\$ 332,391	<b>\$ 1,995,178</b>	\$ 736,463
PC and other	<b>58,671</b>	73,559	<b>152,276</b>	160,145
Handheld	<b>2,091</b>	9,823	<b>7,906</b>	18,388
<b>Total net revenue</b>	<b>\$ 1,863,869</b>	\$ 415,773	<b>\$ 2,155,360</b>	\$ 914,996

Our products are delivered through physical retail and digital online services (digital download, online platforms and cloud streaming). Net revenue by distribution channel was as follows:

	Three Months Ended December 31,		Nine Months Ended December 31,	
	2013	2012	2013	2012
<b>Net revenue by distribution channel:</b>				
Physical retail and other	<b>1,738,599</b>	324,940	<b>1,867,781</b>	736,006
Digital online	<b>\$ 125,270</b>	\$ 90,833	<b>\$ 287,579</b>	\$ 178,990
<b>Total net revenue</b>	<b>\$ 1,863,869</b>	\$ 415,773	<b>\$ 2,155,360</b>	\$ 914,996

**12. COMMITMENTS AND CONTINGENCIES**

At December 31, 2013, we did not have any significant changes to our commitments since March 31, 2013 other than (i) in June 2013, the Company issued \$250,000 principal amount of 1.00% Convertible Notes, (ii) in July 2013, the Company closed its public offering of \$37,500 principal amount of the Company's 1.00% Convertible Notes as a result of the underwriters exercising their overallotment option in full on July 12, 2013 and (iii) in August 2013, our 4.375% Convertible Notes were settled. See Note 8 for additional information regarding our Convertible Notes. See Note 12 of the Notes to the Consolidated Financial Statements included in our Annual Report on Form 10-K for the year ended March 31, 2013 for more information regarding our commitments.

Below is a summary of the annual commitments as of December 31, 2013 related to our 1.00% Convertible Notes:

<u>Fiscal year ending March 31,</u>	<u>Interest</u>	<u>Principal</u>	<u>Total</u>
2014 (remaining three months)	\$ 1,541	\$ —	\$ 1,541
2015	2,875	—	2,875
2016	2,875	—	2,875
2017	2,875	—	2,875
2018	2,875	—	2,875
Thereafter	1,438	287,500	288,938
<b>Total</b>	<b>\$ 14,479</b>	<b>\$ 287,500</b>	<b>\$ 301,979</b>

**TAKE-TWO INTERACTIVE SOFTWARE, INC.**

**Notes to Unaudited Condensed Consolidated Financial Statements (Continued)**

**(Dollars in thousands, except share and per share amounts)**

**12. COMMITMENTS AND CONTINGENCIES (Continued)**

*Legal and Other Proceedings*

We are, or may become, subject to demands and claims (including intellectual property claims) and are involved in routine litigation in the ordinary course of business which we do not believe to be material to our business or financial statements. We have appropriately accrued amounts related to certain of these claims and legal and other proceedings. While it is reasonably possible that a loss may be incurred in excess of the amounts accrued in our financial statements, we believe that such losses, unless otherwise disclosed, would not be material.

**13. SHARE REPURCHASE**

*Share Repurchase Program*

In January 2013, our Board of Directors (the "Board") authorized the repurchase of up to 7,500,000 shares of our common stock. The authorization permits the Company to purchase shares from time to time through a variety of methods, including in the open market or through privately negotiated transactions, in accordance with applicable securities laws. It does not obligate the Company to make any purchases at any specific time or situation. Repurchases are subject to the availability of stock, prevailing market conditions, the trading price of the stock, the Company's financial performance and other conditions. The program may be suspended or discontinued at any time for any reason. During the three and nine months ended December 31, 2013, the Company repurchased approximately 4,217,000 shares of our common stock in the open market for approximately \$73,325, including commissions of \$42, as part of the program. As of December 31, 2013, up to approximately 3,282,000 shares of our common stock remain available for repurchase under the Company's share repurchase authorization.

*Repurchase from Icahn Group*

In November 2013, the Company entered into a Purchase Agreement with High River Limited Partnership, Icahn Partners LP, Icahn Partners Master Fund LP, Icahn Partners Master Fund II LP and Icahn Partners Master Fund III LP (collectively, the "Icahn Group"), pursuant to which the Company repurchased approximately 12,021,000 shares of the Company's common stock owned by the Icahn Group, at a price per share of \$16.93, resulting in an aggregate purchase price of approximately \$203,511 (the "Repurchase Transaction"). The closing of the Repurchase Transaction occurred on November 26, 2013. The Repurchase Transaction was conducted outside the Company's share repurchase program described above.

All of the repurchased shares described in this Note 13 have been classified as treasury stock in our Condensed Consolidated Balance Sheets.

## Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

### CAUTIONARY NOTE ABOUT FORWARD-LOOKING STATEMENTS

*The statements contained herein which are not historical facts are considered forward-looking statements under federal securities laws and may be identified by words such as "anticipates," "believes," "estimates," "expects," "intends," "plans," "potential," "predicts," "projects," "seeks," "will," or words of similar meaning and include, but are not limited to, statements regarding the outlook for the Company's future business and financial performance. Such forward-looking statements are based on the current beliefs of our management as well as assumptions made by and information currently available to them, which are subject to inherent uncertainties, risks and changes in circumstances that are difficult to predict. Actual outcomes and results may vary materially from these forward-looking statements based on a variety of risks and uncertainties including those contained herein, in the Company's Annual Report on Form 10-K for the fiscal year ended March 31, 2013, in the section entitled "Risk Factors," and the Company's other periodic filings with the SEC. All forward-looking statements are qualified by these cautionary statements and speak only as of the date they are made. The Company undertakes no obligation to update any forward-looking statement, whether as a result of new information, future events or otherwise.*

Our Management's Discussion and Analysis of Financial Condition and Results of Operations ("MD&A") is provided in addition to the accompanying Unaudited Condensed Consolidated Financial Statements and notes to assist readers in understanding our results of operations, financial condition and cash flows. The following discussion should be read in conjunction with the MD&A and our annual consolidated financial statements and the notes thereto, included in our Annual Report on Form 10-K for the fiscal year ended March 31, 2013.

#### Overview

##### *Our Business*

We are a leading developer, publisher and marketer of interactive entertainment for consumers around the globe. We develop and publish products through our two wholly-owned labels Rockstar Games and 2K. Our products are currently designed for console gaming systems such as Sony's PlayStation®4 ("PS4") and PlayStation®3 ("PS3"), Microsoft's Xbox One® ("Xbox One") and Xbox 360® ("Xbox 360") and Nintendo's Wii™ ("Wii") and Wii U ("Wii U"); handheld gaming systems such as Nintendo's DS ("DS") and Sony's PlayStation Portable ("PSP"); and personal computers including smartphones and tablets. We deliver our products through physical retail, digital download, online platforms and cloud streaming services.

We endeavor to be the most creative, innovative and efficient company in our industry. Our core strategy is to capitalize on the popularity of video games by developing and publishing high-quality interactive entertainment experiences across a range of genres. We focus on building compelling entertainment franchises by publishing a select number of titles for which we can create sequels and add-on content. Most of our intellectual property is internally owned and developed, which we believe best positions us financially and competitively. We have established a portfolio of proprietary software content for the major hardware platforms in a wide range of genres, including action, adventure, family/casual, racing, role-playing, shooter, sports and strategy, which we distribute worldwide. We believe that our commitment to creativity and innovation is a distinguishing strength, enabling us to differentiate our products in the marketplace by combining advanced technology with compelling storylines and characters that provide unique gameplay experiences for consumers. We have created, acquired or licensed a group of highly recognizable brands to match the broad consumer demographics we serve, ranging from adults to children and game enthusiasts to casual gamers. Another cornerstone of our strategy is to support the success of our products in the marketplace through innovative marketing programs and global distribution on all platforms and through all channels that are relevant to our target audience.



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Our revenue is primarily derived from the sale of internally developed software titles and software titles developed by third-parties for our benefit. Operating margins are dependent in part upon our ability to release new, commercially successful software products and to manage effectively their development costs. We have internal development studios located in Australia, Canada, China, Czech Republic, the United Kingdom, and the United States.

Software titles published by our Rockstar Games label are primarily internally developed. We expect Rockstar Games, our wholly-owned publisher of the *Grand Theft Auto*, *Max Payne*, *Midnight Club*, *Red Dead* and other popular franchises, to continue to be a leader in the action / adventure product category and create groundbreaking entertainment by leveraging our existing titles as well as developing new brands. We believe that Rockstar has established a uniquely original, popular cultural phenomenon with its *Grand Theft Auto* series, which is the interactive entertainment industry's most iconic and critically acclaimed brand and has sold-in over 180 million units. The latest installment, *Grand Theft Auto V*, released in September 2013. *Grand Theft Auto V* includes access to *Grand Theft Auto Online* which launched in October 2013. Rockstar continues to expand on our established franchises by developing sequels, offering downloadable episodes and content, and releasing titles for smartphones and tablets. Rockstar is also well known for developing brands in other genres, including the *L.A. Noire*, *Bully* and *Manhunt* franchises.

Our 2K label has published a variety of popular entertainment properties across all key platforms and across a range of genres including shooter, action, role-playing, strategy, sports and family/casual entertainment. We expect 2K to continue to develop new and successful franchises in the future.

2K's internally owned and developed franchises include the critically acclaimed, multi-million unit selling *BioShock*, *Mafia*, *Sid Meier's Civilization* and *XCOM* series. 2K also publishes highly successful externally developed franchises, such as *Borderlands*. 2K successfully launched *Borderlands 2* in September 2012 and is supporting the title with a robust add-on content campaign. In March 2013, 2K released *BioShock Infinite* which is being supported with add-on content. Also in August 2013, 2K released *The Bureau: XCOM Declassified*.

2K publishes a range of realistic sports simulation titles, including our flagship *NBA 2K* series, which has been the top-ranked NBA basketball video game for 13 years running, the *Major League Baseball 2K* series, our *Top Spin* tennis series and the *WWE 2K* series. *NBA 2K14* was our first title for the Xbox One and PS4. 2K has secured long-term licensing agreements with the National Basketball Association ("NBA"). Our licenses with Major League Baseball Properties, the Major League Baseball Players Association and Major League Baseball Advanced Media expired in December 2013. In addition, in February 2013, 2K entered into an exclusive multi-year agreement with WWE to publish the *WWE* video game franchise worldwide.

2K also develops and publishes titles for the casual and family-friendly games market. Internally developed titles include *Carnival Games* and *Let's Cheer!*. 2K also had an agreement with Nickelodeon to publish video games based on its top rated Nick Jr. titles such as *Dora the Explorer*, *Go, Diego, Go!*, *Ni Hao, Kai-lan* and *The Backyardigans*, which expired in December 2013. Throughout the current fiscal year, 2K has released a slate of new titles designed exclusively for smartphones and tablets, including *Haunted Hollow*, *Sid Meier's Ace Patrol for iOS*, *Beejumbled*, *Turd Birds* and *2K Drive*.

We also have expansion initiatives in the rapidly growing Asia markets, where our strategy is to broaden the distribution of our existing products, expand our business in Japan, and establish an online gaming presence, especially in China and Korea. 2K has secured a multi-year license from the NBA to develop an online version of the NBA simulation game in China, Taiwan, South Korea and Southeast Asia. In October 2012, *NBA 2K Online*, our free-to-play NBA simulation game co-developed by 2K and Tencent, launched commercially on the Tencent Games portal in China. In May 2013, *Pro Baseball 2K*, our online baseball simulation game co-developed by 2K and Nexon Corporation, launched commercially in Korea.

## **Discontinued operations**

In February 2010, we completed the sale to SYNnex Corporation ("Synnex") of our Jack of All Games third-party distribution business, which primarily distributed third-party interactive entertainment software, hardware and accessories in North America. The financial information of our distribution business has been classified as discontinued operations in the Unaudited Condensed Consolidated Financial Statements for all of the periods presented. See Note 2 to our Unaudited Condensed Consolidated Financial Statements for additional information regarding discontinued operations.

## ***Trends and Factors Affecting our Business***

*Product Release Schedule.* Our financial results are affected by the timing of our product releases and the commercial success of those titles. Our *Grand Theft Auto* products in particular have historically accounted for a substantial portion of our revenue. Sales of *Grand Theft Auto* products generated approximately 72.2% of the Company's net revenue for the nine months ended December 31, 2013. The timing of our *Grand Theft Auto* releases varies significantly, which in turn may impact our financial performance on a quarterly and annual basis.

*Economic Environment and Retailer Performance.* We continue to monitor economic conditions that may unfavorably affect our businesses, such as deteriorating consumer demand, pricing pressure on our products, credit quality of our receivables, and foreign currency exchange rates. Our business is dependent upon a limited number of customers who account for a significant portion of our revenue. Our five largest customers accounted for 42.6% and 51.0% of net revenue during the nine months ended December 31, 2013 and 2012, respectively. As of December 31, 2013 and March 31, 2013, our five largest customers comprised approximately 52.1% and 57.2% of our gross accounts receivable, respectively, with our significant customers (those that individually comprised more than 10% of our gross accounts receivable balance) accounting for approximately 25.6% and 30.5% of such balance at December 31, 2013 and March 31, 2013, respectively. The economic environment has affected our customers in the past, and may do so in the future. Bankruptcies or consolidations of our large retail customers could seriously hurt our business, due to uncollectible accounts receivables and the concentration of purchasing power among the remaining large retailers. Certain of our large customers sell used copies of our games, which may negatively affect our business by reducing demand for new copies of our games. While the downloadable content that we now offer for certain of our titles may serve to reduce used game sales, we expect used game sales to continue to adversely affect our business.

*Hardware Platforms.* We derive most of our revenue from the sale of products made for video game platforms manufactured by third-parties, such as Sony's PS4 and PS3, Microsoft's Xbox One and Xbox 360 and Nintendo's Wii and Wii U, which comprised approximately 92.5% of the Company's net revenue by product platform for the nine months ended December 31, 2013. The success of our business is dependent upon the consumer acceptance of these platforms and the continued growth in the installed base of these platforms. When new hardware platforms are introduced, demand for software based on older platforms typically decline, which may negatively affect our business during the market transition to the new consoles. Sony launched its new console system PS4 on November 15, 2013 and Microsoft launched of its new console system Xbox One on November 22, 2013. We continually monitor console hardware sales. We manage our product delivery on each current and future platform in a manner we believe to be most effective to maximize our revenue opportunities and achieve the desired return on our investments in product development. Additionally, our development costs are generally higher for titles during platforms transition periods, and we have limited ability to predict the consumer acceptance of the new platforms, which may affect our sales and profitability. Accordingly, our strategy is to focus our development efforts on a select number of the highest quality

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titles for these platforms, while also expanding our offerings for emerging platforms such as mobile and online games.

**Online Content and Digital Distribution.** The interactive entertainment software industry is delivering a growing amount of content through digital online delivery methods. We provide a variety of online delivered products and offerings. A number of our titles that are available through retailers as packaged goods products are also available through direct digital download through the Internet (from websites we own and others owned by third-parties) to the consumers' console systems or PC. We also offer downloadable add-on content to our packaged goods titles. In addition, we are publishing an expanding variety of titles for tablets and smartphones, which are delivered to consumers through digital download through the Internet. Note 11 to our Unaudited Condensed Consolidated Financial Statements, "Segment and Geographic Information," discloses that net revenue from digital online channels comprised approximately 13.3% of the Company's net revenue by distribution channel for the nine months ended December 31, 2013. We expect online delivery of games and game offerings to become an increasing part of our business over the long-term.

**Product Releases**

We released the following key titles during the nine months ended December 31, 2013:

Title	Publishing Label	Internal or External Development	Platform(s)	Date Released
<i>Sid Meier's Civilization V: Brave New World</i>	2K	Internal	PC, Mac	July 9, 2013
<i>The Bureau: XCOM Declassified</i>	2K	Internal	PS3, Xbox 360, PC	August 20, 2013
<i>Grand Theft Auto V</i>	Rockstar Games	Internal	PS3, Xbox 360	September 17, 2013
<i>Grand Theft Auto Online</i>	Rockstar Games	Internal	PS3, Xbox 360	October 1, 2013
<i>NBA 2K14</i>	2K	Internal	PS3, Xbox 360, PC	October 1, 2013
<i>WWE 2K14</i>	2K	External	PS3, Xbox 360	October 29, 2013
<i>NBA 2K14</i>	2K	Internal	PS4	November 15, 2013

**Product Pipeline**

We have announced the following future key titles to date (this list does not represent all titles currently in development):

Title	Publishing Label	Internal or External Development	Platform(s)	Expected Release Date
<i>Evolve</i>	2K	External	PS4, Xbox One, PC	Fall 2014
<i>NBA 2K15</i>	2K	Internal	TBA	Fiscal 2015
<i>WWE 2K15</i>	2K	External	TBA	Fiscal 2015

**Critical Accounting Policies and Estimates**

Our most critical accounting policies, which are those that require significant judgment, include: revenue recognition; allowances for returns, price concessions and other allowances; capitalization and recognition of software development costs and licenses; fair value estimates including inventory



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obsolescence, valuation of goodwill, intangible assets and long-lived assets; valuation and recognition of stock-based compensation; and income taxes. In-depth descriptions of these can be found in our Annual Report on Form 10-K for the fiscal year ended March 31, 2013.

**Recently Issued Accounting Pronouncements**

***Reclassification of Accumulated Other Comprehensive Income***

In February 2013, new guidance was issued requiring new disclosures about reclassifications from accumulated other comprehensive income to net income. This new guidance requires an entity to provide information about the amounts reclassified out of accumulated other comprehensive income by component. In addition, an entity is required to present, either on the face of the statement where net income is presented or in the notes, significant amounts reclassified out of accumulated other comprehensive income by the respective line items of net income but only if the amount reclassified is required under U.S. GAAP to be reclassified to net income in its entirety in the same reporting period. For other amounts that are not required under U.S. GAAP to be reclassified in their entirety to net income, an entity is required to cross-reference to other disclosures required under U.S. GAAP that provide additional detail about those amounts. The new guidance is effective prospectively for annual and interim periods beginning after December 15, 2012 (April 1, 2013 for the Company). The adoption of this new guidance did not have a material impact on our Condensed Consolidated Financial Statements and the required disclosures are provided in Note 10.

***Presentation of Unrecognized Tax Benefits***

In July 2013, new guidance was issued requiring that entities that have an unrecognized tax benefit and a net operating loss carryforward or similar tax loss or tax credit carryforward in the same jurisdiction as the uncertain tax position present the unrecognized tax benefit as a reduction of the deferred tax asset for the loss or tax credit carryforward rather than as a liability when the uncertain tax position would reduce the loss or tax credit carryforward under the tax law. The disclosure requirements will be effective for annual periods (and interim periods within those annual periods) beginning after December 15, 2013 (April 1, 2014 for the Company), and will require prospective application. Early adoption is permitted. We are currently evaluating the impact on our Condensed Consolidated Financial Statements from the adoption of this guidance.

## Results of Operations

The following table sets forth, for the periods indicated, the percentage of net revenue represented by certain line items in our condensed consolidated statements of operations, net revenue by geographic region, net revenue by platform and net revenue by distribution channel:

	Three Months Ended December 31,		Nine Months Ended December 31,	
	2013	2012	2013	2012
Net revenue	<b>100.0%</b>	100.0%	<b>100.0%</b>	100.0%
Cost of goods sold	<b>60.1%</b>	52.0%	<b>60.6%</b>	61.4%
Gross profit	<b>39.9%</b>	48.0%	<b>39.4%</b>	38.6%
Selling and marketing	<b>3.8%</b>	14.6%	<b>9.9%</b>	22.5%
General and administrative	<b>1.9%</b>	7.9%	<b>5.1%</b>	11.7%
Research and development	<b>1.6%</b>	5.4%	<b>3.6%</b>	6.2%
Depreciation and amortization	<b>0.1%</b>	0.6%	<b>0.5%</b>	0.8%
Total operating expenses	<b>7.4%</b>	28.5%	<b>19.1%</b>	41.2%
Income (loss) from operations	<b>32.5%</b>	19.5%	<b>20.3%</b>	(2.6)%
Interest and other, net	<b>(0.3)%</b>	(2.0)%	<b>(1.2)%</b>	(2.6)%
Loss on extinguishment of debt	<b>0.0%</b>	0.0%	<b>(0.4)%</b>	0.0%
Gain on convertible note hedge and warrants, net	<b>0.0%</b>	0.0%	<b>0.2%</b>	0.0%
Income (loss) from continuing operations before income taxes	<b>32.2%</b>	17.5%	<b>18.9%</b>	(5.2)%
Provision for income taxes	<b>1.3%</b>	0.5%	<b>0.7%</b>	0.5%
Income (loss) from continuing operations	<b>30.9%</b>	17.0%	<b>18.2%</b>	(5.7)%
(Loss) income from discontinued operations, net of taxes	<b>0.0%</b>	0.2%	<b>0.0%</b>	0.0%
Net income (loss)	<b>30.9%</b>	17.2%	<b>18.2%</b>	(5.7)%
<b>Net revenue by geographic region:</b>				
United States	<b>43.9%</b>	65.3%	<b>45.6%</b>	58.0%
International	<b>56.1%</b>	34.7%	<b>54.4%</b>	42.0%
<b>Net revenue by platform:</b>				
Console	<b>96.7%</b>	79.9%	<b>92.6%</b>	80.5%
PC and other	<b>3.2%</b>	17.7%	<b>7.1%</b>	17.5%
Handheld	<b>0.1%</b>	2.4%	<b>0.3%</b>	2.0%
<b>Net revenue by distribution channel:</b>				
Physical retail and other	<b>93.3%</b>	78.2%	<b>86.7%</b>	80.4%
Digital online	<b>6.7%</b>	21.8%	<b>13.3%</b>	19.6%

**Three Months Ended December 31, 2013 Compared to December 31, 2012**

(thousands of dollars)	2013	%	2012	%	Increase/ (decrease)	% Increase/ (decrease)
Net revenue	\$ 1,863,869	100.0%	\$ 415,773	100.0%	\$ 1,448,096	348.3%
Internal royalties	502,169	26.9%	7,903	1.9%	494,266	6254.2%
Product costs	374,710	20.1%	99,020	23.8%	275,690	278.4%
Software development costs and royalties(1)	200,333	10.7%	77,641	18.7%	122,692	158.0%
Licenses	42,522	2.3%	31,735	7.6%	10,787	34.0%
Cost of goods sold	1,119,734	60.1%	216,299	52.0%	903,435	417.7%
<b>Gross profit</b>	<b>\$ 744,135</b>	<b>39.9%</b>	<b>\$ 199,474</b>	<b>48.0%</b>	<b>\$ 544,661</b>	<b>273.0%</b>

(1) Includes \$27,220 and \$1,790 of stock-based compensation expense in 2013 and 2012, respectively.

For the three months ended December 31, 2013, net revenue increased \$1,448.1 million as compared to the prior year. This increase is primarily due to an increase of approximately \$1,446.4 million in sales from our *Grand Theft Auto* franchise, primarily related to sales of *Grand Theft Auto V*, and higher sales of \$99.8 million mainly driven by the October 2013 release of *WWE 2K14* and higher sales of our *NBA 2K* franchise. These increases were partially offset by a \$93.6 million decrease in net sales from *Borderlands 2* and *XCOM: Enemy Unknown*, which released in September 2012 and in October 2012, respectively.

During the three months ended December 31, 2013, the Company recognized the deferred revenue and deferred cost of goods sold balances outstanding as of September 30, 2013, related to sales of *Grand Theft Auto V*, which was released in September 2013, as the undelivered elements were delivered during the three months ended December 31, 2013. *Grand Theft Auto V* includes access to *Grand Theft Auto Online* which launched in October 2013.

Net revenue on consoles increased to 96.7% of our total net revenue for the three months ended December 31, 2013 as compared to 79.9% for the same period in the prior year primarily due to the current year release of *Grand Theft Auto V* on the Xbox 360 and PS3 console gaming systems. PC and other sales decreased to 3.2% of our total net revenue for the three months ended December 31, 2013 as compared to 17.7% for the prior year. The decrease was primarily due to the prior year PC releases of *Borderlands 2* and *XCOM: Enemy Unknown*. Handheld sales decreased to 0.1% of our total net revenue for the three months ended December 31, 2013 as compared to 2.4% for the prior year primarily due to the increased percentage of total net revenue on console platforms.

Net revenue from physical retail and other channels increased to 93.3% of our total net revenue for the three months ended December 31, 2013 as compared to 78.2% for the same period in the prior year primarily due to the current year release of *Grand Theft Auto V* on the Xbox 360 and PS3 console gaming systems. Net revenue from digital online channels for the three months ended December 31, 2013 increased by \$34.4 million, or 37.9% as compared to the same period in the prior year. The increase was mainly driven by digital offerings from our *Grand Theft Auto* and *NBA 2K* franchises, partially offset by *Borderlands 2*.

Gross profit as a percentage of net revenue for the three months ended December 31, 2013 was 39.9% as compared to 48.0% for the prior year. The decrease was primarily due to higher internal royalties mainly due to higher income generated from our *Grand Theft Auto* franchise partially offset by (i) lower product costs in the current year as a percentage of net revenues due to a greater share of net revenue in the current year being generated from a product mix with higher average selling price points and (ii) lower software development costs and royalties as a percentage of net revenue for the

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three months ended December 31, 2013 primarily due to the prior year release of *Borderlands 2*, which was externally developed.

Net revenue earned outside of the United States accounted for 56.1% of our total net revenue for the three months ended December 31, 2013, as compared to 34.7% in the prior year. The year-over-year percentage increase was primarily due to the global release of *Grand Theft Auto V*, which generated higher sales outside the United States during the three months ended December 31, 2013. Foreign currency exchange rates decreased net revenue and increased gross profit by \$4.7 million and \$0.9 million, respectively, for the three months ended December 31, 2013 as compared to the prior year.

**Operating Expenses**

(thousands of dollars)	2013	% of net revenue	2012	% of net revenue	Increase/ (decrease)	% Increase/ (decrease)
Selling and marketing	\$ 70,476	3.8%	\$ 60,724	14.6%	\$ 9,752	16.1%
General and administrative	34,718	1.9%	32,880	7.9%	1,838	5.6%
Research and development	29,233	1.6%	22,369	5.4%	6,864	30.7%
Depreciation and amortization	3,413	0.1%	2,509	0.6%	904	36.0%
<b>Total operating expenses(1)</b>	<b>\$ 137,840</b>	<b>7.4%</b>	<b>\$ 118,482</b>	<b>28.5%</b>	<b>\$ 19,358</b>	<b>16.3%</b>

(1) Includes stock-based compensation expense, which was allocated as follows:

	2013	2012
Selling and marketing	\$ 3,414	\$ 1,701
General and administrative	\$ 1,736	\$ 4,324
Research and development	\$ 3,958	\$ 866

Foreign currency exchange rates decreased total operating expenses by \$0.1 million for the three months ended December 31, 2013 as compared to the prior year.

**Selling and marketing**

Selling and marketing expenses increased \$9.8 million for the three months ended December 31, 2013 as compared to the prior year primarily due to an increase of \$4.7 million advertising expenses incurred in the current year for the releases of *Grand Theft Auto V* in September 2013 and *WWE 2K14* in October 2013, partially offset by advertising expenses incurred in the prior year for the releases of *Borderlands 2* in September 2012 and *XCOM: Enemy Unknown* in October 2012. Also contributing to the increase in selling and marketing expenses is a \$3.3 million increase in personnel costs primarily due to higher stock-based compensation expense.

**General and administrative**

General and administrative expenses increased \$1.8 million for the three months ended December 31, 2013, as compared to the prior year primarily due to an increase of \$4.8 million for higher legal fees and personnel costs, mainly due to higher severance costs related to current year restructuring activities. Partially offsetting the increase in general and administrative expenses is a decrease of \$3.1 million in stock-based compensation expense for previously granted stock-based awards to ZelnickMedia.

General and administrative expenses for the three months ended December 31, 2013 and 2012 include occupancy expense (primarily rent, utilities and office expenses) of \$4.0 million and \$4.0 million, respectively, related to our development studios.



[Table of Contents](#)Research and development

Research and development expenses increased \$6.9 million for the three months ended December 31, 2013 as compared to the prior year primarily due to an increase in personnel costs due mainly to higher stock-based compensation related to the current year issuance of restricted stock to certain employees and lower capitalization rates at our development studios due mainly to resources being transitioned to new projects following the September 2013 release of *GTA V*.

*Interest and other, net*

Interest and other, net was an expense of \$5.9 million for the three months ended December 31, 2013, as compared to an expense of \$8.1 million for the three months ended December 31, 2012. The decrease of \$2.2 million was primarily due to a greater foreign currency exchange gains recorded during the three months ended December 31, 2013.

*Provision for income taxes*

Income tax expense was \$21.9 million for the three months ended December 31, 2013 as compared to income tax expense of \$2.0 million for the three months ended December 31, 2012. The increase in income tax expense was primarily attributable to increased income earned during the three months ended December 31, 2013 partially offset by changes in valuation allowance for tax loss carryforwards anticipated to be utilized.

Our effective tax rate differed from the federal statutory rate primarily due to changes in valuation allowances related to tax loss carryforwards that will be utilized against income.

We are regularly audited by domestic and foreign taxing authorities. Audits may result in tax assessments in excess of amounts claimed and the payment of additional taxes. We believe that our tax positions comply with applicable tax law, and that we have adequately provided for reasonably foreseeable tax assessments.

*Net income and earnings per share*

For the three months ended December 31, 2013, our net income was \$578.4 million, as compared to \$71.4 million in the prior year. Earnings per share for the three months ended December 31, 2013 were \$5.88 for basic and \$4.69 for diluted earnings as compared to earnings per share of \$0.76 for basic and \$0.66 for diluted earnings for the three months ended December 31, 2012. Basic and diluted weighted average shares outstanding were lower compared to the prior year period primarily due to the shares repurchased during the three months ended December 31, 2013 partially offset by the vesting of restricted stock awards over the last twelve months and the issuance of shares upon the conversion of 4.375% Convertible Notes. See Note 9 to our unaudited condensed consolidated financial statements for additional information regarding earnings per share.

**Nine Months Ended December 31, 2013 Compared to December 31, 2012**

<u>(thousands of dollars)</u>	<u>2013</u>	<u>%</u>	<u>2012</u>	<u>%</u>	<u>Increase/ (decrease)</u>	<u>% Increase/ (decrease)</u>
Net revenue	\$ 2,155,360	100.0%	\$ 914,996	100.0%	\$ 1,240,364	135.6%
Internal royalties	510,371	23.7%	9,261	1.1%	501,110	5411.0%
Product costs	438,839	20.4%	244,593	26.7%	194,246	79.4%
Software development costs and royalties(1)	305,151	14.2%	260,180	28.4%	44,971	17.3%
Licenses	51,678	2.4%	47,483	5.2%	4,195	8.8%
Cost of goods sold	1,306,039	60.6%	561,517	61.4%	744,522	132.6%
<b>Gross profit</b>	<b>\$ 849,321</b>	<b>39.4%</b>	<b>\$ 353,479</b>	<b>38.6%</b>	<b>\$ 495,842</b>	<b>140.3%</b>

(1) Includes \$29,176 and \$8,034 of stock-based compensation expense in 2013 and 2012, respectively.



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For the nine months ended December 31, 2013, net revenue increased \$1,240.4 million as compared to the prior year. This increase is primarily due to an increase of approximately \$1,455.2 million in sales from our *Grand Theft Auto* franchise, primarily related to sales of *Grand Theft Auto V* and \$151.6 million in higher sales from the releases of *WWE 2K14* in October 2013, *BioShock Infinite* in March 2013 and our *NBA 2K* franchise. These increases were partially offset by a \$297.6 million decrease in net sales from *Borderlands 2* and *Max Payne 3*, which released in September 2012 and in May 2012, respectively.

Net revenue on consoles increased to 92.6% of our total net revenue for the nine months ended December 31, 2013 as compared to 80.5% for the same period in the prior year primarily due to the current year release of *Grand Theft Auto V* on the Xbox 360 and PS3 console gaming systems. PC and other sales decreased to 7.1% of our total net revenue for the nine months ended December 31, 2013 as compared to 17.5% for the prior year. The decrease was primarily due to the prior year PC releases of *Borderlands 2* and *XCOM:Enemy Unknown*. Handheld sales decreased to 0.3% of our total net revenue for the nine months ended December 31, 2013 as compared to 2.0% for the prior year primarily due to the increased percentage of total net revenue on console platforms.

Net revenue from physical retail and other channels increased to 86.7% of our total net revenue for the nine months ended December 31, 2013 as compared to 80.4% for the same period in the prior year primarily due to the current year release of *Grand Theft Auto V* on the Xbox 360 and PS3 console gaming systems. Net revenue from digital online channels for the nine months ended December 31, 2013 increased \$108.6 million, or 60.7% as compared to the same period in the prior year. The increase was mainly driven by digital offerings from our *Grand Theft Auto* and *NBA 2K* franchises as well as *Bioshock Infinite*.

Gross profit as a percentage of net revenue for the nine months ended December 31, 2013 was 39.4% as compared to 38.6% for the prior year. The increase was primarily due to (i) lower product costs in the current year as a percentage of net revenue as a result of a greater share of net revenue in the current year being generated from a product mix with higher average selling price points and (ii) lower software development costs and royalties as a percentage of net revenue for the nine months ended December 31, 2013 primarily due to the prior year release of *Borderlands 2*, which was externally developed. The increase in gross profit percentage was partially offset by higher internal royalties as a percentage of net revenues primarily due higher income generated from our *Grand Theft Auto* franchise.

Net revenue earned outside of the United States accounted for 54.4% of our total net revenue for the nine months ended December 31, 2013, as compared to 42.0% in the prior year. The year-over-year percentage increase was primarily due to the global release of *Grand Theft Auto V*, which generated higher sales outside the United States during the nine months ended December 31, 2013. Foreign currency exchange rates decreased net revenue and increased gross profit by \$5.8 million and \$1.6 million, respectively, for the nine months ended December 31, 2013 as compared to the prior year.

**Operating Expenses**

(thousands of dollars)	2013	% of net revenue	2012	% of net revenue	Increase/ (decrease)	% Increase/ (decrease)
Selling and marketing	\$ 213,419	9.9%	\$ 205,582	22.5%	\$ 7,837	3.8%
General and administrative	110,601	5.1%	106,891	11.7%	3,710	3.5%
Research and development	76,624	3.6%	57,001	6.2%	19,623	34.4%
Depreciation and amortization	9,837	0.5%	7,828	0.8%	2,009	25.7%
<b>Total operating expenses(1)</b>	<b>\$ 410,481</b>	<b>19.1%</b>	<b>\$ 377,302</b>	<b>41.2%</b>	<b>\$ 33,179</b>	<b>8.8%</b>

(1) Includes stock-based compensation expense, which was allocated as follows:

	2013	2012
Selling and marketing	\$ 8,020	\$ 4,234
General and administrative	\$ 13,884	\$ 8,723
Research and development	\$ 6,514	\$ 1,787

Foreign currency exchange rates decreased total operating expenses by \$0.9 million for the nine months ended December 31, 2013 as compared to the prior year.

Selling and marketing

Selling and marketing expenses increased \$7.8 million for the nine months ended December 31, 2013, as compared to the prior year primarily due to a \$9.3 million increase in personnel costs primarily due to higher stock-based compensation expense and higher headcount. This increase was partially offset by lower advertising expenses incurred in the current year for the September 2013 release of *Grand Theft Auto V* as compared to advertising expenses incurred in the prior year for the release of *Borderlands 2* in September 2012 and *Max Payne 3* in May 2012.

General and administrative

General and administrative expenses increased \$3.7 million for the nine months ended December 31, 2013 as compared to the prior year resulting from an increase of \$10.9 million in personnel costs primarily due to higher stock-based compensation expense and higher severance costs related to current year restructuring activities and \$7.1 million of higher legal fees, IT-related costs, and stock-based compensation expense for previously granted stock-based awards to ZelnickMedia., partially offset by the absence of a \$15.0 million contractual provision that was triggered in June 2012.

General and administrative expenses for the nine months ended December 31, 2013 and 2012 include occupancy expense (primarily rent, utilities and office expenses) of \$12.5 million and \$11.8 million, respectively, related to our development studios.

Research and development

Research and development expenses increased \$19.6 million for the nine months ended December 31, 2013 as compared to the prior year primarily due to an increase of \$16.3 million in personal costs due mainly to higher stock-based compensation related to the current year issuance of restricted stock to certain employees and lower capitalization rates at our development studios due mainly to resources being transitioned to new projects following the September 2013 release of *GTA V*.

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***Interest and other, net***

Interest and other, net was an expense of \$26.0 million for the nine months ended December 31, 2013, as compared to an expense of \$23.6 million for the nine months ended December 31, 2012. The increase of \$2.4 million in interest and other, net was primarily related to \$3.3 million of higher interest expense associated with our June 2013 issuance of the 1.00% Convertible Notes partially offset by lower interest expense associated with August 29, 2013 redemption of our 4.375% Convertible Notes and \$1.2 million higher foreign currency exchange gains recorded during the nine months ended December 31, 2013.

***Gain on convertible note hedge and warrants, net***

Gain on convertible note hedge and warrants, net was \$3.5 million for the nine months ended December 31, 2013 due to the increase in the Company's share price during the period from June 2013 to the net settlement of the hedge and warrants in August 2013. See Liquidity and Capital Resources for additional information regarding settlement and related net gain on the convertible note hedge and warrant transactions.

***Loss on extinguishment of debt***

Loss on extinguishment of debt was \$9.0 million for the nine months ended December 31, 2013 due to the conversion and redemption of our 4.375% Convertible Notes. See Liquidity and Capital Resources for additional information regarding loss on extinguishment of debt.

***Provision for income taxes***

Income tax expense was \$14.8 million for the nine months ended December 31, 2013 as compared to income tax expense of \$4.9 million for the nine months ended December 31, 2012. The increase in income tax expense was primarily attributable to increased income during the nine months ended December 31, 2013, partially offset by changes in valuation allowance for tax loss carryforwards anticipated to be utilized.

Our effective tax rate differed from the federal statutory rate primarily due to changes in valuation allowances related to tax loss carryforwards that will be utilized against income.

We are generally no longer subject to audit for the U.S. federal income tax returns for the periods prior to our fiscal year ended October 31, 2010 and state income tax returns for periods prior to fiscal year ended October 31, 2007. With a few exceptions, we are no longer subject to income tax examinations in non-US jurisdictions for years prior to fiscal year ended October 31, 2010. The determination as to further adjustments to our gross unrecognized tax benefits during the next 12 months is not practicable.

We are regularly audited by domestic and foreign taxing authorities. Audits may result in tax assessments in excess of amounts claimed and the payment of additional taxes. We believe that our tax positions comply with applicable tax law, and that we have adequately provided for reasonably foreseeable tax assessments.

***Net income (loss) and earnings (loss) per share***

For the nine months ended December 31, 2013, our net income was \$392.4 million, as compared to a net loss of \$52.0 million in the prior year. Earnings per share for the nine months ended December 31, 2013 were \$4.02 for basic and \$3.29 for diluted earnings as compared to a net loss per share of \$0.61 for the nine months ended December 31, 2012. Basic and diluted weighted average shares outstanding increased compared to the prior year period primarily due to the impact of dilutive

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shares which were anti-dilutive in the prior period. See Note 9 to our unaudited condensed consolidated financial statements for additional information regarding earnings (loss) per share.

### **Liquidity and Capital Resources**

Our primary cash requirements have been to fund (i) the development, manufacturing and marketing of our published products, (ii) working capital, (iii) acquisitions and (iv) capital expenditures. In addition, our cash funding requirements may be impacted by U.S. tax payments resulting from U.S. taxable income in excess of available U.S. tax loss carryforwards. We expect to rely on funds provided by our operating activities, our Credit Agreement and our Convertible Notes to satisfy our working capital needs.

#### ***Credit Agreement***

In October 2011, we entered into a Second Amended and Restated Credit Agreement (the "Credit Agreement") which amended and restated our July 2007 Credit Agreement. The Credit Agreement provides for borrowings of up to \$100.0 million, which may be increased by up to \$40.0 million pursuant to the terms of the Credit Agreement, and is secured by substantially all of our assets and the equity of our subsidiaries. The Credit Agreement expires on October 17, 2016. Revolving loans under the Credit Agreement bear interest at our election of (a) 1.50% to 2.00% above a certain base rate (4.75% at December 31, 2013), or (b) 2.50% to 3.00% above the LIBOR Rate (approximately 2.67% at December 31, 2013), with the margin rate subject to the achievement of certain average liquidity levels. We are also required to pay a monthly fee on the unused available balance, ranging from 0.375% to 0.50% based on availability.

Availability under the Credit Agreement is restricted by our United States and United Kingdom based accounts receivable and inventory balances. The Credit Agreement also allows for the issuance of letters of credit in an aggregate amount of up to \$25.0 million.

As of December 31, 2013, there was \$98.3 million available to borrow under the Credit Agreement. At December 31, 2013, we had no outstanding borrowings under the Credit Agreement and \$1.7 million of letters of credit outstanding.

The Credit Agreement contains covenants that substantially limit us and our subsidiaries' ability to: create, incur, assume or be liable for indebtedness; dispose of assets outside the ordinary course of business; acquire, merge or consolidate with or into another person or entity; create, incur or allow any lien on any of their respective properties; make investments; or pay dividends or make distributions (each subject to certain limitations); or optionally prepay any indebtedness (subject to certain exceptions, including an exception permitting the redemption of the Company's unsecured convertible senior notes upon the meeting of certain minimum liquidity requirements). In addition, the Credit Agreement provides for certain events of default such as nonpayment of principal and interest, breaches of representations and warranties, noncompliance with covenants, acts of insolvency, default on indebtedness held by third parties and default on certain material contracts (subject to certain limitations and cure periods). The Credit Agreement also contains a requirement that we maintain an interest coverage ratio of more than one to one for the trailing twelve month period, if certain average liquidity levels fall below \$30.0 million. As of December 31, 2013, we were in compliance with all covenants and requirements outlined in the Credit Agreement.

#### ***4.375% Convertible Notes Due 2014***

In June 2009, we issued \$138.0 million aggregate principal amount of 4.375% Convertible Notes due 2014 (the "4.375% Convertible Notes"). The issuance of the 4.375% Convertible Notes included \$18.0 million related to the exercise of an over-allotment option by the underwriters. Interest on the 4.375% Convertible Notes was paid semi-annually in arrears on June 1<sup>st</sup> and December 1<sup>st</sup> of each year,

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and commenced on December 1, 2009. The 4.375% Convertible Notes were scheduled to mature on June 1, 2014, unless earlier redeemed or repurchased by the Company or converted. As further described below, on June 12, 2013, we issued a notice of redemption calling all of our outstanding 4.375% Convertible Notes for redemption on August 29, 2013.

The 4.375% Convertible Notes were convertible at an initial conversion rate of 93.6768 shares of our common stock per \$1,000 principal amount of 4.375% Convertible Notes (representing an initial conversion price of approximately \$10.675 per share of common stock for a total of approximately 12,927,000 underlying conversion shares) subject to adjustment in certain circumstances. Holders could have converted the 4.375% Convertible Notes at their option prior to the close of business on the business day immediately preceding December 1, 2013 only if certain conditions were met. Upon conversion, the 4.375% Convertible Notes could have been settled, at our election, in cash, shares of our common stock, or a combination of cash and shares of the Company's common stock.

At any time on or after June 5, 2012, the Company could have redeemed all of the outstanding 4.375% Convertible Notes for cash, but only if the last reported sale of our common stock for 20 or more trading days in a period of 30 consecutive trading days ending on the trading day prior to the date we provided notice of redemption to holders of the 4.375% Convertible Notes exceeded 150% of the conversion price in effect on each such trading day. This condition was met on June 12, 2013. The redemption price equaled 100% of the principal amount of the 4.375% Convertible Notes to be redeemed, plus all accrued and unpaid interest (including additional interest, if any) to, but excluding, the redemption date.

On June 12, 2013, we issued a notice of redemption calling all of our outstanding 4.375% Convertible Notes, in the aggregate principal amount of \$138.0 million, for redemption on August 29, 2013 at a redemption price of \$1,000 per \$1,000 principal amount, plus accrued and unpaid interest up to, but not including, the redemption date (the period from June 12, 2013 to August 29, 2013 is the "Notice Period"). Holders who elected to convert during the Notice Period were entitled to make-whole shares in addition to such shares they would otherwise be entitled to receive upon conversion. The notice of redemption specified that we would settle any 4.375% Convertible Notes surrendered for conversion in connection with the redemption on a combination settlement basis by paying cash up to a cash amount equal to \$166.0 million in the aggregate of converted notes and delivering shares of our common stock in respect of the amount, if any, by which our conversion obligation exceeded such cash amount. During the Notice Period, \$138.0 million of 4.375% Convertible Notes were converted for \$166.0 million in cash and 3,217,000 shares of our common stock. On August 29, 2013, we paid \$7,000 in cash and we redeemed \$7,000 of 4.375% Convertible Notes. During the nine months ended December 31, 2013, we recorded a loss on extinguishment, net of capitalized debt issuance costs, totaling \$9.0 million related to these transactions.

On June 12, 2013, the Company entered into Unwind Agreements with respect to the convertible note hedge transactions and Unwind Agreements with respect to the warrant transactions with each of the hedge counterparties (collectively, the "Unwind Agreements"). Pursuant to the terms of the Unwind Agreements, and in connection with the Company's issuance of a notice of redemption for all the 4.375% Convertible Notes, the Company had the right to deliver a notice to the hedge counterparties, prior to the redemption date set forth in such redemption notice, designating an early termination date for the convertible note hedge transactions and warrant transactions. The hedge counterparties owed a cash payment to the Company as a result of the early termination of the convertible note hedge transactions that was calculated based on its current fair market value. The Company owed a cash payment to the warrant holders, as applicable, as a result of the early termination of the warrant transactions that was calculated based on its current fair market value. As a result of the Unwind Agreements, the convertible note hedge transactions and warrant transactions were accounted for as derivatives whereby the fair values of these transactions were reported as a convertible note hedge receivable and as a convertible note warrant liability with an offsetting impact to

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additional paid-in capital. Gains and losses on the derivatives resulting from their unwinding were reported in gain on convertible note hedge and warrants, net, in our Condensed Consolidated Statements of Operations. In August 2013, the payment received from unwinding the associated convertible note hedge transactions resulted in proceeds to us of approximately \$84.4 million, offset by \$55.7 million we paid the warrant holders.

During the nine months ended December 31, 2013, we recorded a gain of approximately \$17.3 million resulting from the unwinding of our convertible note hedge transactions and a loss of approximately \$13.8 million resulting from unwinding of the convertible note warrant liability to gain on convertible note hedge and warrants, net, in our Condensed Consolidated Statements of Operations.

### ***1.75% Convertible Notes Due 2016***

On November 16, 2011, we issued \$250.0 million aggregate principal amount of 1.75% Convertible Notes due 2016 (the "1.75% Convertible Notes"). Interest on the 1.75% Convertible Notes is payable semi-annually in arrears on June 1<sup>st</sup> and December 1<sup>st</sup> of each year, commencing on June 1, 2012. The 1.75% Convertible Notes mature on December 1, 2016, unless earlier repurchased by the Company or converted. The Company does not have the right to redeem the 1.75% Convertible Notes prior to maturity.

The 1.75% Convertible Notes are convertible at an initial conversion rate of 52.3745 shares of our common stock per \$1,000 principal amount of 1.75% Convertible Notes (representing an initial conversion price of approximately \$19.093 per share of common stock for a total of approximately 13,094,000 underlying conversion shares) subject to adjustment in certain circumstances. Holders may convert the 1.75% Convertible Notes at their option prior to the close of business on the business day immediately preceding June 1, 2016 only under the following circumstances: (1) during any fiscal quarter commencing after March 31, 2012, if the last reported sale price of the common stock for at least 20 trading days (whether or not consecutive) during a period of 30 consecutive trading days ending on the last trading day of the preceding fiscal quarter is greater than or equal to 130% of the applicable conversion price on each applicable trading day; (2) during the five business day period after any 10 consecutive trading day period (the "measurement period") in which the trading price per \$1,000 principal amount of 1.75% Convertible Notes for each day of that measurement period was less than 98% of the product of the last reported sale price of our common stock and the applicable conversion rate on each such day; or (3) upon the occurrence of specified corporate events. On and after June 1, 2016 until the close of business on the business day immediately preceding the maturity date, holders may convert their 1.75% Convertible Notes at any time, regardless of the foregoing circumstances. Upon conversion, the 1.75% Convertible Notes may be settled, at our election, in cash, shares of our common stock, or a combination of cash and shares of the Company's common stock.

The indenture governing the 1.75% Convertible Notes contains customary terms and covenants and events of default. As of December 31, 2013, we were in compliance with all covenants and requirements outlined in the indenture governing the 1.75% Convertible Notes.

### ***1.00% Convertible Notes Due 2018***

On June 18, 2013, we issued \$250.0 million aggregate principal amount of 1.00% Convertible Notes due 2018 (the "1.00% Convertible Notes" and together with the 4.375% Convertible Notes and the 1.75% Convertible Notes, the "Convertible Notes"). The 1.00% Convertible Notes were issued at 98.5% of par value for proceeds of \$246.3 million. Interest on the 1.00% Convertible Notes is payable semi-annually in arrears on July 1<sup>st</sup> and January 1<sup>st</sup> of each year, commencing on January 1, 2014. The 1.00% Convertible Notes mature on July 1, 2018, unless earlier repurchased by the Company or converted. The Company does not have the right to redeem the 1.00% Convertible Notes prior to maturity. The Company also granted the underwriters a 30-day option to purchase up to an additional



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\$37.5 million principal amount of 1.00% Convertible Notes to cover overallocments, if any. On July 17, 2013, the Company closed its public offering of \$37.5 million principal amount of the Company's 1.00% Convertible Notes as a result of the underwriters exercising their overallocation option in full on July 12, 2013, bringing the proceeds to \$283.2 million.

The 1.00% Convertible Notes are convertible at an initial conversion rate of 46.4727 shares of our common stock per \$1,000 principal amount of 1.00% Convertible Notes (representing an initial conversion price of approximately \$21.52 per share of common stock for a total of approximately 13,361,000 underwriting conversion shares) subject to adjustment in certain circumstances. Holders may convert the 1.00% Convertible Notes at their option prior to the close of business on the business day immediately preceding January 1, 2018 only under the following circumstances: (1) during any fiscal quarter commencing after September 30, 2013, if the last reported sale price of the common stock for at least 20 trading days (whether or not consecutive) during a period of 30 consecutive trading days ending on the last trading day of the preceding fiscal quarter is greater than or equal to 130% of the applicable conversion price on each applicable trading day; (2) during the five business day period after any 10 consecutive trading day period (the "measurement period") in which the trading price per \$1,000 principal amount of 1.00% Convertible Notes for each day of that measurement period was less than 98% of the product of the last reported sale price of our common stock and the applicable conversion rate on each such day; or (3) upon the occurrence of specified corporate events. On and after January 1, 2018 until the close of business on the business day immediately preceding the maturity date, holders may convert their 1.00% Convertible Notes at any time, regardless of the foregoing circumstances. Upon conversion, the 1.00% Convertible Notes may be settled, at our election, in cash, shares of our common stock, or a combination of cash and shares of the Company's common stock.

The indenture governing the 1.00% Convertible Notes contains customary terms and covenants and events of default. As of December 31, 2013, we were in compliance with all covenants and requirements outlined in the indenture governing the 1.00% Convertible Notes.

### ***Financial Condition***

We are subject to credit risks, particularly if any of our receivables represent a limited number of customers or are concentrated in foreign markets. If we are unable to collect our accounts receivable as they become due, it could adversely affect our liquidity and working capital position.

Generally, we have been able to collect our accounts receivable in the ordinary course of business. We do not hold any collateral to secure payment from customers. We have trade credit insurance on the majority of our customers to mitigate accounts receivable risk.

A majority of our trade receivables are derived from sales to major retailers and distributors. Our five largest customers accounted for approximately 42.6% and 51.0% of net revenue for the nine months ended December 31, 2013 and 2012, respectively. As of December 31, 2013 and March 31, 2013, amounts due from our five largest customers comprised approximately 52.1% and 57.2% of our gross accounts receivable balance, respectively, with our significant customers (those that individually comprised more than 10% of our gross accounts receivable balance) accounting for approximately 25.6% and 30.5% of such balance at December 31, 2013 and March 31, 2013, respectively. Based upon performing ongoing credit evaluations, maintaining trade credit insurance on a majority of our customers and our past collection experience, we believe that the receivable balances from these largest customers do not represent a significant credit risk, although we actively monitor each customer's credit worthiness and economic conditions that may affect our customers' business and access to capital. We are monitoring the current global economic conditions, including credit markets and other factors as it relates to our customers in order to manage the risk of uncollectible accounts receivable.

We believe our current cash and cash equivalents and projected cash flow from operations, along with availability under our Credit Agreement will provide us with sufficient liquidity to satisfy our cash

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requirements for working capital, capital expenditures and commitments through at least the next 12 months.

As of December 31, 2013, the amount of cash and cash equivalents held outside of the U.S. by our foreign subsidiaries was approximately \$358.1 million. These balances are dispersed across various locations around the world. We believe that such dispersion meets the business and liquidity needs of our foreign affiliates. In addition, the Company expects in the foreseeable future to have the ability to generate sufficient cash domestically to support ongoing operations. Consequently, it is the Company's intention to indefinitely reinvest undistributed earnings of its foreign subsidiaries. In the event the Company needed to repatriate funds outside of the U.S., such repatriation may be subject to local laws and tax consequences including foreign withholding taxes or U.S. income taxes. It is not practicable to estimate the tax liability and the Company would try to minimize the tax impact to the extent possible.

In January 2013, our board of directors authorized the repurchase of up to 7,500,000 shares of our common stock. The authorization permits the Company to purchase shares from time to time through a variety of methods, including in the open market or through privately negotiated transactions, in accordance with applicable securities laws. It does not obligate the Company to make any purchases at any specific time or situation. Repurchases are subject to the availability of stock, prevailing market conditions, the trading price of the stock, the Company's financial performance and other conditions. The program may be suspended or discontinued at any time for any reason. During the three and nine months ended December 31, 2013, the Company repurchased approximately 4,217,000 shares of our common stock in the open market for approximately \$73.3 million, including commissions of approximately \$0.04 million, as part of the program. As of December 31, 2013, up to approximately 3,282,000 shares of our common stock remain available for repurchase under the Company's share repurchase authorization.

In November 2013, the Company entered into a Purchase Agreement with High River Limited Partnership, Icahn Partners LP, Icahn Partners Master Fund LP, Icahn Partners Master Fund II LP and Icahn Partners Master Fund III LP (collectively, the "Icahn Group"), pursuant to which the Company repurchased approximately 12,021,000 shares of the Company's common stock owned by the Icahn Group, at a price per share of \$16.93, resulting in an aggregate purchase price of approximately \$203.5 million (the "Repurchase Transaction"). The closing of the Repurchase Transaction occurred on November 26, 2013. The Repurchase Transaction was conducted outside the Company's share repurchase program described above.

Our changes in cash flows were as follows:

<u>(thousands of dollars)</u>	<u>Nine Months Ended</u>	
	<u>December 31,</u>	
	<u>2013</u>	<u>2012</u>
Net cash provided by operating activities	<u>\$ 730,793</u>	<u>\$ 41,462</u>
Net cash used in investing activities	<u>(24,455)</u>	<u>(12,317)</u>
Net cash used in financing activities	<u>(133,684)</u>	<u>—</u>
Effects of foreign currency exchange rates on cash and cash equivalents	<u>(2,986)</u>	<u>(701)</u>
Net increase in cash and cash equivalents	<u>\$ 569,668</u>	<u>\$ 28,444</u>

At December 31, 2013 we had \$972.2 million of cash and cash equivalents, compared to \$402.5 million at March 31, 2013. The increase in cash and cash equivalents from March 31, 2013 was primarily a result of cash provided by operating activities. Net cash provided by operating activities was primarily due to cash generated from the September 2013 release of *Grand Theft Auto V* and the collection of accounts receivable balances primarily attributable to the release of *Bioshock Infinite* near the end of the previous fiscal year. The increase in cash was partially offset by cash used in financing

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and investing activities. Net cash used by financing and investing activities related to \$276.8 million for the repurchase of common stock, payments of \$166.0 million for the extinguishment of the 4.375% Convertible Notes, \$55.7 million for the termination of our convertible note warrant transactions and the purchase of fixed assets partially offset by proceeds of \$283.2 million from the issuance of \$287.5 million aggregate principal amount of 1.00% Convertible Notes and \$84.4 million from the termination of our convertible note hedge transactions.

**Contractual Obligations and Commitments**

We have entered into various agreements in the ordinary course of business that require substantial cash commitments over the next several years. Other than agreements entered into in the ordinary course of business and in addition to the agreements requiring known cash commitments as reported in Part II, Item 7 of our Annual Report on Form 10-K for the fiscal year ended March 31, 2013, the Company (i) in June 2013, issued \$250.0 million principal amount of 1.00% Convertible Notes, (ii) in July 2013, closed its public offering of \$37.5 million principal amount of the Company's 1.00% Convertible Notes as a result of the underwriters exercising their overallotment option in full on July 12, 2013 and (iii) in August 2013, our 4.375% Convertible Notes were settled. Interest on the 1.00% Convertible Notes is payable semi-annually in arrears on July 1st and January 1st of each year, commencing on January 1, 2014. The 1.00% Convertible Notes mature on July 1, 2018, unless earlier repurchased by the Company or converted. For additional details on our Convertible Notes see Note 8 to our Unaudited Condensed Consolidated Financial Statements.

Below is a summary of the annual commitments as of December 31, 2013 related to our 1.00% Convertible Notes (in thousands of dollars):

<u>Fiscal year ending March 31,</u>	<u>Interest</u>	<u>Principal</u>	<u>Total</u>
2014 (remaining three months)	\$ 1,541	\$ —	\$ 1,541
2015	2,875	—	2,875
2016	2,875	—	2,875
2017	2,875	—	2,875
2018	2,875	—	2,875
Thereafter	1,438	287,500	288,938
<b>Total</b>	<b>\$ 14,479</b>	<b>\$ 287,500</b>	<b>\$ 301,979</b>

**Off-Balance Sheet Arrangements**

As of December 31, 2013 and March 31, 2013, we did not have any material relationships with unconsolidated entities or financial parties, such as entities often referred to as structured finance or variable interest entities, which would have been established for the purpose of facilitating off-balance sheet arrangements or other contractually narrow or limited purposes. As such, we are not exposed to any financing, liquidity, market or credit risk that could arise if we had engaged in such relationships.

**International Operations**

Net revenue earned outside of the United States is principally generated by our operations in Europe, Canada, Latin America, Asia and Australia. For the three months ended December 31, 2013 and 2012, approximately 56.1% and 34.7%, respectively, of our net revenue was earned outside of the United States. For the nine months ended December 31, 2013 and 2012, approximately 54.4% and 42.0%, respectively, of our net revenue was earned outside of the United States. We are subject to risks inherent in foreign trade, including increased credit risks, tariffs and duties, fluctuations in foreign currency exchange rates, shipping delays and international political, regulatory and economic developments, all of which can have a significant effect on our operating results.

## **Fluctuations in Quarterly Operating Results and Seasonality**

We have experienced fluctuations in quarterly operating results as a result of the timing of the introduction of new titles; variations in sales of titles developed for particular platforms; market acceptance of our titles; development and promotional expenses relating to the introduction of new titles; sequels or enhancements of existing titles; projected and actual changes in platforms; the timing and success of title introductions by our competitors; product returns; changes in pricing policies by us and our competitors; the accuracy of retailers' forecasts of consumer demand; the size and timing of acquisitions; the timing of orders from major customers; and order cancellations and delays in product shipment. Sales of our titles are also seasonal, with higher shipments typically occurring in the fourth calendar quarter as a result of increased demand for titles during the holiday season. Quarterly comparisons of operating results are not necessarily indicative of future operating results.

### **Item 3. Quantitative and Qualitative Disclosures About Market Risk**

#### *Interest Rate Risk*

Historically, fluctuations in interest rates have not had a significant impact on our operating results. Under our Credit Agreement, outstanding balances bear interest at our election of (a) 1.50% to 2.00% above a certain base rate (4.75% at December 31, 2013), or (b) 2.50% to 3.00% above the LIBOR rate (approximately 2.67% at December 31, 2013), with the margin rate subject to the achievement of certain average liquidity levels. Changes in market rates may impact our future interest expense if there is an outstanding balance on our line of credit. The 1.00% Convertible Notes and 1.75% Convertible Notes pay interest semi-annually at a fixed rate of 1.00% and 1.75%, respectively, per annum and we expect that there will be no fluctuation in rates related to the Convertible Notes impacting our cash component of interest expense. For additional details on our Convertible Notes see Note 8 to our Unaudited Condensed Consolidated Financial Statements.

#### *Foreign Currency Exchange Rate Risk*

We transact business in foreign currencies and are exposed to risks resulting from fluctuations in foreign currency exchange rates. Accounts relating to foreign operations are translated into United States dollars using prevailing exchange rates at the relevant period end. Translation adjustments are included as a separate component of stockholders' equity. For the nine months ended December 31, 2013, our foreign currency translation gain adjustment was approximately \$6.5 million. We recognized a foreign currency exchange transaction gain for the nine months ended December 31, 2013 of \$0.4 million and a foreign currency exchange transaction loss for the nine months ended 2012 of \$0.7 million, respectively, in interest and other, net in our Condensed Consolidated Statements of Operations.

#### *Cash Flow Hedging Activities*

We use foreign currency forward contracts to mitigate foreign currency exchange rate risk associated with forecasted transactions involving non-functional currency denominated expenditures. These contracts, which are designated and qualify as cash flow hedges, are accounted for as derivatives whereby the fair value of the contracts is reported as either assets or liabilities on our Condensed Consolidated Balance Sheets. The effective portion of gains or losses resulting from changes in the fair value of these hedges is initially reported, net of tax, as a component of accumulated other comprehensive income (loss) in stockholders' equity. The gross amount of the effective portion of gains or losses resulting from changes in the fair value of these hedges is subsequently reclassified into cost of goods sold or research and development expenses, as appropriate, in the period when the forecasted transaction is recognized in our Condensed Consolidated Statements of Operations. In the event that the gains or losses in accumulated other comprehensive income (loss) are deemed to be ineffective, the

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ineffective portion of gains or losses resulting from changes in fair value, if any, is reclassified to interest and other, net, in our Condensed Consolidated Statements of Operations. In the event that the underlying forecasted transactions do not occur, or it becomes probable that they will not occur, within the defined hedge period, the gains or losses on the related cash flow hedges are reclassified from accumulated other comprehensive income (loss) to interest and other, net, in our Condensed Consolidated Statements of Operations. During the reporting periods presented, all forecasted transactions occurred, and therefore, there were no such gains or losses reclassified into interest and other, net. We do not enter into derivative financial contracts for speculative or trading purposes. At December 31, 2013 and March 31, 2013, we had \$2.8 million and \$7.9 million, respectively, of forward contracts outstanding to buy foreign currencies in exchange for U.S. dollars all of which have maturities of less than one year. As of December 31, 2013 and March 31, 2013, the fair value of these outstanding forward contracts was immaterial and is included in prepaid expenses and other. The fair value of these outstanding forward contracts is estimated based on the prevailing exchange rates of the various hedged currencies as of the end of the period.

### *Balance Sheet Hedging Activities*

We use foreign currency forward contracts to mitigate foreign currency exchange rate risk associated with non-functional currency denominated cash balances and inter-company funding loans, non-functional currency denominated accounts receivable and non-functional currency denominated accounts payable. These transactions are not designated as hedging instruments and are accounted for as derivatives whereby the fair value of the contracts is reported as either assets or liabilities on our Condensed Consolidated Balance Sheets, and gains and losses resulting from changes in the fair value are reported in interest and other, net, in our Condensed Consolidated Statements of Operations. We do not enter into derivative financial contracts for speculative or trading purposes. At December 31, 2013 and March 31, 2013, we had \$179.0 million and \$55.4 million, respectively, of forward contracts outstanding to sell foreign currencies in exchange for U.S. dollars all of which have maturities of less than one year. For the three months ended December 31, 2013 and 2012, we recorded a loss of \$7.2 million and a gain of \$1.0 million, respectively, related to foreign currency forward contracts in interest and other, net on the Condensed Consolidated Statements of Operations. For the nine months ended December 31, 2013 and 2012, we recorded a loss of \$17.5 million and a gain of \$1.3 million, respectively, related to foreign currency forward contracts in interest and other, net on the Condensed Consolidated Statements of Operations. As of December 31, 2013, the fair value of these outstanding forward contracts was immaterial and is included in prepaid expenses and other. As of March 31, 2013, the fair value of these outstanding forward contracts was immaterial and is included in accrued expenses and other current liabilities. The fair value of these outstanding forward contracts is estimated based on the prevailing exchange rates of the various hedged currencies as of the end of the period.

Our hedging programs are designed to reduce, but do not entirely eliminate, the effect of currency exchange rate movements. We believe the counterparties to these foreign currency forward contracts are creditworthy multinational commercial banks and that the risk of counterparty nonperformance is not material. Notwithstanding our efforts to mitigate some foreign currency exchange rate risks, there can be no assurance that our hedging activities will adequately protect us against the risks associated with foreign currency fluctuations. For the nine months ended December 31, 2013, 54.4% of the Company's revenue was generated outside the United States. Using sensitivity analysis, a hypothetical 10% increase in the value of the U.S. dollar against all currencies would decrease revenues by 5.4%, while a hypothetical 10% decrease in the value of the U.S. dollar against all currencies would increase revenues by 5.4%. In the opinion of management, a substantial portion of this fluctuation would be offset by cost of goods sold and operating expenses incurred in local currency.

#### **Item 4. Controls and Procedures**

##### *Evaluation of Disclosure Controls and Procedures*

Based on an evaluation under the supervision and with the participation of management, our principal executive officer and principal financial officer have concluded that our disclosure controls and procedures as defined in rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended ("Exchange Act") were effective as of the end of the period covered by this report to ensure that information required to be disclosed by us in reports that we file or submit under the Exchange Act is (i) recorded, processed, summarized and reported within the time periods specified in the Securities and Exchange Commission rules and forms and (ii) accumulated and communicated to our management, including our principal executive officer and principal financial officer, as appropriate to allow timely decisions regarding required disclosure.

##### *Changes in Internal Control Over Financial Reporting*

There were no changes in our internal control over financial reporting during the quarter ended December 31, 2013, which were identified in connection with management's evaluation required by paragraph (d) of Rules 13a-15 and 15d-15 under the Exchange Act, that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

## **PART II. OTHER INFORMATION**

### **Item 1. Legal Proceedings**

We are, or may become, subject to demands and claims (including intellectual property claims) and are involved in routine litigation in the ordinary course of business which we do not believe to be material to our business or financial statements. We have appropriately accrued amounts related to certain of these claims and legal and other proceedings. While it is reasonably possible that a loss may be incurred in excess of the amounts accrued in our financial statements, we believe that such losses, unless otherwise disclosed, would not be material.

#### **Item 1A. Risk Factors**

There have been no material changes to the Risk Factors disclosed in Item 1A of our Annual Report on Form 10-K for the fiscal year ended March 31, 2013 other than the following.

*We expect to implement a new enterprise resource planning (ERP) system during the next fiscal year, and we may encounter technical or operational difficulties during the transition that could disrupt our operations.*

We expect to implement a new enterprise resource planning (ERP) system during the next fiscal year, and we may encounter technical and operating difficulties during the transition to that new system. We may experience problems in implementing the new system as our employees learn the new system, transfer data from our existing system to the new system and operate with the new system. The transition may not be completed promptly or at all, or could require us to revert to the currently existing system. Any difficulties that we encounter in implementing the new system may disrupt our ability to deal effectively with our employees, vendors, customers and other companies with which we have commercial relationships and also may prevent us from effectively closing a quarterly period and reporting our financial results in a timely manner. If we are unable to produce accurate and timely financial statements, our stock price may be adversely affected and we may be unable to maintain compliance with the listing requirements of the Nasdaq Global Market.

### **Item 2. Unregistered Sales of Equity Securities and Use of Proceeds**

#### *Issuer Purchases of Equity Securities*

*Share Repurchase Program*—In January 2013, our board of directors authorized the repurchase of up to 7,500,000 shares of our common stock. The authorization permits the Company to purchase shares from time to time through a variety of methods, including in the open market or through privately negotiated transactions, in accordance with applicable securities laws. It does not obligate the Company to make any purchases at any specific time or situation. Repurchases are subject to the availability of stock, prevailing market conditions, the trading price of the stock, the Company's financial performance and other conditions. The program may be suspended or discontinued at any time for any reason. During the three and nine months ended December 31, 2013, the Company repurchased approximately 4,217,000 shares of our common stock in the open market for approximately \$73.3 million, including commissions of approximately \$0.04 million, as part of the program. As of December 31, 2013, approximately 3,282,000 shares of our common stock remain available for repurchases under the Company's share repurchase authorization.

*Repurchase from Icahn Group*—In November 2013, the Company entered into a Purchase Agreement with High River Limited Partnership, Icahn Partners LP, Icahn Partners Master Fund LP, Icahn Partners Master Fund II LP and Icahn Partners Master Fund III LP (collectively, the "Icahn Group"), pursuant to which the Company repurchased approximately 12,021,000 shares of the Company's common stock owned by the Icahn Group, at a price per share of \$16.93, resulting in an aggregate purchase price of approximately \$203.5 million (the "Repurchase Transaction"). The closing

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of the Repurchase Transaction occurred on November 26, 2013. The Repurchase Transaction was conducted outside the Company's share repurchase program described above.

*Summary Table*—The table below details the share repurchases that were made under the Company's share repurchase program during the three months ended December 31, 2013, and also includes other shares purchased which represents the Repurchase Transaction with the Icahn Group described above.

Period	Total shares purchased		Other shares purchased		Shares repurchased under repurchase program		Maximum number of shares that may yet be purchased under the repurchase program
	Shares purchased	Average price per share	Shares purchased	Average price per share	Shares purchased	Average price per share	
October 1 - 31, 2013	—	\$ —	—	\$ —	—	\$ —	7,500,000
November 1 - 30, 2013	16,238,427	\$17.05	12,020,744	\$16.93	4,217,683	\$17.39	3,282,317
December 1 - 31, 2013	—	\$ —	—	\$ —	—	\$ —	3,282,317

**Item 6. Exhibits**

Exhibits:

- 10.1 Xbox One Publisher License Agreement dated October 31, 2013, between Microsoft Licensing, GP and the Company\*
- 10.2 Amendment to the Xbox 360 Publisher License Agreement, dated November 13, 2013, between the Company and Microsoft Licensing, GP.\*
- 10.3 Amendment to Non-Qualified Stock Option Agreement with ZelnickMedia Corporation, dated as of November 18, 2013 (incorporated by reference to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on November 18, 2013).
- 10.4 Purchase Agreement, dated November 26, 2013, by and among the Company and the Icahn Group (incorporated by reference to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on November 27, 2013).
- 31.1 Chief Executive Officer Certification Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
- 31.2 Chief Financial Officer Certification Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
- 32.1 Chief Executive Officer Certification pursuant to 18 U.S.C. Section 1350, as adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
- 32.2 Chief Financial Officer Certification pursuant to 18 U.S.C. Section 1350, as adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
- 101.INS XBRL Instance Document.
- 101.SCH XBRL Taxonomy Extension Schema Document.
- 101.CAL XBRL Taxonomy Calculation Linkbase Document.





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Exhibits:

101.PRE XBRL Taxonomy Presentation Linkbase Document.

101.DEF XBRL Taxonomy Extension Definition Document.

- \* Portions hereof have been omitted and filed separately with the Securities and Exchange Commission pursuant to a request for confidential treatment that was granted in accordance with Exchange Act Rule 24b-2.

Attached as Exhibit 101 to this report are the following formatted in XBRL (Extensible Business Reporting Language): (i) Condensed Consolidated Balance Sheets at December 31, 2013 and March 31, 2013, (ii) Condensed Consolidated Statements of Operations for the three and nine months ended December 31, 2013 and 2012, (iii) Condensed Consolidated Statements of Comprehensive Income (Loss) for the three and nine months ended December 31, 2013 and 2012, (iv) Condensed Consolidated Statements of Cash Flows for the nine months ended December 31, 2013 and 2012; and (v) Notes to Unaudited Condensed Consolidated Financial Statements.

**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

**TAKE-TWO INTERACTIVE SOFTWARE, INC.**

(Registrant)

Date: February 3, 2014

By:                   /s/ STRAUSS ZELNICK                  

Strauss Zelnick  
*Chairman and Chief Executive Officer*  
*(Principal Executive Officer)*

Date: February 3, 2014

By:                   /s/ LAINIE GOLDSTEIN                  

Lainie Goldstein  
*Chief Financial Officer*  
*(Principal Financial Officer)*



[\*\*\*] INDICATES MATERIAL THAT WAS OMITTED AND FOR WHICH CONFIDENTIAL TREATMENT WAS REQUESTED. ALL SUCH OMITTED MATERIAL WAS FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION PURSUANT TO THE RULES APPLICABLE TO SUCH CONFIDENTIAL TREATMENT REQUEST.

### XBOX ONE PUBLISHER LICENSE AGREEMENT

This **Xbox One Publisher License Agreement** is entered into and effective as of [\*\*\*] (“**Effective Date**”) between Microsoft Licensing, GP, a Nevada general partnership, (“**Microsoft**”), and Take-Two Interactive Software, Inc., a Delaware corporation (“**Publisher**”). Microsoft Corporation, a Washington corporation, is a party to this Agreement only with respect to its acknowledgement of Section 6.2 and Exhibit 1, Section 4.

### RECITALS

Microsoft and its affiliates provide a computer game and entertainment system known as Xbox One, which consists of a base hardware unit, a Kinect sensor, and an associated proprietary online service known as Xbox Live. Publisher is a game developer and publisher of software for computer game and entertainment systems. Publisher intends to develop and/or publish software products for Xbox One on the terms in this Agreement. The parties agree as follows:

1. **Exhibits.** The following exhibits are incorporated into this Agreement by this reference:

<b>Exhibit 1:</b>	Payments	<b>Exhibit 5:</b>	Xbox Live Services, Publisher Hosted Services and Third Party Services
<b>Exhibit 2:</b>	Xbox One Royalty Tier Selection Form (sample)	<b>Exhibit 6:</b>	Xbox Live Incentive Program
<b>Exhibit 3:</b>	Publisher Enrollment Form (sample)		
<b>Exhibit 4:</b>	Authorized Affiliates Form (sample)		

2. **Definitions.** As further described in this Agreement, the following terms have the following respective meanings:

2.1 “**Agreement**” means this Xbox One Publisher License Agreement and includes this document (including all Exhibits), the Publisher Guide, any approved Concept Submission Forms (in the form approved by Microsoft), any other documents expressly referenced in other parts of this Agreement, the XDK License, and applicable terms of the NDA.

2.2 “**Asian Sales Territory**” means the territory for sales distribution comprising Hong Kong, India, Korea, Singapore, Taiwan and any other countries so identified by Microsoft in the Publisher Guide. The Asian Sales Territory excludes Japan.

2.3 “**Australian Sales Territory**” means the territory for sales distribution comprising Australia, New Zealand, and any other countries so identified by Microsoft in the Publisher Guide.

2.4 “**Authorized Replicator**” means a software replicator approved by Microsoft to replicate FPU for Xbox One.

2.5 “**Avatar**” means a character that is a virtual representation of an Xbox Live User created using the Microsoft-provided avatar creator tools on Xbox Live.

- 2.6** “**Avatar Items**” means items such as wearables and carryables for use with an Avatar.
- 2.7** “**Base Game**” means each software product, in physical and digital format, as described in an approved Concept, including any Title Updates (if and to the extent approved by Microsoft) but does not include Digital Content, a Demo or a Trial.
- 2.8** “**Beta**” means a Demo that is not publicly exposed on Xbox Games Store and is distributed to a select audience.
- 2.9** “**Branding Specifications**” means the specifications as provided by Microsoft for using Licensed Trademarks, as set forth in the Publisher Guide.
- 2.10** “**BTS**” means a Microsoft-designed break-the-seal sticker that will be issued to the Authorized Replicator for placement on the Packaging Materials (defined below) as specified in the Publisher Guide.
- 2.11** “**Business Day**” means any day other than Saturday, Sunday, or national holidays in the U.S.A.
- 2.12** “**Certification**” means the approval process in which Microsoft approves or disapproves of a Software Title for manufacture and distribution, as further described in this Agreement.
- 2.13** “**Certification Requirements**” means the requirements necessary to ensure proper functioning of the Software Title on Xbox One and Xbox Live, as further described in this Agreement. Certification Requirements include Xbox Requirements, technical certification requirements and functional test cases. The Certification Requirements will be set forth in the Publisher Guide and enforced during Certification.
- 2.14** “**Claim**” means an unaffiliated third party’s demand, suit, or other action to the extent: (1) as alleged, it reflects Respondent’s breach of this Agreement; (2) as alleged, it arises from or relates to Respondent’s gross negligence or willful misconduct; (3) solely for Microsoft as Respondent, it alleges that Publisher’s use in any Sales Territory of a Licensed Trademark, as permitted under this Agreement, infringes claimant’s trademark rights; or (4) solely for Publisher as Respondent, it relates to any Software Title, FPU, DFU, or User Generated Content (excluding unmodified software delivered to Publisher by Microsoft under an XDK License), including any allegation relating to quality, performance, safety, privacy, security, or arising out of Publisher’s use of Licensed Trademarks in breach of this Agreement.
- 2.15** “**Commercial Release**” or “**Commercially Released**” means the first FPU availability at retail or the first availability of a Software Title to End Users not designated as a Demo Version or trial service.
- 2.16** “**Companion Application**” means a software application that: (1) runs on a non-console device; (2) includes content that is a subset of or complementary to the primary experience of a Software Title; and (3) is designed to be used with or attract consumers to the Software Title.
- 2.17** [\*\*\*].
- 2.18** “**Concept**” means a detailed description of Publisher’s proposed Software Title, including such information as may be requested by Microsoft.
- 2.19** “**CSV**” means currency stored value that consumers may use to redeem for goods or services from Microsoft that are distributed online. The rates, values, and policies applicable to use of CSV are available in the Publisher Guide.

- 2.20** “**CSV Remittance Rate**” means the rate that Microsoft will use to calculate the Royalty Fee due Publisher for Digital Content purchased with CSV. Microsoft reserves the right to change the CSV Remittance Rate at least [\*\*\*] every [\*\*\*] with [\*\*\*] notice, and will publish any such change in the Publisher Guide. Notwithstanding the foregoing, the CSV Remittance Rate is currently [\*\*\*].
- 2.21** “**Demo**” means a small portion of an applicable Software Title or timed availability of full Software Title that is provided to End Users at no or minimal cost to advertise or promote a Software Title.
- 2.22** “**DFU**” or “**Digital Finished Unit**” means a digital equivalent of a FPU, comprised of an object-code copy of a Software Title that has passed Certification and has been approved by Microsoft and Publisher for release.
- 2.23** “**Digital Content**” means any content, feature, or service published by Publisher and distributed electronically by Microsoft under this Agreement. Digital Content includes DFUs, Online Game Features, Title Updates, Beta, Demo, Multiscreen Content, digitally-distributed games (e.g., Xbox Live Arcade games), trailers, “themes,” “gamer pictures” or any other category of digital content or online service approved by Microsoft or otherwise described in the Publisher Guide.
- 2.24** “**End User**” means an individual or entity that uses the Xbox One console and features or applications thereto.
- 2.25** “**European Sales Territory**” means the territory for sales distribution comprising Austria, Belgium, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Italy, Ireland, Netherlands, Norway, Poland, Portugal, Russia, Slovakia, South Africa, Spain, Sweden, Switzerland, the United Arab Emirates, the United Kingdom, and any other countries so identified by Microsoft in the Publisher Guide.
- 2.26** “**FPU**” or “**Finished Product Unit**” means a copy of a Software Title, in object code form, that has passed Certification, has been affixed to a game media and is approved by Microsoft and Publisher for release and manufacturing. Once Packaging Materials have been added, and the BTS has been assigned or affixed to the FPU or its packaging, the FPU also includes its accompanying BTS and Packaging Materials.
- 2.27** “**IPR**” means any patents, copyrights, trademarks and service marks, trade secrets, moral rights, and any other intellectual property or proprietary rights arising at any time under the applicable law of any applicable jurisdiction.
- 2.28** “**Japan Sales Territory**” means the country of Japan.
- 2.29** “**Licensed Trademarks**” means the Microsoft trademarks so identified in the Publisher Guide.
- 2.30** “**Local Currency**” means the currency associated with the Xbox Games Store to which the End User has access and in which Digital Content is available for purchase.
- 2.31** “**Marketing Guidelines**” means the following requirements that form the basis for Microsoft’s review and approval of Publisher’s Marketing Materials and any media plan, as per the Publisher Guide: (1) conformance to Branding Specifications; (2) inclusion of required language pertaining to IPR of Microsoft or its third party suppliers; (3) inclusion of any information relating to use or maintenance of Xbox One; (4) with respect to language relating specifically to Xbox One, compliance with the overall

Xbox One marketing message, direction, and plan; (5) adherence to requirements of any applicable ratings board per Section 4.4; and (6) inclusion of any other information required by law.

**2.32 “Marketing Materials”** collectively means Packaging Materials and all press releases, marketing, advertising, or promotional materials related to the Software Title, including web advertising and Publisher’s web pages to the extent they refer to Software Title(s) that will be used and distributed by Publisher in the marketing of Software Title(s).

**2.33 “Multiscreen Content”** means Avatar Items, gameplay share and record clips, and other categories of Online Game Features identified by Microsoft from time to time and notified to Publisher via Publisher Guide.

**2.34 “NDA”** means the Microsoft Corporation Non-Disclosure Agreement entered into between the parties and signed by Publisher on [\*\*\*].

**2.35 “North American Sales Territory”** means the territory comprising Canada, Mexico, the United States and any other countries that may be so identified by Microsoft in the Publisher Guide.

**2.36 “Online Game Features”** means content, features, or services (e.g., map packs, levels, and multiplayer functionality) related to consuming a specific Software Title that are made available to End Users via Xbox Live, whether included in the Software Title’s FPU or DFU or otherwise distributed via Xbox Live or Publisher Hosting Services.

**2.37 “Packaging Materials”** means art and mechanical formats for a Software Title including retail packaging, End User instruction manual, warranties, End User warnings, FPU media label, and any promotional inserts and other materials to be included in retail packaging.

**2.38 “Premium Online Content”** or **“Premium Downloadable Content (PDLC)”** means downloadable additional content offered to an Xbox Live User for a fee, such as a game add-on, available from the Xbox Games Store for use with or in a Software Title.

**2.39 “Primary Device”** means the main device that the Xbox SmartGlass technology interacts with, currently the Xbox One, as may be updated from time to time in the Publisher Guide.

**2.40 “Sales Territory”** means the Asian Sales Territory, Australian Sales Territory, European Sales Territory, Japan Sales Territory, North American Sales Territory, South American Sales Territory and any other such territories as may be identified in the Publisher Guide.

**2.41 “Secondary Device”** means auxiliary devices equipped with the SmartGlass Application and services. The list of supported Secondary Devices is in the Publisher Guide.

**2.42 “SmartGlass Application”** means an application developed by Microsoft that can be installed by a consumer on a second screen or other secondary device in order to allow a user to discover content, play and interact with, control, and deepen experiences on a primary device.

**2.43 “SmartGlass Business Policy”** means the set of policies that govern SmartGlass Applications and that are available in the Publisher Guide.

**2.44 “SmartGlass Companion Experience”** means mobile applications, either static or interactive, that are available to consumers and that are linked to a Software Title on a Primary Device using SmartGlass services. A SmartGlass Companion Experience can be run either while connected to the



Primary Device or disconnected in order to interact with, control, and deepen the Software Title's experience. See the SmartGlass Policy document for more details on policies around SmartGlass Companion Experiences.

**2.45** “**Software Title**” means each software product as described in an applicable Concept, including any Title Updates (if and to the extent approved by Microsoft) and all Digital Content for such Software Title that Publisher proposes to publish for Xbox One.

**2.46** “**South American Sales Territory**” means the territory comprising Argentina, Brazil, Chile, Colombia and any other countries that may be so identified by Microsoft in the Publisher Guide.

**2.47** “**SRP**” or “**Suggested Retail Price**” means the highest per unit price that Publisher or its agent recommends the FPU be made commercially available to End Users in the Japan Sales Territory.

**2.48** “**Sub-Publisher**” means an entity that has a valid Xbox One Publisher License Agreement with Microsoft or a Microsoft affiliate, and with which Publisher has entered into a written agreement to allow such entity to publish a Software Title in specific countries in a Sales Territory.

**2.49** “**Threshold Price**” means the WSP (for the North American, European, Asian, Australian and South American Sales Territories) or SRP (for the Japan Sales Territory) at which Publisher intends to sell Software Titles. If the Software Title is bundled with any product or service that is not a Software Title, the Threshold Price will be the WSP or SRP for the entire bundle.

**2.50** “**Trial**” means a subset of a full Software Title that can be converted to the full experience through digital entitlements and to which an Xbox Live User is granted limited or timed access at no cost.

**2.51** “**User Generated Content**” means any content that originates from End Users in any format, including graphics, text, or voice content published through or as part of the Digital Content.

**2.52** “**WSP**” or “**Wholesale Price**” means the highest per-unit price that Publisher intends to charge distributors, retailers, or in bona fide third-party transactions for the right to distribute and resell FPUs in a Sales Territory, however: (1) no transactions involving Publisher affiliates (entities controlling, controlled by, or under common control with, Publisher) will be considered in determining WSP; (2) if Publisher enters into an agreement with a third party (such as a Sub-Publisher) granting the third party exclusive rights to distribute a Software Title in a Sales Territory, the WSP is governed by the price charged by the third party to a retailer or distributor for an FPU rather than the terms of the exclusive distribution agreement between Publisher and such third party; and (3) if the WSP for an FPU varies among countries in a Sales Territory then (a) WSP in the U.S. will determine the royalty for the entire North American Sales Territory; (b) the highest WSP in any individual country of the European Sales Territory will determine the royalty for the entire European Sales Territory; (c) the highest WSP in any individual country of the Asian Sales Territory will determine the royalty for the entire Asian Sales Territory; (d) the WSP for Australia will determine the royalty for the entire Australian Sales Territory; and (e) the WSP for Brazil will determine the WSP for the South American Sales Territory. WSP for Digital Content is the price set by Publisher for such content, as further described in Exhibit 1.

**2.53** “**Xbox Games Store**” means the proprietary online marketplace or store through which Digital Content is made available to Xbox Live Users. Microsoft may elect to change the branding and/or name of Xbox Games Store from time to time.

**2.54** “**Xbox Games Store Policy**” or “**Games Store Policy**” means the document that governs the business of the Xbox Games Store.

2.55 “Xbox Live” means the proprietary online service offered by Microsoft to Xbox Live Users.

2.56 “Xbox Live User” means any authorized individual or entity that accesses or uses Xbox Live, whether a Subscriber, Multiplayer Subscriber, or a guest accessing Xbox Live from a Subscriber or Multiplayer Subscriber account.

2.57 “Xbox Requirements” or “XRs” means objective requirements regarding proper operation of Software Titles in relation to Xbox One and Xbox Live, as stated in the Publisher Guide and enforced during Certification and policy requirements that are enforced over the life of the Software Title.

2.58 **Other Terms.** Other initially capitalized terms are defined by their first use.

### 3. Xbox One Development Kit License / Loaned Equipment.

3.1 **Xbox One Development Kit License.** Xbox One development kits (each an “XDK”) are licensed to Publisher under the terms of the development kit license(s) between Publisher and Microsoft for the relevant territory (each an “XDK License”). Microsoft retains title and ownership of the XDK, which will be licensed to Publisher during the Term.

3.2 **Loaned Equipment.** Microsoft may periodically loan Publisher certain Microsoft assets in relation to Publisher’s development, marketing and promotion of Software Titles. Such loaned assets may include Xbox One kiosks, Xbox One hardware, and accessories (“Loaned Equipment”). With respect to all Loaned Equipment provided to Publisher: (1) Publisher will not provide the Loaned Equipment to any third party not approved by Microsoft in advance (“Approved Third Party”) and, if so approved, Publisher will be responsible for ensuring that the Approved Third Party complies with this Section 3.2; (2) Publisher is solely liable for theft, damage, loss, or injury to people or property occurring while such Loaned Equipment is in Publisher’s or an Approved Third Party’s possession or control; (3) the Loaned Equipment will be used only in a Microsoft-approved location; (4) Publisher’s insurance policy described in Section 18 will cover all theft, loss, damage, or injury to people or property in relation to Publisher’s or an Approved Third Party’s use or possession of Loaned Equipment; (5) Publisher (and any Approved Third Party) will use only power supplies, power cords, cables, and other parts and accessories provided by Microsoft to connect to or use Loaned Equipment; and (6) Publisher will return Loaned Equipment to Microsoft by the date requested (and in accordance with any shipping instructions provided) by Microsoft. For clarity, Microsoft retains title and ownership of the Loaned Equipment.

### 4. Approval process.

4.1 **Standard approval.** The standard approval process for a Software Title includes Concept submission, Optional Certification, Certification, and Marketing Materials approval. Unless Publisher elects the EU Approval Option for a European FPU (as such terms are defined in Section 4.2) or as otherwise expressly stated in this Agreement, Publisher must comply with each phase. Each phase is summarized below and is further described in the Publisher Guide.

4.1.1 **Concept.** Publisher will deliver to Microsoft a completed Concept submission form (using Microsoft’s then-current form) describing the proposed Software Title. If Publisher wants to host (or have a third party host) any Online Game Features, Publisher will so indicate on the Concept submission form and must comply with all Publisher Hosting Services terms (as set forth in Exhibit 5 and the Publisher Guide). Microsoft will review Publisher’s submission and notify Publisher whether the Concept is approved or rejected. Adherence to the approved Concept submission form is required for Certification.

**4.1.2 Optional Certification.** If the Concept is approved, Publisher may, at Publisher's option request advisory feedback from Microsoft (*"Optional Certification"*) by delivering to Microsoft a code-complete version of the Software Title that includes all current features. Microsoft will conduct a technical screen and/or other testing and will subsequently provide Publisher with advisory feedback regarding such testing.

**4.1.3 Certification.** Publisher will deliver to Microsoft the proposed final-release version of the applicable Software Title that is complete and ready for release, manufacture, commercial distribution, and access via Xbox Live. Such version must include the final content rating required by Section 4.4. Microsoft will conduct compliance, compatibility, functional, and other testing to determine the Software Title's compliance with Certification Requirements (*"Certification Testing"*) and will provide Publisher with the testing results, including any fixes required to achieve Certification. Release from Certification for a Software Title requires: (1) passing Certification Testing; (2) conforming with the approved Concept; (3) providing any other materials required by the Publisher Guide; (4) approval of Packaging Materials; and (5) ongoing compliance with all Certification Requirements and other required categories in the Publisher Guide, except as otherwise provided in this Agreement. Microsoft will not unreasonably withhold or delay any testing and/or approvals contemplated by this Section 4.1.3.

**4.1.4 Marketing Materials.** Publisher will submit to Microsoft all Marketing Materials that incorporate Licensed Trademarks and will not use, publish, or distribute any such Marketing Materials until Microsoft has approved them, in writing. Publisher will incorporate all changes related to the Licensed Trademarks that Microsoft may require to bring such Marketing Materials into compliance with Marketing Guidelines. Additionally, if press releases or announcements otherwise mention Xbox One, Xbox Live, or Xbox One versions of Software Titles, Publisher will make reasonable efforts to provide Microsoft with notice of such materials and their contents before release.

**4.2 EU Approval Option.** If Publisher intends to distribute a Software Title solely in the European Union (*"European FPU"*), Publisher may choose, at any time during a Software Title's development and before manufacture by an Authorized Replicator, not to submit the Software Title to Microsoft for approval of Concept or Marketing Materials, although Publisher must still submit such Software Title to Microsoft for Certification approval (*"EU Approval Option"*). The EU Approval Option does not apply to Digital Content. If Publisher chooses the EU Approval Option, it will not use Licensed Trademarks on, and the license grant in Section 13.1 will not apply to, European FPUs. In addition, Publisher will not state (in advertising, marketing materials, packaging, websites, or otherwise) that the European FPU is approved or sanctioned by Microsoft or is an official Xbox One Software Title. The European FPU may not be distributed outside the European Union without complying fully with this Agreement. Except as otherwise expressly provided in this Section 4.2, all other terms of this Agreement will still apply to a Software Title.

**4.3 Additional review.** If a Software Title fails Certification, and if Publisher has made good faith efforts to address any issues raised by Microsoft, Microsoft will give Publisher the opportunity to resubmit such Software Title for Certification, without charge for the first resubmission. Microsoft may, however, charge Publisher a reasonable fee designed to offset the costs associated with testing for any additional resubmissions. Publisher may request Microsoft's review and feedback on interim versions of the Software Title. Such review is within Microsoft's discretion and may require the payment of reasonable fees by Publisher to offset the costs associated with the review of such Software Titles.

**4.4 Content rating.** For those Sales Territories using a content rating system, Microsoft will not accept submission of a Software Title for Certification unless Publisher has obtained a rating of "Mature (17+)" (or its equivalent) or lower (i.e., more broadly appropriate) from appropriate rating bodies, including any independent content rating authority(ies) that Microsoft may reasonably designate (e.g.,

ESRB, PEGI). Publisher will include such rating(s) prominently on FPU and Marketing Materials, as per the applicable rating body's guidelines, and will include such rating(s) in a header file or the manifest of the Software Title, as per the Publisher Guide. For Sales Territories not using a content rating system, Microsoft will not approve any Software Title that, in Microsoft's opinion, is unsuitable for Xbox One (e.g., because it contains excessive sexual content or violence, inappropriate language, or other unsuitable elements). If, after Commercial Release, Microsoft or a ratings body determines that a Software Title is suitable for adults only or is indecent, obscene, or illegal, Publisher will recall, at Publisher's own expense, all FPU for that Software Title following consultation between Publisher and Microsoft. Unless Publisher has obtained, and communicated to Microsoft, a separate rating for Digital Content as per the Publisher Guide, Publisher represents and warrants that all Digital Content not in the initial FPU for a Software Title will be consistent with the content rating (or, in those countries not using a content rating system, with the overall nature of the content) of the underlying Software Title. Publisher will also comply with any other rating requirements in the Publisher Guide. Microsoft may require removal of Digital Content or require Publisher to obtain a separate rating if Microsoft later deems such content inconsistent with the content rating for the underlying Software Title.

**4.5 Publisher testing.** Publisher will: (1) perform its own testing of the Software Title; (2) keep written or electronic records of such testing during and for [\*\*\*] after the Term; and (3) provide Microsoft with copies of, or reasonable access to, such records.

**4.6 Final approval.** Publisher will not distribute any Software Title, manufacture any FPU, or submit any DFU intended for distribution, until Verification Version(s) has been submitted, evaluated and approved, and Microsoft has given its final approval and release from Certification.

**4.7 Title Updates.** All Software Title digital patches and updates provided to Xbox Live Users for [\*\*\*] and that must be accepted for game play (collectively, "**Title Updates**") are subject to Microsoft's approval, except if otherwise stated in this Agreement. Microsoft may require Publisher to develop and provide a Title Update if a Software Title adversely affects Xbox Live. Microsoft reserves the right to remove or reverse a Title Update, if such Title Update adversely impacts the Software Title (e.g., Software Title crashes for all End Users). Microsoft will not charge Publisher for Certification or distribution of Title Updates to Xbox Live Users for any Title Update required by a Publisher Guide change or otherwise requested by Microsoft. However, Microsoft reserves the right to charge Publisher a reasonable fee to offset costs associated with Certification and/or distribution of Title Updates and will notify the Publisher of such fee(s) at least [\*\*\*] in advance of the implementation of such fee(s).

**4.8 Localization.** All Software Titles will be localized as required by local regulation (if applicable) and at least to the same extent (languages, in-game text, voice, and packaging) and provided to End Users in the same manner (e.g. incorporated in base game) as the corresponding Competitive Platform product, unless Xbox One is not available in a country in the applicable Sales Territory.

**4.9 Digital Content.** With the exception of Section 4.2, the terms of this Section 4 will apply mutatis mutandis to Digital Content, except as otherwise provided in this Agreement.

**5. Publisher Guide.** Microsoft has developed a guide containing program-wide requirements and information applicable to the Xbox One platform (as supplemented, revised or updated by Microsoft from time to time, the "**Publisher Guide**"), including Xbox Requirements, Branding Specifications, Marketing Guidelines, Xbox Games Store Policy, and any packaging requirements, and other information regarding other operational aspects of Xbox One and Xbox Live. Each Software Title must comply with the Publisher Guide. On publication of a supplement, revision, or updated version of the Publisher Guide, Publisher will automatically be bound by all provisions. After a Software Title has completed Optional Certification or within [\*\*\*] of submission for Certification, however, Publisher will not be obligated to

comply, for such Software Title only, with any subsequent changes made by Microsoft to the Xbox Requirements or other required categories in the Publisher Guide, unless such subsequent changes are intended to address Xbox One or Xbox Live security or technical integrity issues or compliance will not add significant expense or delay to a Software Title's development, Certification, or manufacture. Changes made to Branding Specifications, Marketing Guidelines, FPU technical specifications, or packaging requirements will be effective as to a Software Title that has passed Certification only on a "going forward" basis (i.e., only to such Marketing Materials or FPUs manufactured more than [\*\*\*] after Microsoft notifies Publisher of the change), unless Publisher can implement the change without delaying shipment of affected Software Title(s) or publishing affected Marketing Materials.

## **6. Post-release compliance.**

**6.1 Bugs or errors.** Notwithstanding Microsoft's Certification, all Software Titles must remain in compliance with all Certification requirements in the Publisher Guide on a continuing and ongoing basis. Nothing in this Agreement may be construed to relieve Publisher of its obligation to (and Publisher will, as soon as possible after discovery) correct material bugs and errors in software Titles whenever discovered (including after commercial Release) in a mutually-agreed manner (which may be via a Title Update). Microsoft reserves the right to charge a reasonable amount to cover additional Certification costs if re-Certification is required.

## **6.2 Digital Content.**

**6.2.1 Minimum Commitment.** If Publisher makes an Online Game Feature available via Xbox Live, it will be made available via Xbox Live for the later of (1) at least as long as [\*\*\*] or (2) for at least [\*\*\*] following Commercial Release of the respective Software Title in each Sales Territory in which the Online Game Feature was released ("**Minimum Commitment**"). Publisher will provide necessary customer support for such Online Game Feature during its availability and for [\*\*\*] after discontinuation. Subject to Publisher's compliance with this Section 6.2.1, Publisher may terminate Microsoft's license to such Online Game Feature on [\*\*\*] prior notice (which must include a Microsoft-approved decommission plan). Microsoft may discontinue any or all such Online Game Features via Xbox Live on [\*\*\*] prior notice to Publisher. Publisher will clearly notify Xbox Live Users of the duration of availability, and will notify Xbox Live Users reasonably in advance of discontinuation, of Online Game Features.

**6.2.2 Availability.** Microsoft may make Digital Content other than Online Games Features submitted by Publisher available to Xbox Live Users for the Term, and unless immediate removal is necessary to comply with Publisher's contractual or other legal obligations, Publisher will provide Microsoft [\*\*\*] prior notice before removing Digital Content. Notwithstanding termination or expiration of Microsoft's license to distribute Digital Content, Microsoft may retain a copy of Digital Content, and Publisher grants Microsoft a license to redistribute the final version of any Digital Content to Xbox Live Users who have previously purchased it, directly or indirectly, from Microsoft to their Xbox One console for no additional fee, even if the Xbox Live User is re-downloading to a different Xbox One unit or within a different Sales Territory than where originally downloaded.

**6.2.3 Archive.** Publisher will retain (in object code, source code, and symbol format) and support all versions of Digital Content made available to Xbox Live Users during, and at least [\*\*\*] after, the period in which it was available.

**6.2.4 Disablement.** Microsoft may disable or remove any Digital Content from Xbox Live or on Xbox One consoles (including by disabling previously downloaded copies on End Users' Xbox One consoles), immediately and at any time following consultation with Publisher, Sales Territory-wide or in

specific countries, if Microsoft determines that: (1) Publisher has breached this Agreement; (2) Publisher has terminated this Agreement, in its entirety or as applicable to a particular Software Title, or terminated applicable license grants; (3) such Digital Content, or its related Software Title, fails to comply with applicable documentation, the approved Concept, or other aspects of this Agreement; (4) such Digital Content, or its related Software Title, materially deviates from the version passing Certification or materially fails to perform as originally intended; (5) such Digital Content, or its related Software Title, is causing harm to (or is likely to harm) the Xbox One console, third-party networks, End Users, or otherwise (e.g., due to piracy, security breach or security defects, or technical failure); or (6) such Digital Content is damaging (or is likely to) damage Microsoft's reputation, involve Microsoft in public controversy, or subject Microsoft to liability.

## **7. Manufacturing.**

**7.1 Replication.** Publisher will use only Authorized Replicators to produce FPU's. Before placing an order with an Authorized Replicator, Publisher will confirm with Microsoft that such entity is an Authorized Replicator, as such list of Authorized Replicators may change from time to time. A then-current list of Authorized Replicators will be in the Publisher Guide. Publisher will notify Microsoft of its intended Authorized Replicator for each Software Title. The agreement for replication services will be negotiated between Publisher and the applicable Authorized Replicator, subject to the terms of this Agreement. Microsoft may charge Authorized Replicator for rights, services, or products associated with manufacturing FPU's. The agreement between Microsoft and each Authorized Replicator grants Microsoft the right to instruct Authorized Replicator to cease manufacturing FPU's, or to prohibit releasing FPU's to Publisher or its agents, if Publisher is in breach of this Agreement or any credit arrangement between the parties. Microsoft does not guarantee performance of, and will not be liable for the failure to perform any agreement by, any Authorized Replicators. Microsoft is not obligated to ensure that FPU's are free of defects.

**7.2 Submission to Authorized Replicator.** Microsoft, and not Publisher, will provide to the applicable Authorized Replicator the final release version of the Software Title and all specifications required by Microsoft for manufacturing FPU's, including the Security Technology. Publisher will prepare and deliver to the Authorized Replicator all other items required for manufacturing FPU's, including approved Packaging Materials associated with the FPU's.

## **7.3 Verification Versions.**

**7.3.1 FPU Verification Version.** Publisher shall allow Microsoft to cause Authorized Replicator to create several Verification Versions of each FPU that has been submitted, but has not passed Certification, that will be provided to both Microsoft and Publisher for evaluation. Before Authorized Replicator fully manufactures FPU's, both parties must approve the applicable Verification Version. Microsoft's approval of each Verification Version is a condition precedent to Publisher's right to manufacture, however Publisher will grant final approval and will work directly with Authorized Replicator regarding the production run, including by verifying that all FPU's are replicated in conformity with all quality standards and manufacturing specifications, policies, and procedures that Microsoft requires of Authorized Replicators and all Packaging Materials are approved by Microsoft before pack out. Publisher will cause Authorized Replicator to include BTS on each FPU. "**Verification Version**" means a unit of a Software Title that is intended to comply fully with all terms of this Agreement and that has not passed Certification, which is provided by Authorized Replicator or Publisher, as applicable, for testing purposes.

**7.3.2 Digital Content Verification Version.** Publisher will work with Microsoft to create a Verification Version, via token, for each Software Title that is to be distributed as a DFU. Once

Microsoft approves the Verification Version, Publisher will grant final approval and the Software Title is approved for distribution.

**7.4 Samples.** For each Software Title published under this Agreement, Publisher will provide a reasonable number of samples (as per the Publisher Guide, but not to exceed [\*\*\*] FPU copies, [\*\*\*] DFU copies per Software Title per Sales Territory in which the Software Title will be released, and no more than [\*\*\*] samples of any "Special" or "Limited" edition versions). Microsoft may use such samples solely as product samples, for customer support, testing, and archival purposes [\*\*\*]. Any use of such samples for marketing use [\*\*\*] will be subject to Section 10.5. Publisher will not be required to pay Royalty Fees for such FPU samples if the samples are shipped directly from an Authorized Replicator to Microsoft. Publisher will not be entitled to any Royalty Fee or other compensation with respect to Digital Content samples as authorized under this Section 7.4 above.

**7.5 Manufacturing reports.** To assist with scheduling manufacturing resources, Publisher will provide Microsoft with forecasts showing [\*\*\*] manufacturing projections by Sales Territory for each Software Title. Publisher will use commercially reasonable efforts to cause Authorized Replicator to deliver to Microsoft, within [\*\*\*] after the end of each [\*\*\*] during the Term, accurate [\*\*\*] statements of FPU's manufactured in such [\*\*\*], for each Software Title and with sufficient detail to satisfy Microsoft. Microsoft will have reasonable audit rights to examine Authorized Replicator's records regarding the number of FPU's manufactured.

**7.6 Alternate FPU manufacturing.** With Microsoft's approval, Publisher may use a different process or company to combine FPU's with Packaging Materials, but only if such packaging process incorporates BTS and otherwise complies with the Publisher Guide. This Section 7.6 will apply to Software Titles that (1) will be bundled with an accessory in accordance with Section 10.4, or (2) are released in a Sales Territory under a regional incentive program, or (3) that are manufactured for and intended to be sold in the Australian, Asian or Japan Sales Territories. Publisher will notify Microsoft of its use of such process or company so that the parties may coordinate their activities and approvals. If Microsoft is unable to accommodate such process or company, Publisher will modify its operations to comply with Microsoft's requirements.

**7.7 Security.** Microsoft may add to the final release version of Software Titles delivered by Publisher to Microsoft, and to all FPU's, such digital signatures, other security technology, and copyright management information (collectively, "**Security Technology**") as Microsoft elects, or Microsoft may elect to modify signatures included in any Security Technology included in the Software Title or Digital Content by Publisher. Additionally, Microsoft may add Security Technology that prohibits playing Software Titles on Xbox One units sold in a Sales Territory different from the Sales Territory in which FPU's

or Digital Content are intended to be distributed, or FPU or Digital Content modified in any way not authorized by Microsoft. Any changes in Security Technology will not be applicable to Software Titles already in Certification testing or FPU already in manufacturing by an Authorized Replicator, unless such change will not materially delay the delivery date of such FPU by Authorized Replicator to Publisher, or unless otherwise agreed by Publisher. Subject to this Section 7.7, Microsoft may update Security Technology requirements from time to time via the Publisher Guide.

**7.8 Demos.** If Publisher wants to distribute a Demo it must obtain Microsoft's approval as per the Publisher Guide. Subject to the Publisher Guide, Demo(s) may be distributed digitally or placed on a single disc, either as a stand-alone or with other Demos, and the suggested price of such units must be [\*\*\*] or at a suggested retail price that does not exceed [\*\*\*] or its equivalent in local currency. All rights, obligations, and approvals in this Agreement that apply to Software Titles will separately apply to any Demo. [\*\*\*]

**7.9 Trials.** If Publisher wants to distribute a Trial, it must obtain Microsoft’s approval as per the Publisher Guide. Subject to the Publisher Guide, Trial(s) may be distributed only digitally and the suggested price of such units must be [\*\*\*]. All rights, obligations, and approvals in this Agreement that apply to Software Titles will separately apply to any Trial. No royalties will be payable to Microsoft for any Trial.

**Minimum order quantities.** [\*\*\*], Publisher’s first FPU order for a Software Title must at least meet the full minimum order quantities (“*MOQs*”) as described below and in the Publisher Guide. Microsoft may update and revise the MOQs in the [\*\*\*], which will be effective starting the following [\*\*\*]. Current MOQs are set forth in Table 1 below. Publisher must meet MOQs independently for each Sales Territory. For example, if an FPU is released in both the North American Sales Territory and the European Sales Territory, Publisher must place orders to manufacture: (1) at least [\*\*\*] FPU for sale in the North American Sales Territory, and (2) [\*\*\*] FPU for sale in the European Sales Territory. Furthermore, within the MOQ for a Sales Territory, separate language SKUs may be aggregated to meet the Sales Territory MOQ. For example, Publisher will meet the European Sales Territory MOQ if they manufacture at least [\*\*\*] English-language FPU and [\*\*\*] Spanish-language FPU for a total of at least [\*\*\*] FPU.

**Table 1 — Minimum Order Quantities**

Sales Territory	Per FPU
North American Sales Territory	[***]
European Sales Territory	[***]
Japan Sales Territory	[***]
Asian Sales Territory	[***]
Australian Sales Territory	[***]
South American Sales Territory	[***]

**7.10 New Authorized Replicator.** If Publisher requests that Microsoft certify and approve a third party replicator that is not then an Authorized Replicator, Microsoft will consider such request in good faith. Publisher acknowledges and agrees that Microsoft may condition certification and approval of such third party on the execution of an agreement in a form satisfactory to Microsoft pursuant to which such third party agrees to strict quality standards, non-disclosure requirements, license fees for use of Microsoft IPR, and procedures to protect Microsoft’s IPR. Notwithstanding anything contained herein, Publisher acknowledges that Microsoft is not required to certify, maintain the certification or approve any particular third party as an Authorized Replicator.

**8. Payments.** The parties will make payments to each other under the terms of Exhibit 1.

**9. Software Title parity.** Each FPU and DFU is subject to the following requirements:

**9.1 FPU and DFU simship.** For each FPU of a Base Game released in a given Sales Territory where Xbox One has been Commercially Released, a DFU of the same Base Game must be made available for distribution in that same Sales Territory, on a country by country basis, via Xbox Games Store simultaneously with the release date of the FPU. For each DFU of a Base Game released in a given Sales Territory where Xbox One has been Commercially Released, a FPU of the same Base Game must be made available for retail distribution in that same Sales Territory, on a country by country basis, simultaneously with the Xbox Games Store availability date of the DFU. For purposes of this Subsection 9.1 only, “simultaneously” means within [\*\*\*].



## **9.2 Features and content parity.**

**9.2.1** Each Base Game, Online Game Feature, and Xbox Live Arcade game will have at least the same features and content as any corresponding version of a Competitive Platform product, including all localization, Publisher subscriptions, and pack-in content from Publisher, subject to platform limitations. The parties will work together in good faith to address any platform limitations that may impact feature and content parity for the Xbox One version.

**9.2.2** Each Premium Downloadable Content, Demo, and additional downloadable content will have at least the same features and content as any corresponding version of a Competitive Platform product, subject to platform limitation. In the event that Publisher is unable to comply with this Section 9.2.2, the parties will work together in good faith to determine a mutually acceptable alternative.

## **9.3 Simship with Competitive Platforms.**

**9.3.1** Publisher will Commercially Release the FPU and DFU of the Base Game(s), including Publisher subscriptions and Online Game Features that are included as part of each such Base Game [\*\*\*].

**9.3.2** Publisher will Commercially Release an Xbox Live Arcade game [\*\*\*].

**9.3.3** Publisher will Commercially Release each Premium Downloadable Content, Demo and additional downloadable content [\*\*\*]. In the event that Publisher is unable to comply with this Section 9.3.3, the parties will work together in good faith to determine a mutually acceptable alternative.

**9.4 Gameplay record, share and streaming features.** At Publisher's discretion on Software Title by Software Title basis and subject to any rights clearance issues or other license restrictions, Publisher will support gameplay record, share, and streaming features (see Sections 11.4 and 11.5) in each Software Title. Publisher retains the right to disable gameplay record, share and streaming features at any time post-Commercial Release of such Software Title. However, Publisher agrees, that subject to Microsoft policy, Microsoft technical, and Microsoft rights limitations, the Xbox One version of each Software Title will be treated equally with regards to gameplay record, share, and streaming feature(s) as the Competitive Platform version of the same such Software Title.

## **10. Marketing, sales, support, and promotion.**

**10.1 Publisher responsible.** As between Microsoft and Publisher, Publisher will solely market and sell the Software Titles. Publisher will provide all technical and other support related to FPUs (including for Xbox Live Users of Digital Content). Publisher will provide appropriate contact information (including Publisher's street address, telephone number, and the applicable individual/group responsible for customer support) to all End Users and to Microsoft for posting on [www.xbox.com](http://www.xbox.com).

**10.2 Warranty.** Publisher will provide the original End User of any FPU a minimum warranty (in writing and in practice) that complies with local laws (as reasonably determined by Publisher) in each country of each Sales Territory in which the FPU is sold. Publisher will offer End Users additional warranty coverage in the applicable country of each Sales Territory as required by local law.

**10.3 Recall of FPUs.** Notwithstanding anything in this Agreement to the contrary, if there is a material defect in any FPUs that in Publisher's or Microsoft's reasonable judgment would: (1) significantly impair any End User's ability to play such FPU; or (2) adversely affect Xbox One or Xbox Live gameplay, Microsoft may require Publisher, following consultation between Publisher and Microsoft, to recall FPUs, at Publisher's own expense, and promptly repair or replace such FPUs if the defect has not been otherwise remedied via a Title Update.

**10.4 No unapproved or unauthorized bundling.** Except as expressly stated in this Section 10.4, Publisher will not market or distribute FPU's bundled with any other product or service, or knowingly permit or assist any third party in such bundling, without Microsoft's prior written consent. Publisher may, however, market or distribute FPU's bundled with: (1) Software Title(s) previously certified and released by Microsoft for manufacturing; or (2) accessory products (e.g., game pads) previously licensed as an "Xbox One Licensed Accessory" by Microsoft, without obtaining Microsoft's advance, written permission. Publisher will contact Microsoft in advance to confirm that the Software Title or accessory to be bundled has previously been approved by Microsoft pursuant to a valid license. Refer to the Publisher Guide for additional information and bundle request form(s).

**10.5 Software Title license.** Subject to Publisher's prior written (which may be via email) consent in each case, Publisher grants Microsoft a fully-paid, royalty-free, non-exclusive license to: (1) publicly perform and publicly display Software Titles at conventions, events, trade shows, press briefings, public interactive displays, and the like; (2) use the title of, and screen shots from, the Software Title in advertising and promotional material related to Xbox One and other Microsoft products and services, as Microsoft may reasonably deem appropriate; and (3) distribute Demo with the Official Xbox Magazine, or as a standalone product with other demo software. The licenses granted in this Section 10.5 are sublicensable to Microsoft's affiliates and third-party contractors and, solely with regard to the foregoing clause (4), are perpetual. The parties may, from time to time, discuss additional, possible marketing and promotion. For purposes of the foregoing, it will not be unreasonable for Publisher to withhold approval if its screen shots, advertising materials, etc. would be depicted with Microsoft titles that compete with Publisher's Software Titles, or Microsoft's proposed use is inconsistent with Publisher's marketing plan for such Software Title (e.g., use by Microsoft ahead of Publisher's official announcement of a Software Title). The parties will develop a process to pre-approve uses of Software Titles and screen shots in accordance with this Section 10.5. Nothing in this Agreement, however, will preclude Microsoft from using screen shots, Marketing Materials, etc. as permitted by law without a license (e.g., "fair use" under applicable copyright law or "referential" use under trademark law). Microsoft may use the code from Software Titles for internal compatibility and testing uses to ensure that the Software Titles operate correctly on Xbox One and Xbox Live.

**10.6 Token Promotions.** If Publisher wants to distribute Microsoft-generated codes, redeemable by Xbox Live Users for Digital Content downloads from Xbox Live ("**Tokens**") as part of promotional activities related to a Software Title using Xbox Games Store (each, a "**Token Promotion**"), Publisher will comply with the Publisher Guide. Upon approval by Microsoft, Publisher will pre-pay all applicable fees as set in the Publisher Guide. As soon as commercially feasible after payment by Publisher for a Token order, Microsoft will create Tokens and deliver them to Publisher.

**10.7 Joint Promotions.** Microsoft and Publisher may periodically develop, execute, and administer promotions involving Software Title(s) (each, a "**Promotion**"). The parties will execute a schedule for each Promotion (each, a "**Promotion Schedule**"), as per the Publisher Guide. The following additional terms apply to each Promotion for which a Promotion Schedule has been executed by both parties: (1) each party may use the specific properties identified in the Promotion Schedule, solely in relation to the Promotion, and during the period and for the territory, identified in the Promotion Schedule; (2) all promotional materials prepared by or on behalf of a party for the Promotion will be subject to the other's approval (and the approving party will approve or disapprove such materials within [\*\*\*], unless otherwise dictated by the specific promotional program, and failure to respond within the approval period will be deemed an approval); and (3) the parties will comply with all other obligations in the Promotion Schedule.

## **11. Grant of distribution and other licenses; limitations.**

**11.1 Distribution license.** On Certification of a Software Title, approval of Marketing Materials, and receipt of the FPU Verification Version by Microsoft, and subject to all terms of this Agreement, Microsoft grants Publisher a non-exclusive, non-transferable, personal license to distribute FPUs containing redistributable, sample code, and Security Technology in approved Sales Territories, solely in FPU form, to third parties for distribution to users or directly to users. Except for transfers of FPUs through normal distribution channels (e.g., retailers, wholesalers), Publisher may not sublicense, transfer, or assign its rights under this license to any third parties (including any right to distribute Software Titles or FPUs to another entity that will brand, co-brand, or otherwise assume control over such products as a “publisher” as that concept is understood in the console game industry) without Microsoft’s express, prior, written consent. Publisher’s license does not include any right, power, or authority to subject Microsoft’s software (or derivative works of, or IPR associated with, such software) in whole or in part to any terms of an Excluded License. “*Excluded License*” means any license that requires, as a condition of use, modification, or distribution of software subject to the Excluded License, that such software or other software combined or distributed with such software be: (1) disclosed or distributed in source code form; (2) licensed for the purpose of making derivative works; or (3) redistributable at no charge.

**11.2 Distribution limitations.** Except as provided for in this Agreement, Publisher will distribute FPUs only in the Sales Territories for which the Software Titles have been approved by Microsoft. Publisher will not, directly or indirectly: (1) export any FPUs from one Sales Territory to another, or outside of Sales Territories; (2) assist or knowingly permit any third party in doing so, except for de minimis quantities of which Publisher provides Microsoft advanced written notice; or (3) distribute FPUs to any person or entity that Publisher has reason to believe may re-distribute or sell such FPUs outside a Sales Territory. Publisher may, however, request to distribute FPUs in countries outside the Sales Territories, and Microsoft will not unreasonably withhold consent.

**11.3 Digital Content rights.** In consideration of royalties payable under Exhibit 1, Publisher grants Microsoft a worldwide, transferable, sublicensable license to: (1) broadcast, transmit, distribute, host, publicly perform (subject to Section 11.13 below) and publicly display, reproduce, stream, and store (a) Digital Content, excluding Multiscreen Content, and (b) Software Titles and Software Title gameplay, for access, use and viewing by End Users and other third parties; (2) broadcast, transmit, distribute, host, publicly perform (subject to Section 11.13 below) and publicly display, reproduce, and stream Multiscreen Content for use on any platform or service on which Xbox Live is offered; and (3) distribute to Xbox Live Users, and permit Xbox Live Users to download and store, Digital Content and recordings of Software Title gameplay. The licenses in this Section 11.3 are exclusive (i.e., except as expressly permitted under this Agreement, Publisher will not directly or indirectly permit or enable access to Digital Content by any means, methods, platforms, or services other than through Xbox Live). Notwithstanding the foregoing, this Section 11.3 does not prevent Publisher from making other platform versions of its Software Titles or Digital Content available via other platform-specific online services.

**11.4 Gameplay record and share features.** The Xbox One gameplay record and share features are Xbox One system features that allow End Users to record their gameplay experiences and publish the recorded gameplay clips to share with third parties via Microsoft and third-party video sharing sites and services. Subject to Section 9.4, unless the gameplay and record features are disabled Publisher grants Microsoft a fully-paid, royalty-free, non-exclusive, perpetual license to, solely as part of the gameplay record and share features: (1) record portions of Software Title gameplay; (2) copy, archive, host, and have hosted such recordings; (3) create derivative works, using only Microsoft-provided editing tools, of such recordings (including by application of various compression and streaming technologies); (4) publicly perform (subject to Section 11.13 below), and publicly display such recordings; and (5) grant to third parties the right to view such recordings. The licenses granted in this Section 11.4 are sublicensable

to Microsoft's affiliates, third-party contractors, and End Users. [\*\*\*]. Microsoft may promote, curate, and surface gameplay clips and derivative works created by End Users, Microsoft or Publisher via Microsoft-owned channels (e.g. Xbox, Xbox Live, Xbox Live dashboard, Xbox.com). However, Microsoft shall not use any gameplay clips or derivative works related to any Publisher Software Title to promote any Microsoft or third party products or services in marketing initiatives or in any Microsoft-scripted presentation at conventions, events, trade shows, press briefings, public interactive displays and the like, without Publisher's prior written consent.

**11.5 Gameplay streaming features.** The Xbox One streaming features are Xbox One system features that allow End Users to share and access their gameplay experiences with Microsoft and third-party applications and services. The licenses granted in this Section 11.5 are sublicensable to Microsoft's affiliates, third-party contractors, and End Users. [\*\*\*].

**11.5.1 Gameplay streaming feature.** Subject to Section 9.4, unless the streaming feature is disabled, Publisher grants Microsoft a fully-paid, royalty-free, non-exclusive, perpetual license to, solely as part of the gameplay streaming feature: broadcast, transmit, distribute, host, publicly perform (subject to Section 11.13 below) and publicly display, reproduce, and stream gameplay of a Software Title with Microsoft and third-party applications and services.

**11.5.2 Gameplay streaming and remote access feature.** Subject to Section 9.4, unless the streaming and remote access feature is disabled, Publisher grants Microsoft a fully-paid, royalty-free, non-exclusive, perpetual license to, solely as part of the gameplay streaming and remote access feature: (a) broadcast, transmit, distribute, host, publicly perform (subject to Section 11.13 below) and publicly display, reproduce, and streaming gameplay of a Software Title and (b) provide use, access and control of the gameplay on a Software Title on any platform or service on which Xbox Live is offered. Any Xbox Live cloud-based streaming game subscription and/or rental service is exempted from the obligations of this Subsection 11.5.2.

**11.6 No Reverse Engineering.** Publisher will not, directly or indirectly (including by aiding a third party to), Reverse Engineer all or any component of Xbox One, including hardware, software, or firmware, except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation. "**Reverse Engineer**" means: (1) x-ray electronic scanning or physical or chemical stripping of semiconductor components, including the motherboard for Xbox One; or (2) disassembling, decompiling, sniffing, using logic analyzers or electrical probes, or replacing physical components of Xbox One to derive source code. This Section 11.5 does not amend or supersede Section 3.4 of the XDK License between the parties and their respective affiliates.

**11.7 Reservation.** All rights not expressly granted in this Agreement are reserved. Without limiting the above, and except to the extent otherwise expressly provided in this Agreement, nothing in this Agreement may be construed as a license to either party's IPR, expressly or by implication, estoppel, exhaustion, or otherwise.

**11.8 Ownership.** Except for IPR supplied by Microsoft to Publisher (including Licensed Trademarks, licenses in software and hardware granted by an XDK License, or any of Microsoft's IPR that Publisher may have included in any Software Titles), ownership of which Microsoft retains, Publisher will, as between the parties, own all rights in the Software Titles.

**11.9 Sub-Publishing.** Publisher may enter into independent agreements with other publishers to distribute Software Titles in approved Sales Territories if: (1) Publisher completes and provides to Microsoft, at least [\*\*\*] before authorizing a Sub-Publisher to manufacture any Software Title(s) in each Sales Territory for each Sub-Publisher, the Sub-Publishing Notification Form (as found in the Publisher

Guide) which will summarize the scope and nature of the Sub-Publishing relationship between Publisher and Sub-Publisher, identify which entity will be responsible for Certification of Software Title(s), list the Software Title(s) for which Sub-Publisher has acquired publishing rights, identify the geographic territory(ies) for which such rights were granted, and identify the term of Publisher's agreement with Sub-Publisher; and (2) Publisher and Sub-Publisher are and remain at all times in good standing under their respective Xbox One Publisher License Agreements. Each of Publisher and Sub-Publisher will make applicable royalty payments for FPU's for which it places manufacturing orders.

**11.10 Authorized affiliates.** If the parties and Publisher's affiliate execute the "Authorized Affiliate" form attached as Exhibit 4, such affiliate may exercise the rights granted to Publisher under this Agreement. The foregoing will not apply to any Publisher affiliate that pays or intends to pay royalties from a European billing address; any such European affiliate must execute a Publisher Enrollment Form with MIOL, in the form attached as Exhibit 3.

**11.11 SmartGlass.** Publisher may create, host, stream, and distribute SmartGlass Companion Experiences subject to the Xbox SmartGlass Business Policy and this Agreement. SmartGlass Companion Experiences may be [\*\*\*] transactions, at Publisher's discretion. [\*\*\*] transactions for SmartGlass Companion Experiences for features or content which impact the Software Title on the Primary Device will be conducted solely via Xbox Games Store, unless otherwise permitted via the Xbox SmartGlass Business Policy, and will be deemed Premium Online Content subject to the Royalty Fee and payment terms set forth in Section 4 of Exhibit 1.

**11.12 License to End Users.** Publisher may create a license agreement to govern Publisher's relationship with End Users with regard to Software Titles distributed physically via FPU or digitally via DFU (each, a "EULA"). If Publisher elects to bind End Users to a EULA, Publisher's EULA must: (1) to the maximum extent allowed by applicable law, disclaim any warranties, limit liability, and exclude damages on behalf of Microsoft and its affiliates, either by category (e.g., by a reference to "Publisher's licensors") or by name; (2) disclaim any obligation on the part of Microsoft or its affiliates to provide support or services other than those covered by the Xbox Live terms of use; (3) not prevent or limit access to the Software Title (i.e., EULA may not be required to launch a Software Title, but a EULA may be required to access Online Game Features); and (4) not purport to govern or change, in any way, the End User's relationship with Microsoft under Microsoft's applicable agreements with such End User, including the Xbox Live terms of use. Not more than [\*\*\*], Microsoft may recommend changes to the Publisher EULA, which Publisher shall consider in good faith.

**11.13** Notwithstanding anything to the contrary contained in this Agreement, Microsoft acknowledges that, with respect to musical compositions embodied in any Software Titles, Digital Content, and gameplay clips derived from the gameplay record and share feature, as between Publisher and Microsoft, [\*\*\*].

**12. Usage data.** The operation of Xbox Live requires Microsoft to collect and store Xbox Live User usage data, including statistics, scores, ratings, and rankings (collectively, "*Xbox Live User Data*"), as well as personally-identifiable Xbox Live User data (e.g., name, email address) ("*Personal Data*"). Microsoft may, in its discretion, use such Xbox Live User Data for any purpose, including posting the Xbox Live User Data on Xbox.com or other Microsoft websites. Microsoft will use commercially reasonable efforts to periodically make certain Xbox Live User Data and Personal Data available to Publisher for Publisher's use solely in connection with the Xbox Live service (including, without limitation, the Publisher Companion Experience, Publisher Hosted Services and Third Party Services) in accordance with the then-current Xbox Live Privacy Statement and such other reasonable restrictions as Microsoft may require. Without limiting the foregoing, Publisher may not disclose to or share with any third party any Personal Data that has been made available to Publisher by Microsoft, and in any

permitted email communications with Xbox Live Users made using the Personal Data that has been made available to Publisher by Microsoft, Publisher must include instructions for opting out of receiving any further communications from Publisher. Notwithstanding anything to the contrary, in the event of any discrepancy between the terms of this Section 12 and the terms of Sections 9.2.2 and 9.2.3 of Exhibit 5, the terms of Sections 9.2.2 and 9.2.3 of Exhibit 5 shall govern.

### **13. Trademark rights and restrictions.**

**13.1 Licensed Trademarks.** Publisher will incorporate Licensed Trademarks, and include credit and acknowledge Microsoft as required by the Branding Specifications, in each FPU, DFU, Demo Version, Trials, and all Marketing Materials. Subject to all terms of this Agreement, Microsoft grants to Publisher a non-exclusive, non-transferable license to use Licensed Trademarks on FPUs, DFUs, Demo Versions, Trials, and Marketing Materials, solely in connection with marketing, sale, and distribution in approved Sales Territories. Except as expressly permitted in this Agreement, Publisher is granted no right, and will not purport to permit any third party, to use Licensed Trademarks in any manner without Microsoft's prior written consent. Publisher has no right to use Licensed Trademarks in connection with merchandising or selling related or promotional products, other than approved Demos. Publisher will not during the Term contest the validity of, by act or omission jeopardize, or take any action inconsistent with, Microsoft's rights or goodwill in Licensed Trademarks in any country, including attempted registration of any Licensed Trademark, or use or attempted registration of any mark confusingly similar to any Licensed Trademark.

**13.2 Branding Specifications.** Publisher's use of Licensed Trademarks must comply with the Publisher Guide, including the Branding Specifications. Publisher will not use Licensed Trademarks with third-party trademarks in a manner that might suggest co-branding or otherwise create confusion as to source or sponsorship of the Software Title, Marketing Materials, FPUs, or DFUs, or ownership of Licensed Trademarks, unless Microsoft has approved such use, expressly and in writing. If Publisher learns of any non-conformance with this Section 13.2, it will promptly remedy such non-conformance and notify Microsoft of the non-conformance and remedial steps taken.

**13.3 Ownership; goodwill.** Publisher acknowledges Microsoft's ownership of, and all goodwill associated with, the Licensed Trademarks. Use of the Licensed Trademarks will not create any right, title, or interest in this Agreement in Publisher's favor. Publisher's use of the Licensed Trademarks will inure solely to the benefit of Microsoft.

**14. Confidentiality; publicity.** The NDA will apply to all Confidential Information (defined in the NDA) provided by the parties under this Agreement or the XDK License (regardless of any earlier termination or expiration of the NDA). Any general terms in the NDA (e.g., applicable law and venue), however, will not apply to the extent they conflict with this Agreement. Except if otherwise stated in this Agreement, neither party will communicate with the press or public about their relationship under, or use the other's name connected to, this Agreement, without the other's express, prior, written consent, not to be unreasonably withheld. Notwithstanding the foregoing, if either party is advised by legal counsel that any portion of this Agreement must be disclosed as part of that party's public filings, it will notify the other in writing and the parties will jointly seek confidential treatment of such information to the maximum extent reasonably possible, in documents approved by both parties and filed with the applicable governmental or regulatory authorities, and Microsoft will prepare a redacted version of this Agreement for filing.

**15. Protection of proprietary rights.**

**15.1 Microsoft's IPR.** Publisher will promptly notify Microsoft if it learns of any infringement or misappropriation of Microsoft's IPR related to this Agreement. Microsoft may take such actions as it deems advisable to protect its IPR, and Publisher will, on request, cooperate with Microsoft in all reasonable respects, at Microsoft's expense. Microsoft will not, however, be required to take any action and may retain all proceeds derived from any such actions.

**15.2 Publisher's IPR.** Publisher, without Microsoft's express written permission, may bring any action related to actual or potential infringement of Software Titles, FPU's, DFU's, Marketing Materials, Digital Content, information, data, logos, software, or any other materials provided or otherwise made available by Publisher under or in relation to this Agreement (excluding only Licensed Trademarks, Security Technology, and redistributable components in the form delivered to Publisher by Microsoft under an XDK License) (collectively, "**Publisher Content**"), to the extent such infringement involves Publisher's IPR (but not Microsoft's IPR). Publisher will make reasonable efforts to inform Microsoft regarding such actions in a timely manner and may retain all proceeds derived from any such actions.

**15.3 Joint actions.** The parties may jointly pursue cases of infringement involving Software Titles (as such products will contain IPR owned by each of them). Unless otherwise agreed, or unless recovery is expressly allocated between them by the court, if the parties jointly prosecute an infringement lawsuit under this Section 15.3, any recovery will be used first to reimburse the parties' respective reasonable attorneys' fees and expenses, pro rata, and any remaining recovery will also be given to the parties pro rata based on the fees and expenses incurred in bringing such action.

**16. Representations, warranties, and disclaimers.**

**16.1 Publisher.** Publisher continuously represents and warrants that:

**16.1.1** It has full power to enter into this Agreement;

**16.1.2** It has not previously granted, and will not grant, any rights to any third party that are inconsistent with the rights granted to Microsoft in this Agreement;

**16.1.3** The Publisher Content does not, and Microsoft's and End Users' access to and use of Publisher Content through and in relation to Xbox One will not, infringe or misappropriate any third-party IPR;

**16.1.4** It will comply with all laws, regulations, administrative and court orders, and requirements in the Sales Territories relating to (and will keep in force all necessary permits, licenses, registrations, approvals, and exemptions throughout the Term, as long as it is) distributing, selling, or marketing Publisher Content;

**16.1.5** The Publisher Content does not and will not contain any messages, data, images, or programs that are illegal (e.g., defamatory, obscene, pornographic, or violate privacy laws) or violate content rating requirements in a country in the Sales Territory(ies) where the Software Title is marketed or distributed;

**16.1.6** Digital Content will not harvest or otherwise collect personal information about End Users, including e mail addresses, without End Users' express consent; furthermore, Digital Content will not link to any unsolicited communication (e.g., an offer for a third-party event or product) that is sent to any third party; and

**16.1.7** Publisher has obtained and will maintain all third-party rights, consents, and licenses necessary for the permitted exploitation of Publisher Content and associated features, including online features, game play recording and sharing, streaming, remote accessing and Digital Content under this Agreement, other than as set forth in Section 11.13 above.

**16.2** **Microsoft.** Microsoft continuously represents and warrants that:

**16.2.1** it has full power to enter into this Agreement;

**16.2.2** it has not previously granted, and will not grant, any rights to any third party that are inconsistent with the rights granted to Publisher under this Agreement;

**16.2.3** it will comply with all laws, regulations, administrative and court orders, and requirements in the Sales Territories relating to (and will keep in force all necessary permits, licenses, registrations, approvals, and exemptions throughout the Term, as long as it is) distributing, selling, or marketing Publisher Content via the Xbox Games Store; and

**16.2.4** The Xbox One, Xbox Live and/or Xbox Game Store, will not harvest or otherwise collect personal information about End Users, including e-mail addresses, without End Users' express consent.

**16.3** **Disclaimer.** Expressly subject to Section 16.2, Microsoft provides all materials (including the Security Technology) and services under this Agreement "as is," without warranty of any kind, and, to the maximum extent permitted by applicable law, disclaims all other warranties (express, implied, statutory, or otherwise) under the applicable laws of any jurisdiction, regarding the materials and services it provides under this Agreement, including any warranties of merchantability or fitness for a particular purpose, of freedom from computer viruses, and of non-infringement.

**16.4** **Excluded damages.** To the maximum extent permitted by applicable law, in no event will Microsoft or its affiliates, licensors, or suppliers be liable for any special, incidental, punitive, or consequential damages of any kind or nature whatsoever, arising out of or related to this Agreement or the transactions contemplated under it, including lost profits or lost goodwill and whether based on breach of any express or implied warranty, breach of contract, tort (including negligence), or strict liability, regardless of whether Microsoft has been advised of the possibility of such damage or if such damage could have been reasonably foreseen.

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**16.5** **Limitation of liability.** Except for amounts owed under this Agreement, the maximum liability of Microsoft to Publisher or any third party relating to this Agreement will be [\*\*\*]. Furthermore, under no circumstances will Microsoft be liable to Publisher for any damages whatsoever with respect to any claims relating to the Security Technology or its effect on any Software Title or for any statements or claims made by Publisher, whether in Publisher's Marketing Materials or otherwise, regarding the availability or operation of any Digital Content.

**17.** **Defense of claims.**

**17.1** **Obligation.** If a Claim is brought against a party, or its subsidiaries, affiliates, agents, licensees, or successors, or any agents, directors, officers, or employees of any of them (all, collectively, "**Defendant**"), the other party ("**Respondent**") will defend the Claim (including by paying litigation costs and reasonable attorneys' fees) and pay any settlement that Respondent consents to or any adverse final judgment.

**17.2** **Procedure.** Defendant: (1) will promptly notify Respondent of any Claim and permit Respondent, using agreed counsel, to answer and defend; (2) at Respondent's reasonable request and expense, will assist in the defense and provide non-confidential information; and (3) at its expense, may participate in the defense with separate counsel. Respondent is not responsible for settlements it does not consent to and will not settle Claims under this Section 17 without Defendant's consent (with both parties' consent not unreasonably withheld). Neither party will stipulate, acknowledge, or admit fault or liability on the other's part without the other's prior, written consent. Respondent will not publicize any settlement without Defendant's prior, written consent.

**18.** **Insurance.**

**18.1** **Coverage.** Publisher will maintain sufficient and appropriate insurance coverage to enable it to meet its obligations under this Agreement and by law. Prior to distribution of any Software Title, Publisher at its sole cost and expense shall have endorsed Microsoft as an additional insured on Publisher's



media perils errors and omissions liability policy for claims arising in connection with production, development and distribution of each Software Title in an amount no less than [\*\*\*] on a per [\*\*\*] basis. Coverage provided to Microsoft under the policy shall be primary to and not contributory with any insurance maintained by Microsoft.

**18.2 Other requirements.** On request, Publisher will deliver to Microsoft proof of the coverage required by this Section 18. If Microsoft reasonably determines that Publisher's coverage is less than required to meet its obligations under this Agreement, Publisher will promptly acquire such coverage and notify Microsoft.

**19. Bankruptcy.** The rights conferred by Publisher on Microsoft under this Agreement, including those described in Sections 10.5 and 11.3, constitute a license running from Publisher to Microsoft of a right to intellectual property for purposes of Section 365(n) of the United States Bankruptcy Code (11 U.S.C. 101, et seq.), and that Microsoft will have, in a bankruptcy proceeding in which Publisher is a debtor, the rights of a “licensee” as set forth in that provision. In a bankruptcy proceeding of Publisher, and notwithstanding any other term of this Agreement, Publisher will not have the power, absent Microsoft’s consent in its sole discretion, to assume or assign to a third-party any license running from Microsoft to Publisher of any property, interest, or right created in the Agreement, all such rights being purely personal to Publisher, such that governing non-bankruptcy law will preclude Publisher’s assignment (and, if applicable, assumption) of those rights without Microsoft’s consent.

**20. Term and termination.**

**20.1 Term.** The term of this Agreement begins on the Effective Date and continues until [\*\*\*] (“*Term*”). If the Agreement will expire, the parties will agree on a plan to allow End Users who purchase Xbox Live-enabled Software Titles near the expiration date to access and use the Digital Content of such Software Titles on Xbox Live for a commercially reasonable time after expiration.

**20.2 Termination.** Either party may terminate this Agreement (in its entirety or solely for an applicable Software Title), effective immediately on notice if: (1) the other party materially breaches this Agreement (other than Section 14, the NDA, or an XDK License) and fails to cure within [\*\*\*] after notice (provided that Publisher’s breach of Section [\*\*\*] or Section [\*\*\*] shall not give rise to a right of Microsoft to terminate this Agreement, either in its entirety or solely for an applicable Software Title, subject to Publisher’s indemnification obligations); (2) the other party materially breaches Section 14, the NDA, or an XDK License; or (3) if the other party becomes Insolvent. If Publisher is the breaching party, Microsoft may suspend availability of Digital Content during any cure period. Any notice of breach must be prominently labeled “Notice of Breach.” Additionally, if Microsoft determines, at any time before Commercial Release that the applicable Software Title does not materially comply with the Publisher Guide (subject to Section 5) or applicable laws, Microsoft may, notwithstanding any prior approvals, terminate this Agreement, without cost or penalty, on a Software Title by Software Title, or Sales Territory by Sales Territory basis, on notice to Publisher. “*Insolvent*” means admitting in writing the inability to pay debts as they mature; making a general assignment for the benefit of creditors; suffering or permitting appointment of a trustee or receiver for all or any assets, unless such appointment is vacated or dismissed within [\*\*\*]; filing (or having filed) any petition as a debtor under any provision of law relating to insolvency, unless such petition and all related proceedings are dismissed within [\*\*\*]; being adjudicated insolvent or bankrupt; having wound up or liquidated; or ceasing to carry on business.

**20.3 Effect and sell-off.** On termination or expiration of this Agreement, Publisher has no further right to, and will not, exercise rights licensed under this Agreement or an XDK License and will promptly cease all manufacture of FPU through its Authorized Replicators and, other than as provided below, cease using Licensed Trademarks. Publisher will have [\*\*\*] after expiration (or termination, if not due to Publisher’s breach) (“*Sell-Off Period*”) to sell its inventory of FPUs existing as of the date of termination or expiration, after which Publisher will immediately return all unsold FPUs to an Authorized Replicator for destruction. Publisher will cause the Authorized Replicator to: (1) destroy all returned FPUs; and (2) have its authorized representative certify to Microsoft, in writing, that all such FPUs were destroyed. All of Publisher’s obligations under this Agreement will apply during such Sell-Off Period. If this Agreement is terminated due to Publisher’s breach, Microsoft may require Publisher to immediately destroy all undistributed FPUs not yet distributed to Publisher’s distributors, dealers and/or end users and shall require all those distributing the FPU over which it has control to cease distribution. Publisher will, until the end of the Minimum Commitment term, continue to support existing Online Game Features for FPUs sold before the effective date of termination or expiration.

**20.4 Cross-default.** If Microsoft has the right to terminate this Agreement, then it may also terminate the XDK License. If Microsoft has the right to terminate the XDK License, then Microsoft may also terminate this Agreement.

**20.5 Survival.** The following will survive expiration or termination of this Agreement: Sections 2, 6.2.1-6.2.3, 8, 10.1- 10.3, 10.5(4), 11.4 (solely with respect to storing and distributing recorded gameplay clips), 11.5, 12, 14.1, 15, 16, 17, 18, 20.3, 20.5, and 21; Sections 1, 4, and 7 of Exhibit 1; and Sections 1, 7.2, 7.3, 8.2, 8.3, and 10 of Exhibit 5.

**21. General.**

**21.1 Law, venue, attorneys' fees.** Washington State law governs this Agreement (excluding conflicts principles that would require applying different law). If federal jurisdiction exists, the parties consent to exclusive jurisdiction and venue in the King County, Washington federal courts. If not, the parties consent to exclusive jurisdiction and venue in the King County, Washington Superior Court. In any action arising out of or relating to this Agreement, the prevailing party may recover its reasonable attorneys' fees, costs, and other expenses, including those on appeal or in a bankruptcy action.

**21.2 Notice.** All notices under this Agreement will be: (1) in writing; (2) in English; (3) deemed given [\*\*\*]; (4) sent by delivery service, messenger, or registered or certified mail (postage prepaid, return receipt requested); and (5) addressed and sent, with any required copies, as provided in Table 1 below (or as the recipient has otherwise designated, in writing or by email, before notice was sent). Ordinary business communications (excluding, for example, those related to payment or breach) may be sent by email and need not be cc'd.

**Table 1— Contact Information**

<b>To Microsoft:</b>	Microsoft Corporation One Microsoft Way Redmond, Washington 98052-6399 USA	<b>To Publisher:</b>	[***]
<b>Attention:</b>	General Manager, Xbox 3rd Party Publishing	<b>Attention:</b>	[***]
<b>Phone:</b>	(425) 882-8080	<b>Phone:</b>	[***]
<b>Fax:</b>	(425) 936-7329	<b>Fax:</b>	[***]
<b>Copy To:</b>	Microsoft Corporation One Microsoft Way Redmond, Washington 98052-6399 USA	<b>Copy To:</b>	[***]
<b>Copy To Fax:</b>	Attn: Legal & Corporate Affairs (425) 936-7329	<b>Copy To Fax:</b>	[***]

**21.3 No delay or waiver.** No delay or failure to exercise or enforce any right or remedy under this Agreement, and no course of dealing or performance, will waive any such right or remedy. No express waiver of any right or remedy in one instance will waive such right or remedy in any other instance. All rights and remedies will be cumulative, not exclusive.

**21.4 Assignment.** Publisher may not assign this Agreement, or any right or duty under it, to any third party unless Microsoft expressly consents to such assignment, in writing. Microsoft may assign this Agreement, or any right or duty under it, as it deems appropriate, or authorize its affiliates or contractors to perform this Agreement in whole or part on Microsoft's behalf. A merger, consolidation, or other

corporate reorganization, or a transfer or sale of a controlling interest in a party's stock, or of all or substantially all of its assets, is deemed to be an assignment. This Agreement will inure to the benefit of and bind the parties, their successors, administrators, heirs, and permitted assigns.

**21.5 Relationship.** Each party is an independent contractor to the other and has no authority to act on behalf of or bind the other, and this Agreement does not create any other relationship (e.g., employment, partnership, or agency).

**21.6 Interpretation.** If a court of competent jurisdiction finds any part of this Agreement illegal, unenforceable, or invalid, that part will be deemed replaced with an enforceable term most closely matching the parties' intent, and the rest of the Agreement will remain in full force and effect. This Agreement will be interpreted according to its plain meaning without presuming that it should favor either party. Unless stated or context requires otherwise: (1) all internal references are to this Agreement, its parties, and its Exhibits; (2) all monetary amounts are expressed and, if applicable, payable, in U.S. dollars; (3) "**days**" means calendar days; (4) "**may**" means that the applicable party has a right, but not a concomitant duty; (5) "**partner**," if used in this Agreement or related documents, is used in its common, marketing sense and does not imply a partnership; (6) "**notify**" means to give notice as provided in (and "**notice**" means a notice that complies with) Section 21.2; (7) "**current**" or "**currently**" means "as of the Effective Date" but "**then-current**" means the present time when the applicable right is exercised or performance rendered or measured; (8) URLs are understood to also refer to successors, localizations, and information or resources linked from within websites at such URLs; (9) lists of examples following "**including**," "**e.g.**," "**such as**," or "**for example**" are deemed to include "without limitation"; and (10) "**or**" means "and/or" (i.e., "a or b" is interpreted to mean "a, or b, or both a and b"); and (11) a party's choices under this Agreement are in its sole discretion.

**21.7 Injunction.** Publisher's threatened or actual unauthorized use of Licensed Trademarks or other Microsoft proprietary rights, and either party's threatened or actual breach of confidentiality provisions, may result in immediate and irreparable damage for which there is no adequate remedy at law. In such event, the non-breaching party is entitled to appropriate injunctive relief from any court of competent jurisdiction.

**21.8 Miscellaneous.** All rights and remedies under this Agreement are cumulative. Each party will pay its own costs to perform (except if expressly stated otherwise). This Agreement: (1) is effective only when manually signed (i.e., with a pen) or signed via an electronic signature service by authorized representatives of both parties, which signature requirement is, without limitation, a material term; (2) is the parties' entire agreement on this subject and merges and supersedes all related oral understandings, representations, prior discussions, letters of intent, or preliminary agreements; (3) is formed as of the Effective Date; (4) may be modified only by a writing hand-signed (i.e., with a pen) or signed via an electronic signature service by authorized representatives of each party (except as otherwise expressly provided in this Agreement); and (5) may be executed in counterparts, by fax or other electronic means to accurately send images, or by electronic signature service. The parties have formed this Agreement as of the Effective Date.

**Agreed and accepted:**

**Microsoft Licensing, G.P.**

Signature: /s/ Mohammad Shafaqat  
Name: Mohammad Shafaqat  
Title: Xbox Program Manager

**Take-Two Interactive Software, Inc.**

Signature: /s/ Seth Krauss  
Name: Seth Krauss  
Title: EVP & General Counsel

Date: October 31, 2013

Date: October 31, 2013

**Microsoft Corporation**

Signature: /s/ Mohammad Shafaqat  
Name: Mohammad Shafaqat  
Title: Xbox Program Manager  
Date: October 31, 2013



[\*\*\*]

[\*\*\*] [\*\*\*] [\*\*\*] [\*\*\*] [\*\*\*] [\*\*\*] [\*\*\*]  
[\*\*\*]

1.4 Royalty Tier migration. [\*\*\*] Publisher may elect to change the Royalty Tier to any other valid Royalty Tier (e.g. migrate from Tier 1 to Tier 2 or from Tier 1 to Tier 3). A Software Title may migrate Royalty Tiers [\*\*\*] after each [\*\*\*] period from the date the Software Title was manufactured under its then current Royalty Tier. Publisher must submit to Microsoft, at least [\*\*\*] before placing the first manufacturing order under the desired migrated Royalty Tier a completed “*Xbox One Royalty Tier Migration Form*” as specified in the Publisher Guide (which may require electronic submission). Unit Discount accumulation restarts with each Royalty Tier migration.

2. Payment process. [\*\*\*] Authorized Replicators are authorized by Microsoft to begin production once Microsoft has provided them with written confirmation that Publisher has satisfied its payment obligations with respect to such manufacturing order. Upon the Authorized Replicator’s receipt of such confirmation, the Authorized Replicator will determine the timing of production. All payments will be made by wire transfer, in accordance with payment instructions in the Publisher Guide, in the currency stated in Table 1 below for FPUs manufactured for sale in the applicable Sales Territory. Publisher has [\*\*\*] after invoice date to notify Microsoft of any dispute.

**Table 1: Payment Currency**

Sales Territory	North American	European	Australian	Japan	Asian	South American
Currency	U.S. Dollars	Euros	U.S. Dollars	Yen	U.S. Dollars	U.S. Dollars

3. Billing address. Publisher may have up to [\*\*\*] “bill to” addresses for royalty payment under this Agreement. Each such address will be for FPUs manufactured by Authorized Replicators in a given Sales Territory. If Publisher includes a “bill-to” address in a European country, Publisher (or its Affiliate) must execute a Publisher Enrollment Form (in the form of Exhibit 3) with Microsoft’s affiliate Microsoft Ireland Operations, Ltd. within [\*\*\*] before establishing a billing address in a European country. Publisher’s billing address(es) for North American Sales Territory and/or either Japan or Asian Sales Territory set forth in Table 5 below.

**Table 2: Publisher Addresses**

North American Sales Territory	[***]
Japan or Asian Sales Territory	[***]

4. Digital Content and PDLC.

4.1 [\*\*\*]

4.2 [\*\*\*]

4.2.1 [\*\*\*]

4.2.2 [\*\*\*]

4.3 Payment. Within [\*\*\*] after the end of each [\*\*\*], or more frequently, Microsoft shall provide Publisher with access to a statement and release payment for any Royalty Fees due to Publisher. In the event Royalty Fees are less than [\*\*\*] for a given [\*\*\*], then no payment will be made until such Royalty Fees accrued exceeds [\*\*\*]. The statement will contain information sufficient to discern how the Royalty Fees were computed. Publisher has [\*\*\*] after the statement date to dispute the information presented on the statement.

4.4 Xbox Live billing, collection, and Publisher Hosted Services. Microsoft has the sole right to bill and collect all fees associated with Xbox Live, including for subscriptions or any Digital Content for which Xbox Live Users may be charged, [\*\*\*]. As between Publisher and Microsoft, Microsoft will solely offer, host, fulfill and deliver Digital Content, and any other Xbox One-related content or services to Xbox Live Users, except as follows. Publisher may host (and have hosted on its behalf) multiplayer functionality and server-hosted content and services necessary for online game modes, and other such content and services approved by Microsoft for Software Titles (“*Publisher Hosted Services*” or “*Third Party Services*”) see Exhibit 5 and Publisher Guide for additional detail.

4.5 [\*\*\*]

5. Additional payment. Without limiting Section 16.1.7 of the main body of this Agreement, for the sale of Software Titles (including any embodied Software Title content or Digital Content), Publisher will pay all: (1) so-called “record” royalties to artists, producers, engineers, mixers, A&R executives, and other royalty participants; (2) mechanical royalties to publishers of copyrighted musical compositions; (3) synchronization royalties to publishers of copyrighted musical compositions (except as otherwise set forth in Section 11.13 of the Agreement); (4) payments required under collective bargaining agreements applicable to Publisher or its affiliates; and (5) other royalties, fees, or amounts required to be paid to any third party under Section 16.1.7.

6. Taxes. Neither party is liable for any of the other party’s taxes that the other is legally obligated to pay and that are incurred or arise in connection

with or related to transactions under this Agreement, and all such taxes (including net income or gross receipts taxes, franchise taxes, property taxes, or taxes arising from sales between a party and its subscribers or customers) are the financial responsibility of the party legally obligated to pay such tax. Each party will pay to the other any sales, use, or value-added taxes owed by that party solely as a result of entering into this Agreement and required to be collected under applicable law. A party may provide to the other a valid exemption certificate in which case that other party will not collect taxes covered by such certificate. Each party will defend, indemnify, and hold the other harmless from any taxes (including sales or use taxes paid by one party to the other) or claims, causes of action, costs (including reasonable attorneys' fees), and any other liabilities of any kind whatsoever related to a party's taxes. If any taxes must be withheld on payments made by one party to the other, the paying party will deduct such taxes from the amount otherwise owed and pay them to the appropriate taxing authority. The paying party will secure and deliver to the other an official receipt for those withholdings and other documents reasonably requested by the other to claim a foreign tax credit or refund. The parties will use reasonable efforts to ensure that any taxes withheld are minimized to the extent possible under applicable law. This tax section will govern the treatment of all taxes arising as a result of, or connected with, this Agreement notwithstanding any other section of this Agreement.

7. Audit. Each party will keep all usual and proper records related to its performance under this Agreement (including any addenda or amendments), including audited financial statements and support for all transactions related to the ordering, production, inventory, distribution, or billing/invoicing information for [\*\*\*] from the date created. Either party ("**Auditing Party**") may, on [\*\*\*] notice, cause a third-party independent CPA or law firm to audit or inspect the other party's ("**Audited Party**") records no more than [\*\*\*] in any [\*\*\*] period to verify compliance with the financial, royalty, and payment

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terms of this Agreement. Auditing Party will have access to the previous [\*\*\*] of Audited Party's records from the date that the audit request notice was received by Audited Party. The right of inspection and consultation will expire with respect to all records related to any amounts payable under this Agreement on the [\*\*\*] of the date of the statement or payment to which such records relate. Any such audit will be conducted during regular business hours at Audited Party's offices and will be paid for by Auditing Party, unless Material discrepancies are disclosed. If Material discrepancies are disclosed, Audited Party will pay Auditing Party [\*\*\*]. For purposes of this Section 7, "**Material**" means [\*\*\*] of the amounts due to Auditing Party within the audit period (net of any overpayments that may have occurred during such audit period).

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**EXHIBIT 2 - XBOX ONE ROYALTY TIER SELECTION FORM**

Please complete and sign the form, and submit via email to MSLIPUBX@MICROSOFT.COM with CC to your Account Manager.

- A. This form must be submitted at least [\*\*\*] prior to the first manufacturing order being placed for the Software Title for each respective Sales Territory. If this form is not submitted on time or is rejected by Microsoft, the royalty rate will default to [\*\*\*] for the applicable Sales Territory.
- B. A separate form must be submitted for each Sales Territory.
- C. Initial order must meet MOQ for the Sales Territory listed in Section 7.10, Table 1 of the Agreement and the Publisher Guide.
- D. A different form must be submitted for non-standard Software Title editions, such as Game of the Year, Special Edition, Limited Edition or Compilation.

1. Publisher Name:

2. Xbox One Software Title Name:

3. BinaryID(s): *Last known BinaryID(s) at time of submission; for post RTM titles BinaryID(s) of build to manufacture*

4. Date of First Commercial Release (mm/dd/yy):

5. Sales Territory or Program (check one):

North American       European       Australian       South American       Asian       Japan

6. Final Certification Date(mm/dd/yy):

7. Select Royalty Tier and WSP: (check one):

[\*\*]                                        [\*\*]                                        [\*\*]                                        [\*\*]  
[\*\*]                                        [\*\*]                                        [\*\*]                                        [\*\*]

The undersigned represents that he/she has authority to submit this form on behalf of the above Publisher, and that the information contained herein is true and accurate.

To avoid manufacturing delays at your Authorized Replicator your disc manufacturing order must include the intended Sales Territory or Program as indicated above.

\_\_\_\_\_  
By (sign)

\_\_\_\_\_  
Name, Title (Print)

\_\_\_\_\_  
E-Mail Address (for confirmation of receipt)

\_\_\_\_\_  
Date (Print mm/dd/yy)



**EXHIBIT 3 - XBOX ONE PUBLISHER ENROLLMENT FORM**

Please complete, sign the form, and submit via email to MSLIPUBX@MICROSOFT.COM with CC to your Account Manager.

PUBLISHER MUST COMPLETE, SIGN AND SUBMIT THIS ENROLLMENT FORM [\*\*\*].

This Xbox One Publisher Enrollment Form (“Enrollment”) is entered into between Microsoft Ireland Operations Ltd. (“MIOL”) and the following publisher (“Publisher”):

Publisher: \_\_\_\_\_

VAT number: \_\_\_\_\_

Attention: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Email: \_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

and is effective as of the latter of the two signatures identified below. The terms of that certain Xbox One Publisher License Agreement signed by Microsoft Licensing, GP and \_\_\_\_\_ dated \_\_\_\_\_ (the “Xbox One PLA”) are incorporated herein by reference.

1. Term. This Enrollment will expire on the date on which the Xbox One PLA expires, unless it is terminated earlier as provided for in the Xbox One PLA.

2. Notices; Requests. All notices and requests in connection with this Enrollment will be: (1) in writing; (2) in English; (3) deemed given [\*\*\*]; (4) sent by delivery service, messenger, or registered or certified mail (postage prepaid, return receipt requested); and (5) addressed and sent, with any required copies, as provided to the Publisher as set forth above and to MIOL as follows (or as the recipient has otherwise designated, in writing or by email, before notice was sent). Ordinary business communications (excluding, for example, those related to payment or breach) may be sent by email and need not be cc’d.

MICROSOFT IRELAND OPERATIONS LTD.

with a cc to: MICROSOFT CORPORATION

Attention: MIOL Xbox Accounting Services  
Microsoft European Operations Centre,  
Atrium Building Block B,  
Carmenhall Road,  
Sandyford Industrial Estate  
Dublin 18  
Ireland  
Fax: 353 1 706 4110

Attention: Legal & Corporate Affairs Department  
One Microsoft Way  
Redmond, WA 98052-6399  
USA  
Fax: +1 (425) 706-7329

3. Representations and Warranties. By signing this Enrollment, the parties agree to be bound by the terms of this Enrollment, and Publisher represents and warrants that: (i) it has read and



understands the Xbox One PLA, including any amendments thereto, and agrees to be bound by those; (ii) it is either the entity that signed the Xbox One PLA or its affiliate; and (iii) the information that it has provided herein is accurate.

4. Billing Address. For purposes of the Xbox One PLA, Exhibit 1, Section 3, Publisher's billing address for FPU's manufactured by Authorized Replicators located in the European Sales Territory is as follows:

Name: \_\_\_\_\_  
Attention: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Email: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_

**MICROSOFT IRELAND OPERATIONS LTD.**

**PUBLISHER:** \_\_\_\_\_

\_\_\_\_\_  
By (sign)

\_\_\_\_\_  
By (sign)

\_\_\_\_\_  
Name (Print)

\_\_\_\_\_  
Name (Print)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date (Print mm/dd/yy)

\_\_\_\_\_  
Date (Print mm/dd/yy)

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**EXHIBIT 4 - AUTHORIZED AFFILIATES**

Please complete, sign the form, and submit via email to MSLIPUBX@MICROSOFT.COM with CC to your Account Manager.

Publisher affiliates authorized to perform the rights and obligations under this Agreement are:

**I. Name:**  
**Address:**

**II. Name:**  
**Address:**

**Telephone:**  
**Fax:**

**Telephone:**  
**Fax:**

Publisher will provide Microsoft at least [\*\*\*] prior written notice of the name and address of each additional Publisher affiliate that Publisher wishes to add to this Exhibit 4. Any additional Publisher affiliate may not perform any rights or obligations under this Agreement until it has signed and submitted a Publisher Affiliate Agreement (attached below) to Microsoft.

**PUBLISHER AFFILIATE AGREEMENT**

For good and valuable consideration, \_\_\_\_\_, a \_\_\_\_\_, corporation (“Publisher Affiliate”) hereby covenants and agrees with Microsoft Licensing, GP, a Nevada general partnership, and Microsoft Corporation, a Washington corporation, that Publisher Affiliate will comply with all obligations of \_\_\_\_\_ (“Publisher”) pursuant to that certain Xbox One Publisher License Agreement between Microsoft Licensing, GP, Microsoft Corporation, and Publisher dated \_\_\_\_\_ (the “Xbox One PLA”) and to be bound by the terms and conditions of this Publisher Affiliate Agreement. Capitalized terms used herein and not otherwise defined will have the same meaning as in the Agreement.

Publisher Affiliate acknowledges that its agreement herein is a condition for Publisher Affiliate to exercise the rights and perform the obligations established by the terms of the Xbox One PLA. Publisher Affiliate and Publisher will be jointly and severally liable to Microsoft for all obligations related to Publisher Affiliate’s exercise of the rights, performance of obligations, or receipt of Confidential Information under the Xbox One PLA. This Publisher Affiliate Agreement may be terminated in the manner set forth in the Xbox One PLA. Termination of this Publisher Affiliate Agreement does not terminate the Xbox One PLA with respect to Publisher or any other Publisher Affiliates.

IN WITNESS WHEREOF, Publisher Affiliate and Publisher have executed this agreement as of the date set forth below. All signed copies of this Publisher Affiliate Agreement will be deemed originals.

**PUBLISHER AFFILIATE:**

**PUBLISHER:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

Title:

Title:

**EXHIBIT 5 — XBOX LIVE SERVICES, PUBLISHER HOSTED SERVICES, AND THIRD PARTY SERVICES**

This Exhibit 5 provides the policies and guidelines governing Xbox Live Services, Publisher Hosted Service and Third Party Services.

**1. Definitions**

**1.1** “*Hosted Content*” means any content, including any Digital Content or Online Game Feature, included in Publisher’s Software Titles that are accessed by Publisher (or third party) servers via Xbox Live Services or Third Party Services.

**1.2** “*Publisher Companion Experience*” means the internet website or an application (e.g. a web portal or mobile application) through which players of the Software Titles can access certain Hosted Content. The Publisher Companion Experience will contain certain game data information related to the Software Titles that Publisher makes available to Xbox Live Users.

**1.3** “*Publisher Hosted Services*” means Publisher’s use of Hosted Content under this Exhibit 5, whether performed by Publisher or a Third Party Host, including operating, maintaining, and controlling the servers necessary to provide the Hosted Content. This includes any custom back-end service or feature that a Publisher has built and deployed.

**1.4** “*Third Party Host*” means a third party (e.g., ISP) providing hosting services on behalf of Publisher. A Third Party Host provides Publisher Hosted Services.

**1.5** “*Third Party Services*” means internet-based commercial features and services that Software Titles may want to directly access (e.g., YouTube, Facebook, Weather.com, etc.)

**1.6** “*Xbox Live Services*” means Microsoft’s online resources and functionalities provided by the Xbox Live platform that enable Publisher (and other permitted third parties) , which can be accessed both from within Software Titles and from Publisher Hosted Services, to access Xbox Live and related data stored within, or accessible from, Xbox Live (e.g., achievements, matchmaking, statistics, cloud compute services).

**1.7** “*Xbox Live User Content*” means any content that originates from Xbox Live Users in any format and that is published through or as part of any Hosted Content, but excluding Xbox Live User Communications. The parties acknowledge that Microsoft may regulate the transmission of Xbox Live User Content that is transmitted through the Xbox Live Services, including but not limited to user generated content, telemetry data and/or gameplay data; provided, however that nothing in this Section 1.7 shall affect the parties’ respective ownership rights to any such content or data.

**1.8** “*Xbox Live User Communications*” means transient voice and text communications sent from an Xbox Live User to one or more Xbox Live Users using the Xbox Live service (e.g., voice chat).

**2. Approval and Certification.** All proposed use of Publisher Hosted Services and Hosted Content and the manner in which Publisher uses the Xbox Live User Content on the Publisher Companion Experience are subject to the same approval and Certification processes as are set forth for any Software Title. To gain approval and pass Certification, Publisher may be required to submit sufficient additional information about its server architecture and Publisher Companion Experience. Publisher shall also enable Microsoft to test the Publisher Hosted Services, the Hosted Content, and the Publisher Companion Experience, as applicable. Microsoft may at any time audit Publisher’s compliance with the terms of this

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Exhibit 5, and Publisher will allow Microsoft access to the Publisher Hosted Services, Hosted Content, and Publisher Companion Experience as Microsoft may request for this purpose; provided that Publisher shall not be obligated to provide Microsoft with access to its server environment in connection with any such audits. Publisher will comply with the Publisher Guide in its performance of this Exhibit 5.

**3. Access to Xbox Live Services; limitations.** Subject to Publisher's compliance with the terms of the Agreement, including this Exhibit and the Publisher Guide, Microsoft grants Publisher a worldwide, nonexclusive, royalty-free license to access Xbox Live Services, as necessary to implement and operate the Publisher Companion Experience and to provide the Publisher Hosted Services and Hosted Content.

**4. Publisher Hosted Service requirements.** Publisher will comply, and on Microsoft's request, provide Microsoft with sufficient information to verify Publisher's compliance, with the following:

**4.1 Standards.** Publisher will host the Hosted Content and provide the Publisher Hosted Services, each in a manner that meets or exceeds standards of quality, performance, stability, and security generally accepted in the industry, as well as those specific requirements in this Exhibit and the Publisher Guide.

**4.2 Operation.** Publisher will monitor the operation and performance of the Publisher Hosted Services; respond to technical and Xbox Live User inquiries; and have rules, policies, and procedures for the Publisher Hosted Services that are consistent with this Exhibit and any standards that Microsoft may provide from time to time to reflect changes in industry best practices.

**4.3 Reporting and technical policies.** Publisher will use the communication processes stated in the Publisher Guide for updating Microsoft's technical teams. In addition, Publisher will comply with the technical processes, policies, rules, and detailed procedures for notification, escalation, and reporting of scheduled and unscheduled maintenance of, and problems that might occur with, the Publisher Hosted Services, all as set forth in the Publisher Guide. Each party will notify the other if it discovers a technical problem with the other party's service. Publisher will notify Microsoft in advance of Publisher's scheduled downtimes, and Publisher will use commercially reasonable efforts to schedule maintenance downtimes for the Publisher Hosted Services to coincide with Microsoft's scheduled downtimes for Xbox Live. Publisher will, on Microsoft's request that Publisher reschedule any scheduled downtime for the Publisher Hosted Services, use commercially reasonable efforts to do so to a mutually-acceptable date and time.

**4.4 Server capacity and load.** Publisher will use commercially reasonable efforts to support all Xbox Live Users using its Publisher Hosted Services, including operating sufficient computing resources for traffic, and will immediately inform Microsoft of the failure of relevant Publisher Hosted Services. Publisher will not allow the load on the Hosted Services system to exceed [\*\*\*] of the capacity of the system, where "capacity" is defined as the maximum load which can be sustained by the system. Together with the materials that Publisher submits for Certification, Publisher will describe in writing the tools and techniques it will use in measuring the maximum capacity and load ("**Tools**"), which Tools must be recognizable as industry standards, and which are subject to Microsoft's advance written acceptance or rejection. Publisher will measure the load on the Publisher Hosted Services at intervals of no more than [\*\*\*]. Publisher will retain records of load measurements for no less than [\*\*\*], and will make such records accessible to Microsoft on request. Should changes to the system occur that necessitate changes in the Tools, or should the capacity of the system materially increase or decrease, Publisher will inform Microsoft within [\*\*\*].

**4.5 Uptime.** Publisher will operate (or have operated) the Publisher Hosted Services so that they have [\*\*\*] Uptime per [\*\*\*]. "**Uptime**" means the portion of time when the system is accessible and

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available to Xbox Live Users; Uptime is calculated [\*\*\*] assuming conformance with the industry standard of monitoring every [\*\*\*]. Publisher will report uptime statistics to Microsoft on request.

**4.6 Troubleshooting and notice to Xbox Live Users.** If the Publisher Hosted Services or the Publisher Companion Experience are unable to connect to and properly interoperate with Xbox Live, both Microsoft and Publisher will diligently work (subject to the availability of Microsoft resources, in Microsoft's discretion) to troubleshoot the problem, and Publisher will diligently work to fix any such problem. During any time in which a Software Title, any Hosted Content that uses the Publisher Hosted Services or the Publisher Companion Experience is unable to establish a connection to the Publisher Hosted Services, then Publisher must display the appropriate message to the Xbox Live User in accordance with the Publisher Guide.

**4.7 Xbox Live family settings features.** The Publisher Hosted Services, Hosted Content, and Publisher Companion Experience will at all times comply with the Xbox Requirements related to the family settings features of Xbox One and Xbox Live, provided that nothing in this Section 4.7 shall require Publisher to make any changes to a Software Title after the Certification of such Software Title by Microsoft in accordance with the Agreement.

## **5 Xbox Live User Content**

**5.1 Microsoft approval.** Publisher may not allow Xbox Live Users to create, share, or otherwise provide Xbox Live User Content in connection with a Software Title without first obtaining Microsoft's express, written, approval. If Publisher wants to make Xbox Live User Content available as part of Hosted Content, Publisher must provide to Microsoft a detailed description of the process and procedures Publisher will have in place regarding such Xbox Live User Content at least [\*\*\*]. Furthermore, the Software Title must comply with any XRs related to the creation and/or consumption of Xbox Live User Content.

**5.2 Infringement.** If Microsoft has approved Publisher to make Xbox Live User Content available as part of Hosted Content, Publisher will maintain a procedure, that complies with applicable law and mutual agreement of the parties, for removing Xbox Live User Content in the event of a valid infringement claim. Microsoft may notify Publisher of any complaints related to Xbox Live User Content. Publisher will notify Microsoft as soon as commercially practicable (and in any event no later than [\*\*\*]) after Publisher receives any reasonably founded in law or fact third-party claim of infringement relating to Xbox Live User Content associated with Publisher's Software Title(s) or Digital Content, which notice will also specify the steps that Publisher has taken or will take in response, and Publisher will indemnify, defend and hold Microsoft harmless from any claims, causes of action, costs (including without limitation, reasonable attorneys' fees) and any liabilities of any nature whatsoever related to any such claims of infringement.

**5.3 Violations of Xbox Live terms of use or code of conduct.** Microsoft may, in its discretion, require Publisher to remove Xbox Live User Content for Xbox Live User violations of the Xbox Live terms of use, Xbox Live Code of Conduct, or both.

**5.4 Action by Microsoft.** If Publisher breaches the policies and terms of this Exhibit, Microsoft may, without limiting any of its other rights and remedies under the Agreement, restrict access to the Hosted Content, Publisher Companion Experience, or both, and disconnect Publisher Hosted Services from Xbox Live. Microsoft, in its discretion, may also restrict the uploading of Xbox Live User Content to, restrict access to Xbox Live Services from, or require Publisher to remove Xbox Live User Content from, Xbox Live in accordance with the Xbox Live terms of use, privacy statement, and code of conduct.

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**6. Publisher Hosted Services support.** As between Microsoft and Publisher, Publisher will provide all customer support and technical support to Xbox Live Users for the Publisher Companion Experience, Hosted Content, and Publisher Hosted Services. Microsoft has no support responsibilities whatsoever to Xbox Live Users for the Publisher Companion Experience, Hosted Content, and Publisher Hosted Services.

**7. Third Party Host of Publisher Hosted Services.** Publisher may (subject to Microsoft's advance consent) subcontract to a Third Party Host all or any portion of Publisher's rights or obligations with regard to providing Publisher Hosted Services only. All actions and failures to act of any Third Party Host engaged by Publisher are imputed to, and deemed to be actions or failures to act of Publisher. If Microsoft has consented to the use of a Third Party Host, then:

**7.1 Limited access.** Publisher may provide the Third Party Host with access to only those portions of Xbox Live Services that are necessary for the Third Party Host to perform the Publisher Hosted Services, and to no other portions;

**7.2 Guarantee.** Publisher unconditionally and irrevocably guarantees Third Party Host's performance of the applicable obligations imposed by this Agreement and the XDK;

**7.3 Liability.** Publisher will indemnify and hold Microsoft harmless from all damages or costs of any kind incurred by Microsoft or any third party and arising from or related to Third Party Host's fulfillment of, or failure to fulfill, the applicable obligations of Publisher under this Exhibit, or by other actions or failures of Third Party Host; and

**7.4 Payment.** Publisher will make all payments to Third Party Host for services performed, and for any other services or deliverables for which Third Party Host was engaged.

**8. Third Party Services.** Subject to Microsoft's advance consent, Publisher may use Third Party Services. All actions and failures to act of any Third Party Services engaged by Publisher are imputed to, and deemed to be actions or failures to act of Publisher. If Microsoft has consented to use of a Third Party Service, then:

**8.1 Limited Access.** Publisher may provide the Third Party Service with access to only those portions of Xbox Live Services that are necessary for the Third Party Service, and to no other portions;

**8.2 Guarantee.** Publisher unconditionally and irrevocably guarantees Third Party Service's performance of the applicable obligations imposed by this Agreement; and

**8.3 Liability.** Publisher will indemnify and hold Microsoft harmless from all damages or costs of any kind incurred by Microsoft or any third party and arising from or related to Third Party Service's fulfillment of, or failure to fulfill, the applicable obligations of Publisher under this Exhibit, or by other actions or failures of Third Party Service.

**9. Xbox Live Services, Publisher Hosted Services and Third Party Services additional terms.**

**9.1 Compliance.** Publisher will implement, operate, and provide the Publisher Companion Experience, Publisher Hosted Services, and Hosted Content in full compliance with applicable laws in jurisdictions in which the Publisher Companion Experience, Publisher Hosted Services, and Hosted Content are made available. Publisher may be required to provide Microsoft with reasonable information, including legal opinions, to verify that the Publisher Companion Experience, Publisher Hosted Services, and Hosted Content comply with applicable laws. Publisher will promptly reply to and comply with any

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reasonable and legal requests by any law enforcement officials regarding Publisher Companion Experience, Hosted Services or Hosted Content.

**9.2 Privacy.** Publisher's access to Xbox Live Services is subject to periodic privacy review by Microsoft. Additionally, as a condition precedent to Microsoft's approval of the Publisher Hosted Services, Hosted Content, or the manner in which Publisher uses the Xbox Live User Content on the Publisher Companion Experience, Microsoft may require Publisher to have its own "terms of use," "privacy policy," or both (collectively, "**Publisher TOU**") to govern Publisher's collection of Personal Data from Xbox Live Users. Not more than [\*\*\*], Microsoft may recommend changes to the Publisher TOU, which Publisher shall consider in good faith in accordance with applicable law.

**9.2.1 Limits on Personal Data collection.** Publisher will not collect any Personal Data or Xbox Live User Content through the Xbox Live Services without first obtaining Microsoft's consent, which consent shall be on a one-time basis for each Software Title (including all versions thereof), and if Microsoft so consents, then Publisher may collect and use such Personal Data and Xbox Live User Content in accordance with applicable law, Microsoft's privacy policy and the Publisher Guide. If Publisher obtains a consent from the Xbox Live User to use their Personal Data in accordance with the Publisher TOU, the use of such Personal Data and Xbox Live User Content (after complete transmission by Microsoft) by Publisher shall not be subject to Microsoft's privacy policy or Publisher Guide and such Personal Data will not be deemed to be Personal Data subject to Section 12 of the PLA or any other agreement with Microsoft.

**9.2.2 Personal Data collected independently by Publisher.** Any Xbox Live User's Personal Data collected by Publisher that is not transmitted via the Xbox Live Services must be collected in accordance with the Publisher TOU and will not be deemed to be Xbox Live User Data or Personal Data subject to Section 12 of the PLA, or be subject to any other agreement with Microsoft.

**9.2.3 Hyperlinks.** Publisher will include in the Publisher TOU hyperlinks to the then-current, appropriately localized, version of the Xbox Live terms of use, privacy statement, and code of conduct (which are currently located, localized for the U.S. market, at <http://privacy.microsoft.com/en-us/default.aspx>, and <http://www.xbox.com/enUS/Legal/CodeOfConduct>). Alternately, Publisher will include in the Publisher TOU a statement explaining that when users submit Personal Data to Publisher via third-party platforms such as a gaming console, that action is subject to the TOU of the third-party; and

**10. Representations and warranties. Publisher further represents and warrants that :**

**10.1 Non-infringement.** Any and all information, data, logos, software, or other materials provided to Microsoft or made available to Xbox Live Users via the Publisher Companion Experience (including Hosted Content) and the Publisher Hosted Services do not infringe or misappropriate any third party IPR;

**10.2 Compliance with laws.** The Publisher Companion Experience, Hosted Content, and Publisher Hosted Services do not contain any messages, data, images, or programs that are, by applicable law, defamatory, obscene, or pornographic, or in any way violate any applicable laws (including laws of privacy and data collection and storage) of the territory where the Publisher Hosted Content is distributed or hosted;

**10.3 Personal information and privacy.** Except as approved by Microsoft, the Publisher Companion Experience, Hosted Content, and the Publisher Hosted Services will not harvest or otherwise collect personal information about Xbox Live Users, including e-mail addresses, without Xbox Live Users' express consent; furthermore, the Publisher Companion Experience, Hosted Content, and the Publisher

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Hosted Services will not link to any unsolicited communication (e.g., an offer for a third-party event or product) sent to any third party;

**10.4 Variance from approved Concept.** It will not serve any Hosted Content that is not approved in the Software Title's Concept; and

**10.5 User Generated Content.** Subject to the terms of the Agreement, Publisher has obtained all necessary rights and permissions for Publisher's and Microsoft's use of the Xbox Live User Content.

**10.6** Notwithstanding anything to the contrary in this Agreement, Publisher and Microsoft shall each own (and have the right to use without further approvals from the other) any Xbox Live User Content relating to a Software Title that is collected by Microsoft and transmitted to Publisher; and for the purposes of clarification, (i) this Exhibit 5 does not apply to any Xbox Live User Content that is collected by Publisher, and (ii) Publisher owns exclusively (a) any Xbox Live User Content that is created by tools provided by Publisher and (b) any Xbox Live User Content that is derivative of a Software Title.

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**EXHIBIT 6 — XBOX LIVE INCENTIVE PRUGRAM**

**1. Xbox Live Incentive Program**

In order to encourage Publisher to support Xbox Live functionality and to drive increased usage of Xbox Live, Publisher may qualify for certain [\*\*\*] incentive payments based on the amount of Xbox Live Share created by Publisher's Multiplayer Software Titles. "***Multiplayer Software Title***" means a Software Title for Xbox One or Xbox 360 that supports real-time multiplayer game play over Xbox Live.

[\*\*\*]

**2. Additional Definitions**

**2.1** "***Accounting Period***" means Microsoft's [\*\*\*] within the Term; provided that if the Effective Date of this Agreement or the expiration date of this program falls within such a [\*\*\*], then the applicable payment calculation set forth below shall be made for a partial Accounting Period.

**2.2** "***Guest***" means an individual who accesses Xbox Live who is not a Multiplayer Subscriber or a Subscriber.

**2.3** "***Multiplayer Subscriber***" means a subscriber who: (i) has created a "Gamertag" for use on Xbox Live; (ii) has paid a fee to establish, migrate or renew an active, fee-based subscription account to Xbox Live, which is currently branded as "Xbox Live Gold" (excluding any subscribers in a "free-trial" period); and (iii) the Xbox Live account is not delinquent (as determined by Microsoft's standard practices). If a multiplayer subscription includes multiple Xbox Live accounts and Gamertags, the number of Multiplayer Subscribers attributable to such multiplayer subscription will be 2. For avoidance of doubt, Subscribers, trial users, and Guests will not be counted as Multiplayer Subscribers.

**2.4** "[\*\*\*] ***Multiplayer Hours***" means [\*\*\*]

**2.5** "[\*\*\*] ***Multiplayer Hour Share***" means [\*\*\*]

**2.6** "[\*\*\*] ***Unique Users***" means [\*\*\*]

**2.7** "[\*\*\*] ***Unique User Share***" means [\*\*\*]

**2.9** "***Subscription Revenue***" means [\*\*\*]

**2.10** "***Xbox Live Share***" means [\*\*\*]

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3. **[\*\*\*] incentive table**

The [\*\*\*] incentive payments shall be determined pursuant to Table 1 below:

Table 1: [\*\*\*]

[***]	[***]	[***]	[***]	[***]	[***]
[***]	[***]	[***]	[***]	[***]	[***]
[***]	[***]	[***]	[***]	[***]	[***]
[***]	[***]	[***]	[***]	[***]	[***]
[***]	[***]	[***]	[***]	[***]	[***]
[***]	[***]	[***]	[***]	[***]	[***]

4. **Example**

[\*\*\*]

- [\*\*\*][\*\*\*]
- [\*\*\*][\*\*\*]
- [\*\*\*][\*\*\*]
- [\*\*\*][\*\*\*]
- [\*\*\*]

[\*\*\*]

- [\*\*\*][\*\*\*]
- [\*\*\*][\*\*\*]

[\*\*\*]

- a. [\*\*\*]
- b. [\*\*\*]
- c. [\*\*\*]

[\*\*\*]

5. **Impact of Subscription Revenue change.** In the event that a Microsoft-initiated change to the Xbox Live subscription model negatively impacts the Subscription Revenue on a per Multiplayer Subscriber basis by more than [\*\*\*] ([\*\*\*]), Microsoft may change or discontinue the Xbox Live Incentive Program by providing Publisher with [\*\*\*] advance notice.

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**6. Other Xbox Live Incentive Program requirements**

**6.1 Multiplayer Software Title simship, feature and content parity.** Any Multiplayer Software Title that does not meet the following simship, feature and content parity provisions [\*\*\*]:

6.1.1 Publisher will commercially release an Xbox 360 and/or Xbox One version in every Sales Territory that such Software Title is released for any Competitive Platform on a country by country basis in which Xbox 360 and/or Xbox One are available;

6.1.2 All Digital Content, Betas, Demos, and Trials are shipped no later than any Competitive Platform version in each Sales Territory on a country by country basis in which Xbox 360 and/or Xbox One are available; and

6.1.3 The Software Title maintains ongoing feature and content parity with Competitive Platform versions in each Sales Territory on a country by country basis in which Xbox 360 and/or Xbox One are available.

**6.2** [\*\*\*]

**6.3** [\*\*\*]

**7. Term.** This Xbox Live Incentive Program will commence on [\*\*\*], and will be available until [\*\*\*], unless earlier terminated by Microsoft upon written notice to Publisher.

**8. Payments.** In the event Publisher qualifies for a [\*\*\*] incentive payment under this program during an Accounting Period, Microsoft will provide payment for any amount due to Publisher, within [\*\*\*] after the end of each Accounting Period.

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[\*\*\*] INDICATES MATERIAL THAT WAS OMITTED AND FOR WHICH CONFIDENTIAL TREATMENT WAS REQUESTED. ALL SUCH OMITTED MATERIAL WAS FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION PURSUANT TO THE RULES APPLICABLE TO SUCH CONFIDENTIAL TREATMENT REQUEST.

**AMENDMENT TO THE  
XBOX 360 PUBLISHER LICENSE AGREEMENT**  
*(Verification Versions, Alternative Manufacturing, Multi-Game Packs,  
Hits Program Revisions, and Currency Stored Value)*

This Amendment to the Xbox 360 Publisher License Agreement (this “**Amendment**”) is entered into and effective as of the later of the signature dates below (the “**Amendment Effective Date**”) by and between Microsoft Licensing, GP, a Nevada general partnership (“**Microsoft**”), and Take-Two Interactive Software, Inc. (“**Publisher**”), and supplements the Xbox 360 Publisher License Agreement between the parties dated as of November 17, 2005, as amended (the “**Xbox 360 PLA**”). Microsoft Corporation, a Washington corporation, is a party to this Amendment only with respect to its acknowledgement of Sections 6.2 and Exhibit 1, Section 6 of the Xbox 360 PLA.

**RECITALS**

A. Microsoft and Publisher entered into the Xbox 360 PLA to establish the terms under which Publisher may publish video games for Microsoft’s Xbox 360 video game system.

B. The parties now wish to amend certain terms of the Xbox 360 PLA as set forth below.

Accordingly, for and in consideration of the mutual covenants and conditions contained herein, and for other good and valuable consideration, receipt of which each party hereby acknowledges, Microsoft and Publisher agree as follows:

**1. Definitions.** Except as expressly provided otherwise in this Amendment, capitalized terms shall have the same meanings as those ascribed to them in the Xbox 360 PLA.

1.1 The following new definition is hereby added to Section 2 of the Xbox 360 PLA:

“**Multi-Game Pack(s)**” means an FPU that includes multiple Software Titles bundled and sold together.

1.2 The definition of “**Standard Software Title**” is expanded to include Multi-Game Pack(s).

**2. Verification Versions.** Section 7.3 of the Xbox 360 PLA shall be replaced with the following:

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### 7.3 Verification Version.

7.3.1 FPU Verification Version. Publisher shall allow Microsoft to cause the Authorized Replicator to create several test versions of each Software Title that has been submitted, but has not passed certification, affixed to a DVD (“**Verification Version(s)**”) that will be provided to both Microsoft and Publisher for evaluation. Prior to full manufacture of an FPU by the Authorized Replicator, both Publisher and Microsoft must approve the applicable Verification Version. Once Microsoft approves the Verification Version, Publisher shall grant the final approval and work directly with the Authorized Replicator regarding the production run. Publisher agrees that all FPUs must be replicated in conformity with all of the quality standards and manufacturing specifications, policies and procedures that Microsoft requires of its Authorized Replicators, and that all Packaging Materials must be approved by Microsoft prior to packaging. Publisher shall cause the Authorized Replicator to include the BTS on each FPU.

7.3.2 Digital Content Verification Version. Publisher will work with Microsoft to create a Verification Version, via token, for each Software Title and XBLA game that is to be distributed via Live Marketplace. Once Microsoft approves the Verification Version, Publisher shall grant final approval and the Software Title or XBLA game is approved for distribution.

3. **Alternate Manufacturing in Europe.** Section 7.8 of the Xbox 360 PLA shall be replaced with the following:

**7.8 Alternate Manufacturing.** Publisher may utilize a different process or company for the combination of a FPU with Packaging Materials provided that such packaging process incorporates the BTS and otherwise complies with the Xbox 360 Publisher Guide. Publisher shall notify Microsoft regarding its use of such process or company so that the parties may properly coordinate their activities and approvals. To the extent that Microsoft is unable to accommodate such processes or company, Publisher shall modify its operations to comply with Microsoft’s requirements.

4. Exhibit 1, Sections 1a and b, including Tables 1 and 2, of the Xbox 360 PLA shall be replaced with the following:

#### 1. Platform Royalty

a. For each FPU manufactured, Publisher shall pay Microsoft nonrefundable royalties in accordance with the royalty tables (Tables 1 and 2) and the Unit Discount Table (Table 3).

b. To determine the applicable royalty rate for a particular Software Title to be sold in a particular Sales Territory, the applicable Threshold Price from Table 1 for the category of Software Title will determine the correct Royalty Tier (except with respect to the first Commercial Release of Hits Software Titles as described further in (ii) below). The royalty rate is then as set forth in Table 2 based on such Tier and the Sales Territory in which the FPUs will be sold. For example, assume the Wholesale Price of a Standard Software Title to be sold in the European Sales Territory is [\*\*\*]. According to Table 1,



Tier B royalty rates will apply to that Software Title and the royalty rate for each FPU as set forth in Table 2 is [\*\*\*].

[\*\*\*]

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[***]	[***]	[***]	[***]	[***]
[***]	[***]	[***]	[***]	[***]
[***]	[***]	[***]	[***]	[***]
[***]	[***]	[***]	[***]	[***]
[***]	[***]	[***]	[***]	[***]
[***]	[***]	[***]	[***]	[***]
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[***]	[***]	[***]	[***]	[***]
[***]	[***]	[***]	[***]	[***]
[***]	[***]	[***]	[***]	[***]

\*This is the US dollar equivalent of local currency in the Asian Sales Territory

\*\*Hits Tier 3 is only available for Hits FPUs that are manufactured on or after [\*\*\*].

\*\*\* If a Multi-Game Pack consists of more than [\*\*\*] Software Titles, in addition to the Royalty Rates set for the Multi-Game Pack Program, each additional Software Title after [\*\*\*] will be charged a rate equivalent to the [\*\*\*] Royalty Rate.

[\*\*\*]

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[***]	[***]	[***]	[***]	[***]
[***]	[***]	[***]	[***]	[***]
[***]	[***]	[***]	[***]	[***]
[***]	[***]	[***]	[***]	[***]
[***]	[***]	[***]	[***]	[***]
[***]	[***]	[***]	[***]	[***]
[***]	[***]	[***]	[***]	[***]
[***]	[***]	[***]	[***]	[***]
[***]	[***]	[***]	[***]	[***]
[***]	[***]	[***]	[***]	[***]
[***]	[***]	[***]	[***]	[***]
[***]	[***]	[***]	[***]	[***]
[***]	[***]	[***]	[***]	[***]
[***]	[***]	[***]	[***]	[***]
[***]	[***]	[***]	[***]	[***]

\* [\*\*\*]

5. **Unit Discounts.** Exhibit 1, Section 1.e (Unit Discounts) of the Xbox 360 PLA is hereby replaced with the following:

e. **Unit Discounts.** Publisher is eligible for a discount on Standard Software Title FPU's manufactured for a particular Sales Territory (a "Unit Discount") based on the number of such FPU's that have been manufactured for sale in that Sales Territory as described in Table 3 below. Hits, standalone Expansion Pack FPU's, and individual Software Titles included in Multi-Game Packs will not be included in the FPU manufacturing quantity calculation for purposes of determining the Unit Discount. For the avoidance of doubt, only an entire Multi-Game Pack qualifies for Unit Discounts. Except as provided in Section 5 below, units manufactured for sale in a Sales Territory are aggregated only towards a discount on FPU's manufactured for that Sales Territory; there is no worldwide or cross-territorial aggregation of units for a particular Software Title. The discount will be rounded up to the nearest Cent, Yen or hundredth of a Euro.

[\*\*\*]

[***]	[***]	[***]	[***]	[***]
[***]	[***]	[***]	[***]	[***]
[***]	[***]	[***]	[***]	[***]
[***]	[***]	[***]	[***]	[***]
[***]	[***]	[***]	[***]	[***]
[***]	[***]	[***]	[***]	[***]

6. **Japan Re-Ordering Program.** Exhibit 1, Section 1.f(i)(1) of the Xbox 360 PLA is hereby replaced with the following:

"(1) The Software Title must have been commercially available in the Japan Sales Territory between [\*\*\*], and [\*\*\*]."

7. **Multi-Game Pack Program.** Exhibit 1, Section 1 of the Xbox 360 PLA shall be revised to add the following new section:

g. **Multi-Game Pack Program.** Publisher may elect to manufacture and distribute Multi-Game Pack(s) subject to the requirements of this Section 1g. Upon compliance with the program requirements and receipt of the Multi-Game Pack Program Form (attached as Exhibit 10 hereto) at least [\*\*\*] prior to the targeted commercial release of the Multi-Game Pack, Publisher is authorized to manufacture and distribute Multi-Game Packs in each Sales Territory at the royalty rates in Table 2 of Section 1 applicable to the Multi-Game Packs. The Multi-Game Pack program requirements are:

(i) A Software Title that has been commercially released for [\*\*\*] or less can be included in a Multi-Game Pack only once every [\*\*\*], and a Software Title that has been commercially released for more than [\*\*\*] can also be included in [\*\*\*] exclusive retail bundle in addition to the Multi-Game Pack;

(ii) All Software Titles included in a Multi-Game Pack must have been commercially available at retail for at least [\*\*\*] prior to including and manufacturing such Software Title as part of a Multi-Game Pack;

(iii) Multi-Game Packs must consist of at least [\*\*\*] Hits Software Title but may be a combination of both Standard and Hits Software Titles;

1. Multi-Game Packs consisting of [\*\*\*] disc-based Software Titles may be Software Titles crossing Publisher's franchises and must be packaged into a single case.
2. Multi-Game Packs consisting of [\*\*\*] disc-based Software Titles or more must all be Software Titles from a Publisher's single franchise and must be packaged into no more than [\*\*\*] cases surrounded by a Microsoft-approved package sleeve.
3. Combinations of "Better with Kinect" and non-Kinect required Software Titles are permitted in Multi-Game Packs, and will follow branding guidelines. A combination of "Kinect-Required", "Better with Kinect" and non-Kinect required Software Titles are not permitted in Multi-Game Packs;

(iv) All Software Title discs included in Multi-Game Packs must be new manufacturing of the Software Title (existing FPU's may not be re-packaged or re-used under this program, no o-rings, no-recertification);

(v) Multi-Game Packs cannot include Games on Demand or XBLA tokens, but may include tokens for additional content available for download and for use with or in a Software Title (subject to the Xbox Live Marketplace Policy token fees);

(vi) Multi-Game Packs as a whole are not eligible for the Hits program set forth in Section 2 of Exhibit 1 and inclusion in a Multi-Game Pack does not influence the status of each individual title with regards to the Hits Program;

(vii) Multi-Game Packs are eligible for the unit discounts set forth in Section 1(e);

(viii) All Marketing Materials for Multi-Game Packs must comply with all Microsoft Branding Specifications, and Publisher shall submit all such Marketing Materials to Microsoft for its approval in accordance with this Agreement;

(ix) Packaging for a Multi-Game Pack must comply with all Microsoft packaging and branding requirements per the Xbox 360 Publisher Guide.

(ix) Publisher acknowledges that Microsoft may change any of the qualifications for participation in the Multi-Game Pack program upon [\*\*\*] advance written notice to Publisher.

**8. Hits Program.**

a. Exhibit 1, Section 2.a(i) of the Xbox 360 PLA is hereby replaced with the following:

“(i) The Software Title must have been commercially available as a Standard FPU in the applicable Sales Territory for at least [\*\*\*] at the time of Commercial Release of the Hits FPU.”

b. Beginning [\*\*\*], the Hits Program manufacturing requirements for Platinum or Classic Hits as set forth in Exhibit 1, Section 2.b, Table 1 of the Xbox 360 PLA is revised for only the Japan Sales Territory as follows:

[\*\*\*]

[***]	[***]	[***]	[***]	[***]
[***]	[***]	[***]	[***]	[***]
[***]	[***]	[***]	[***]	[***]
[***]	[***]	[***]	[***]	[***]
[***]	[***]	[***]	[***]	[***]

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\*As of [\*\*\*], Software Titles manufacturing as Platinum Hits in Japan Sales Territory must manufacture a minimum of [\*\*\*] Hits FPU.  
 \*\*These Kinect Hits qualifications apply solely to Hits FPU that (i) have a royalty rate of [\*\*\*] (or [\*\*\*] on or after [\*\*\*], with respect to the Japan and Asian Sales Territories only); (ii) use Kinect as the primary control mechanism (“Better with Kinect” Software Titles are not eligible); and (iii) have achieved at least one of the following review scores: [\*\*\*] Metacritic score; or [\*\*\*] on Xbox.com; or [\*\*\*] on Amazon.co.uk/.com (as may be updated via the Xbox 360 Publisher Guide) provided that any of the foregoing must have at least [\*\*\*] published reviews to qualify.

**9. Currency Stored Value.**

a. Exhibit 1, Section 6 of the Xbox 360 PLA shall be deleted and replaced with the following:

**6. Online Content.** This section applies to Microsoft Corporation and Publisher.

a. For the purposes of this Section 6, the following capitalized terms have the following meanings:

“**CSV**” means a currency stored value system devised by Microsoft and available to consumers to purchase online goods or services from Microsoft or its partners. Microsoft reserves all rights to determine rates and policies applicable to the use of CSV.

“**CSV Remittance Rate**” means a rate on which Microsoft will calculate the Royalty Fee (defined in Section 6b) due Publisher for Premium Online Content purchased using CSV via Xbox Live Marketplace. Microsoft reserves the right to change the CSV Remittance Rate at least [\*\*\*] every [\*\*\*] with [\*\*\*] notice, and will publish any such change in the Xbox

360 Publisher Guide. Notwithstanding the foregoing, the CSV Remittance Rate is currently [\*\*\*].

“**Gross Receipts**” is defined as all revenues generated by Publisher’s Premium Online Content at the greater of the Publisher’s wholesale price (multiplied by the CSV Remittance Rate, as appropriate) or the actual price for such item.

“**Local Currency**” means the currency associated with the Xbox Live Marketplace to which the user has access and in which the Online Content is available for purchase.

“**Premium Online Content**” means Online Content offered for sale and not distributed for free.

“**Royalty Percentage**” for Premium Online Content is [\*\*\*]. Microsoft may assign a Royalty Percentage for other categories of Premium Online Content, as set forth in the Xbox 360 Publisher Guide.

b. Publisher may submit Online Content to Microsoft for Microsoft to distribute via Xbox Live Marketplace and Xbox Live distribution channels. Publisher will assign a Wholesale Price for the Online Content expressed in Local Currency (or in USD for subscription-based Online Content) at the time it submits such Online Content. Microsoft may choose to offer such Online Content to Xbox Live Users for [\*\*\*]. Microsoft also reserves the right to charge Publisher a reasonable fee for delivering [\*\*\*] content via Xbox Live Marketplace. For each Premium Online Content item, Microsoft will pay Publisher a royalty calculated as follows in subsections c and d (the “**Royalty Fee**”).

c. CSV Purchases. For Premium Online Content made available and purchased with CSV, the Royalty Fee will equal [\*\*\*]. For example, if a certain unit of Premium Online Content were purchased for [\*\*\*] and the current CSV Remittance Rate were [\*\*\*], the Royalty Fee would equal [\*\*\*]. In the event Microsoft reduces the price of Premium Online Content or distributes such Premium Online Content for [\*\*\*], Microsoft will pay [\*\*\*].

d. Non-CSV Purchases. For non-CSV purchases of Premium Online Content, the Royalty Fee will equal [\*\*\*].

e. Within [\*\*\*] after the end of each [\*\*\*], or more frequently, with respect to which Microsoft owes Publisher any Royalty Fees, Microsoft shall provide Publisher with access to a statement and release payment for any amount shown thereby to be due to Publisher. In the event Royalty Fees are less than [\*\*\*] for a given [\*\*\*], then no payment will be made until such Royalty Fees accrued exceeds [\*\*\*]. The statement will contain information sufficient to discern how the Royalty Fees were computed. Publisher has [\*\*\*] after the statement date to dispute the information presented on the statement.

**10. Exhibits.**

Exhibits 6 and 8 of the Xbox 360 PLA are hereby amended and restated in their entirety as attached hereto. Exhibit 10 is hereby added as Exhibit 10 of the Xbox 360 PLA as attached hereto.

**11.** Except and to the extent expressly modified by this Amendment, the Xbox 360 PLA shall remain in full force and effect and is hereby ratified and confirmed. In the event of any conflict between this Amendment and the Xbox 360 PLA the terms of this Amendment shall control.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed as of the Amendment Effective Date.

**MICROSOFT CORPORATION**

**PUBLISHER**

/s/ Astrid Ford  
By (sign)  
Astrid Ford  
Name  
Sr. Program Mgr  
Title  
November 13, 2013  
Date

/s/ Seth Krauss  
By (sign)  
Seth Krauss  
Name  
EVP & General Counsel  
Title  
November 13, 2013  
Date

**MICROSOFT LICENSING, GP**

/s/ Astrid Ford  
By (sign)  
Astrid Ford  
Name  
Sr. Program Mgr  
Title  
November 13, 2013  
Date

**EXHIBIT 6**

**XBOX 360 HITS PROGRAM ELECTION FORM**

**Please complete the below information, sign the form, and submit via options below:**

**FAX:** +1 (425) 708-2300 **TO ATTN OF:** MICROSOFT LICENSING GP AND YOUR ACCOUNT MANAGER

**EMAIL:** [MSLIPUBX@MICROSOFT.COM](mailto:MSLIPUBX@MICROSOFT.COM) W/ CC TO YOUR ACCOUNT MANAGER

- A. This Form Must Be Submitted By A Publisher At Least [\*\*\*] Prior To The Target Commercial Release Date For A Software Title In A Hits Program In Any Sales Territory.** *If this form is not submitted on time or is rejected by Microsoft, orders will be held from manufacturing until such time MS has approved and/or configured the request in their systems.*
- B. A Separate Form Must Be Submitted For Each Sales Territory And for Each Hits Program In Which The Publisher Wishes To Publish A Software Title As Part Of A Hits Program**

1. Publisher Name:
2. Xbox 360 Software Title Name:
3. XeMID(s): *Complete XeMID(s) is required*
4. Title qualified under the following Hits Program (check one)
 

<input type="checkbox"/> Platinum or Classics Hits	<input type="checkbox"/> Family Hits (ESRB E / PEGI 3+ or PEGI 7+)
<input type="checkbox"/> Kinect Hits (Kinect is the Primary control mechanism)	<input type="checkbox"/> Kinect Hits (Kinect is the primary control mechanism and Hits Tier 2 election required)

5. Royalty Tier (check one):

[\*\*\*]

[\*\*\*]

[\*\*\*]

6. Sales Territory for which Publisher wants to publish the Software Title as a Hits FPU (check one):

North America

Europe

Japan

Asia

7. Date of Commercial Release of Software Title in applicable Sales Territory (mm/dd/yy):

8. Number of Standard FPUs manufactured to date for the Software Title in the applicable Sales Territory:

9. Projected Commercial Release date of Software Title in the applicable Sales Territory as part of Hits Program mm/dd/yy):

10. Initial order quantity of Hits Titles manufactured for Sales Territory:

The undersigned represents that he/she has authority to submit this form on behalf of the above Publisher, and that the information contained herein is true and accurate.

---

To avoid manufacturing delays at your Authorized Replicator, your disc manufacturing order must include:

- Sales Territory
- Hits Program

---

By (sign)

---

Name, Title (Print)

---

E-Mail Address (for confirmation of receipt)

---

Date (Print mm/dd/yy)

---



EXHIBIT 8

XBOX 360 HITS ROYALTY TIER MIGRATION FORM

Please complete the below information, sign the form, and submit via options below:

FAX: +1 (425) 708-2300 TO ATTN OF: MICROSOFT LICENSING GP  
AND YOUR ACCOUNT MANAGER

EMAIL: MSLIPUBX@MICROSOFT.COM W/ CC TO YOUR  
ACCOUNT MANAGER

- A. This form must be submitted at [\*\*\*] prior to the 1<sup>st</sup> manufacturing order being placed for the software title(s) for each respective Sales Territory. *If this form is not submitted on time or is rejected by Microsoft, orders will be held from manufacturing until such time MS has approved and/or configured the request in their systems.*
- B. A Hits Software Title may not change royalty tier until it has been in the Hits Program for at least [\*\*\*].
- C. A separate form must be submitted for each Sales Territory in which Publisher desires to change the applicable base royalty.

1. Publisher Name:

2. Xbox 360 Software Title Name:

3. XeMID(s): *Complete XeMID(s) is required*

4. Date of First Commercial Release (mm/dd/yy):

5. Sales Territory (check one):

North America

Europe

Japan

Asia

6. Please indicate migration

[\*\*\*]

[\*\*\*]

[\*\*\*]

7. Initial order quantity of migrated Hits Title for Sales Territory:

The undersigned represents that he/she has authority to submit this form on behalf of the above Publisher, and that the information contained herein is true and accurate.

To avoid manufacturing delays at your Authorized Replicator, your disc manufacturing order must include:

- Sales Territory
- Hits Program

\_\_\_\_\_  
By (sign)

\_\_\_\_\_  
Name, Title (Print)

\_\_\_\_\_  
E-Mail Address (for confirmation of receipt)

\_\_\_\_\_  
Date (Print mm/dd/yy)

---

**EXHIBIT 10**

**XBOX 360 ROYALTY TIER SELECTION FORM FOR MULTI-GAME PACK PROGRAM (MGPP) REQUEST**

Please complete the below information, sign the form, and submit via options below:

**FAX:** +1 (425) 708-2300 **TO ATTN OF:** MICROSOFT LICENSING GP **EMAIL:** MSLIPUBX@MICROSOFT.COM W/ CC TO YOUR ACCOUNT MANAGER  
**AND YOUR ACCOUNT MANAGER**

- A. This form must be submitted at least [\*\*\*] prior to the 1st manufacturing order being placed for the software title(s) for each respective Sales Territory. If this form is not submitted on time or is rejected by Microsoft, orders will be held from manufacturing until such time MS has approved and configured their systems to accept the Multi-Game Pack request.**
- B. A separate form must be submitted for each Title, Sales Territory and Multi-Game Pack request**

1. Publisher Name:
2. Game Pack Title:
3. All Xbox 360 Software Title Names included in the MGPP:

Title	Complete XeMID(s): All titles must have been commercially available in the Sales Territory for at least [***]	Number of Discs	Titles that are Hit or qualify for Hits?	Have any of the titles been in the MGPP within the last 12 mos?	Are any of the titles Kinect required?
Title 1			<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No.	<input type="checkbox"/> Yes <input type="checkbox"/> No
Title 2			<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
Title 3			<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

Please discuss with your AM and use additional space if your Multi-Game Pack will exceed [\*\*\*] titles.

4. Authorized Replicators to be used (check all that apply): *Please reference MGPP when placing orders with Authorized Replicator(s)*

Expected MFG Date

Volume Forecast

- Arvato Brazil  Arvato Germany  Arvato North Carolina  Arvato Russia |  Datapulse Singapore
- JVC Alabama |  Memory Tech Japan |  Technicolor Mexico  Technicolor Poland

5. Sales Territory (check one):  North America  Europe  Japan  Asia

6. Select the MGPP Royalty Tier: The royalty rate is based on the WSP/SRP of the full packaged product.

[\*\*\*] [\*\*\*] [\*\*\*] [\*\*\*]  
 [\*\*\*]  
 • [\*\*\*]  
 • [\*\*\*]

The undersigned represents that he/she has authority to submit this form on behalf of the above Publisher, and that the information contained herein is true and accurate.



To avoid manufacturing delays at your Authorized Replicator, your disc manufacturing order must indicate the intended Sales Territory and Program reference below:

**Program = Multi-Game Pack Program (MGPP)**

---

By (sign)

---

Name, Title (Print)

---

E-Mail Address (for confirmation of receipt)

---

Date (Print mm/dd/yy)

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**CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER**  
**Section 302 Certification**

I, Strauss Zelnick, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q for the quarterly period ended December 31, 2013 of Take-Two Interactive Software, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

February 3, 2014

/s/ STRAUSS ZELNICK

Strauss Zelnick

*Chairman and Chief Executive Officer*

QuickLinks

[Exhibit 31.1](#)

[CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER Section 302 Certification](#)

**CERTIFICATION OF CHIEF FINANCIAL OFFICER**  
**Section 302 Certification**

I, Lainie Goldstein, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q for the quarterly period ended December 31, 2013 of Take-Two Interactive Software, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

February 3, 2014

/s/ LAINIE GOLDSTEIN

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Lainie Goldstein  
*Chief Financial Officer*

QuickLinks

[Exhibit 31.2](#)

[CERTIFICATION OF CHIEF FINANCIAL OFFICER Section 302 Certification](#)

**CERTIFICATION PURSUANT TO  
18 U. S. C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report of Take-Two Interactive Software, Inc. (the "Company") on Form 10-Q for the period ended December 31, 2013 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Strauss Zelnick, as Chairman and Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. §1350, as adopted pursuant to §906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934: and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

February 3, 2014

/s/ STRAUSS ZELNICK

Strauss Zelnick

*Chairman and Chief Executive Officer*



QuickLinks

[Exhibit 32.1](#)

[CERTIFICATION PURSUANT TO 18 U. S. C. SECTION 1350, AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002](#)

**CERTIFICATION PURSUANT TO  
18 U. S. C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report of Take-Two Interactive Software, Inc. (the "Company") on Form 10-Q for the period ended December 31, 2013 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Lainie Goldstein, as Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. §1350, as adopted pursuant to §906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934: and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

February 3, 2014

/s/ LAINIE GOLDSTEIN

Lainie Goldstein  
*Chief Financial Officer*

QuickLinks

[Exhibit 32.2](#)

[CERTIFICATION PURSUANT TO 18 U. S. C. SECTION 1350, AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002](#)

