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## **FORM 10-Q**

**TAKE TWO INTERACTIVE SOFTWARE INC - TTWO**

**Filed: June 09, 2006 (period: April 30, 2006)**

Quarterly report which provides a continuing view of a company's financial position

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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 April 30, 2006

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

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission file number 0-29230

**TAKE-TWO INTERACTIVE SOFTWARE, INC.**  
(Exact Name of Registrant as Specified in Its Charter)

**Delaware**  
(State or Other Jurisdiction  
of Incorporation or Organization)

**51-0350842**  
(I.R.S. Employer  
Identification No.)

**622 Broadway, New York, New York 10012**  
(Address of principal executive offices including 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 is a large accelerated filer, an accelerated filer, or a non-accelerated filer. See definition of "accelerated filer and large accelerated filer" in Rule 12b-2 of the Exchange Act). Large Accelerated Filer

Accelerated Filer

Non-Accelerated Filer

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 June 2, 2006, there were 72,548,823 shares of the Registrant's Common Stock outstanding.

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**PART I.**

**FINANCIAL INFORMATION**

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

**TAKE-TWO INTERACTIVE SOFTWARE, INC. and SUBSIDIARIES**  
**Condensed Consolidated Balance Sheets (Unaudited)**  
As of April 30, 2006 and October 31, 2005  
(In thousands, except share and per share data)

	April 30, 2006	October 31, 2005
<b>ASSETS</b>		
Current assets		
Cash and cash equivalents	\$ 141,068	\$ 107,195
Accounts receivable, net of allowances of \$87,820 and \$69,904 at April 30, 2006 and October 31, 2005, respectively	130,328	198,068
Inventories	91,820	136,227
Software development costs	69,431	88,826
Licenses	4,253	7,651
Prepaid taxes and taxes receivable	69,854	40,307
Prepaid expenses and other current assets	27,772	24,025
Deferred tax assets	38,319	10,943
<b>Total current assets</b>	<b>572,845</b>	<b>613,242</b>
Fixed assets, net	49,796	48,617
Software development costs, net of current portion	27,183	19,602
Licenses, net of current portion	4,984	2,330
Goodwill	190,491	179,893
Intangibles, net	48,916	58,666
Deferred tax assets	7,784	5,506
Other assets	4,018	5,020
<b>Total assets</b>	<b>\$ 906,017</b>	<b>\$ 932,876</b>
<b>LIABILITIES and STOCKHOLDERS' EQUITY</b>		
Current liabilities		
Accounts payable	\$ 108,216	\$ 133,353
Accrued expenses and other current liabilities	135,508	90,702
Income taxes payable	14,361	10,220
<b>Total current liabilities</b>	<b>258,085</b>	<b>234,275</b>
Other long-term liabilities	403	2,467
<b>Total liabilities</b>	<b>258,488</b>	<b>236,742</b>
Stockholders' equity		
Common stock, par value \$.01 per share; 100,000,000 shares authorized; 72,515,165 and 70,667,421 shares issued and outstanding at April 30, 2006 and October 31, 2005, respectively	725	707

Additional paid-in capital	433,381	418,053
Deferred compensation	—	(11,189)
Retained earnings	208,382	287,877
Accumulated other comprehensive income	5,041	686
Total stockholders' equity	647,529	696,134
Total liabilities and stockholders' equity	\$ 906,017	\$ 932,876

The accompanying notes are an integral part of the unaudited condensed consolidated financial statements.

**TAKE-TWO INTERACTIVE SOFTWARE, INC. and SUBSIDIARIES**  
**Condensed Consolidated Statements of Operations (Unaudited)**  
For the three and six months ended April 30, 2006 and 2005  
(In thousands, except per share data)

	Three months ended		Six months ended	
	April 30,		April 30,	
	2006	2005	2006	2005
Net revenues	\$ 265,122	\$ 222,068	\$ 530,103	\$ 724,542
Cost of goods sold				
Product costs	130,940	123,504	291,793	360,989
Royalties	82,282	21,938	115,149	102,147
Software development costs	34,128	4,780	49,722	8,985
Total cost of goods sold	247,350	150,222	456,664	472,121
Gross profit	17,772	71,846	73,439	252,421
Operating expenses				
Selling and marketing	32,194	36,275	73,838	87,206
General and administrative	33,705	28,705	72,158	57,392
Research and development	16,097	13,785	33,806	37,202
Depreciation and amortization	12,944	5,102	19,595	9,888
Total operating expenses	94,940	83,867	199,397	191,688
Income (loss) from operations	(77,168)	(12,021)	(125,958)	60,733
Interest income, net	4	1,164	257	1,704
Income (loss) before income taxes	(77,164)	(10,857)	(125,701)	62,437
Provision (benefit) for income taxes	(26,791)	(2,671)	(46,206)	15,374
Net income (loss)	\$ (50,373)	\$ (8,186)	\$ (79,495)	\$ 47,063
Per share data:				
Basic:				
Weighted average common shares outstanding	70,979	70,112	70,890	69,365
Net income (loss) per share	\$ (0.71)	\$ (0.12)	\$ (1.12)	\$ 0.68
Diluted:				
Weighted average common shares outstanding	70,979	70,112	70,890	70,678
Net income (loss) per	\$ (0.71)	\$ (0.12)	\$ (1.12)	\$ 0.67

share



**The accompanying notes are an integral part of the unaudited condensed consolidated financial statements.**

**TAKE-TWO INTERACTIVE SOFTWARE, INC. and SUBSIDIARIES**  
**Condensed Consolidated Statements of Cash Flows (Unaudited)**  
For the six months ended April 30, 2006 and 2005  
(In thousands)

	Six months ended	
	April 30,	
	2006	2005
Cash flows from operating activities:		
Net income (loss)	\$ (79,495)	\$ 47,063
Adjustment to reconcile net income (loss) to net cash provided by operating activities:		
Depreciation and amortization	19,595	9,888
Loss on disposal of fixed assets	—	15
Amortization of intellectual property and other	6,563	6,642
Amortization of compensatory restricted stock	2,032	9,266
Stock-based compensation related to compensatory stock options	6,662	—
Amortization of software development costs and licenses	68,982	28,327
Provision for doubtful accounts and other allowances	15,712	14,634
Write-off of software development costs and licenses	18,462	3,397
Tax benefit from exercise of compensatory stock and stock options	—	9,941
Foreign currency transaction (gain) loss	(1,252)	247
Changes in operating assets and liabilities, net of effects of acquisitions:		
Accounts receivable	54,270	162,459
Inventories	45,348	37,847
Software development costs	(67,504)	(70,866)
Licenses	(7,218)	(5,556)
Prepaid taxes and taxes receivable	(29,547)	(8,900)
Prepaid expenses and other current assets	(1,199)	373
Non-current assets	893	(347)
Accounts payable	(26,029)	(76,474)
Accrued expenses and other liabilities	11,162	(66,589)
Income taxes payable	5,206	(2,748)
Net cash provided by operating activities	42,643	98,619
Cash flows from investing activities:		
Purchase of fixed assets	(13,009)	(14,610)



Acquisition of intangible assets	—	(20,000)
Acquisitions, net of cash acquired	<b>1,143</b>	(23,244)
Escrow payment for settlement	—	(7,500)
Payments for prior acquisitions	<b>(1,334)</b>	(965)
Proceeds from sale of fixed assets and investments	—	73
<b>Net cash used in investing activities</b>	<b>(13,200)</b>	(66,246)
Cash flows from financing activities:		
Proceeds from exercise of stock options	<b>1,944</b>	24,445
Excess tax benefit from exercise of compensatory stock and stock options	<b>124</b>	—
Other financing	—	(52)
<b>Net cash provided by financing activities</b>	<b>2,068</b>	24,393
Effect of foreign exchange rates	<b>2,362</b>	(1,620)
<b>Net increase in cash for the period</b>	<b>33,873</b>	55,146
Cash and cash equivalents, beginning of the period	<b>107,195</b>	155,095
<b>Cash and cash equivalents, end of the period</b>	<b>\$ 141,068</b>	<b>\$ 210,241</b>

The accompanying notes are an integral part of the unaudited condensed consolidated financial statements.

**TAKE-TWO INTERACTIVE SOFTWARE, INC. and SUBSIDIARIES**  
**Condensed Consolidated Statements of Cash Flows (Unaudited) (continued)**  
For the six months ended April 30, 2006 and 2005  
(In thousands)

	Six months ended April,	
	2006	2005
<b>Supplemental information on businesses acquired:</b>		
Fair value of assets acquired:		
Current assets	\$ 112	\$ 111
Non-current assets	421	1,196
Intangible assets	5,644	7,980
Goodwill	11,085	29,433
Less: liabilities assumed		
Current liabilities	(200)	(3,275)
Deferred income taxes	(1,620)	(3,192)
Net assets of businesses acquired, excluding cash acquired	\$ 15,442	\$ 32,253
Cash paid for businesses acquired	\$ 857	\$ 24,000
Less: cash acquired	(2,000)	(756)
Net cash paid (acquired) for businesses	(1,143)	23,244
Additional consideration in connection with acquisitions	4,085	6,416
Contingent and deferred consideration	—	2,593
Issuance of unregistered common stock in connection with acquisitions	12,500	—
Total consideration, net of cash acquired	\$ 15,442	\$ 32,253
<b>Supplemental cash flow information:</b>		
Issuance of warrants to licensor	\$ —	\$ 1,183
Cash paid for taxes	9,724	26,809
Cash paid for interest	575	131

**The accompanying notes are an integral part of the unaudited condensed consolidated financial statements.**

**TAKE-TWO INTERACTIVE SOFTWARE, INC. and SUBSIDIARIES**  
**Condensed Consolidated Statements of Stockholders' Equity (Unaudited)**  
For the year ended October 31, 2005 and the six months ended April 30, 2006  
(In thousands)

	Common Stock		Additional Paid-in Capital	Deferred Compensation	Retained Earnings	Accumulated Other Comprehensive Income (loss)	Total
	Shares	Amount					
<b>Balance, October 31, 2004</b>	68,159	\$ 682	\$ 381,928	\$ (3,896)	\$ 250,402	\$ 6,354	\$ 635,470
Foreign currency translation adjustment	—	—	—	—	—	(5,668)	(5,668)
Net income	—	—	—	—	37,475	—	37,475
Comprehensive income							31,807
Purchase of treasury shares, retired	(925)	(9)	(24,920)	—	—	—	(24,929)
Exchange of treasury shares, retired	(367)	(4)	(8,307)	—	—	—	(8,311)
Proceeds from exercise of stock options and warrants	2,753	27	31,196	—	—	—	31,223
Amortization of deferred compensation	—	—	—	14,860	—	—	14,860
Issuance of common stock in connection with acquisition	82	1	1,999	—	—	—	2,000
Issuance of compensatory stock and stock options	965	10	22,688	(22,153)	—	—	545
Tax benefit in connection with the exercise of compensatory stock and stock options	—	—	12,286	—	—	—	12,286
Issuance of warrants to licensor	—	—	1,183	—	—	—	1,183
<b>Balance, October 31, 2005</b>	70,667	\$ 707	\$ 418,053	\$ (11,189)	\$ 287,877	\$ 686	\$ 696,134
Foreign currency translation adjustment	—	—	—	—	—	4,355	4,355
Net loss	—	—	—	—	(79,495)	—	(79,495)
Comprehensive loss							(75,140)
Deferred compensation	—	—	(11,189)	11,189	—	—	—
Proceeds from exercise of stock options and warrants	174	1	1,944	—	—	—	1,945
Stock-based compensation related to compensatory stock options	—	—	9,069	—	—	—	9,069

Amortization of restricted stock	—	—	2,836	—	—	—	2,836
Issuance of common stock in connection with acquisition	679	7	12,493	—	—	—	12,500
Issuance of compensatory restricted stock, net of forfeitures and cancellations	995	10	51	—	—	—	61
Tax benefit in connection with the exercise of compensatory stock and stock options	—	—	124	—	—	—	124
<b>Balance, April 30, 2006</b>	<u>72,515</u>	<u>\$ 725</u>	<u>\$ 433,381</u>	<u>\$ —</u>	<u>\$ 208,382</u>	<u>\$ 5,041</u>	<u>\$ 647,529</u>

**The accompanying notes are an integral part of the unaudited condensed consolidated financial statements.**

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

**Notes to Unaudited Condensed Consolidated Financial Statements**

(Dollars in thousands, except per share amounts)

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**1. ORGANIZATION AND DESCRIPTION OF BUSINESS**

Take-Two Interactive Software, Inc. (the "Company") was incorporated in the State of Delaware in September 1993. The Company develops, publishes and distributes interactive software games designed for personal computers, video game consoles and handheld platforms.

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

**Basis of Presentation**

The unaudited condensed consolidated financial statements of the Company have been prepared in accordance with the instructions to Form 10-Q and Article 10 of Regulation S-X. Accordingly, the financial statements do not include all information and disclosures necessary for a presentation of the Company's financial position, results of operations and cash flows in conformity with generally accepted accounting principles in the United States of America. In the opinion of management, the financial statements reflect all adjustments (consisting only of normal recurring accruals) necessary for a fair statement of the Company's financial position, results of operations and cash flows. The results of operations for an interim period are not necessarily indicative of the results for the full year. The financial statements should be read in conjunction with the audited financial statements and notes thereto contained in the Company's Annual Report on Form 10-K for the fiscal year ended October 31, 2005.

**Estimates**

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the dates of the financial statements and the reported amounts of revenues and expenses during the reported periods. The most significant estimates and assumptions relate to the adequacy of allowances for returns, price concessions and doubtful accounts; the amortization and recoverability of software development costs, licenses and other intangibles; valuation of inventories, fair value of stock compensation and realization of deferred income taxes. Actual amounts could differ significantly from these estimates.

**Stock Split**

In April 2005, the Company effected a three-for-two stock split in the form of a stock dividend. Accordingly, all share and per share data in the accompanying unaudited condensed consolidated financial statements and notes thereto give retroactive effect to the stock split.

**Financial Instruments**

The carrying amounts of the Company's financial instruments, including cash and cash equivalents, accounts receivable, income tax receivable and payable, accounts payable and accrued liabilities, approximate fair value because of their short maturities. The Company considers all highly liquid instruments purchased with original maturities of three months or less to be cash equivalents.

The Company transacts business in various foreign currencies and has significant sales and purchase transactions denominated in foreign currencies. The Company uses forward exchange contracts to seek to mitigate foreign currency risk associated with foreign currency assets and liabilities, primarily certain intercompany receivables and payables. The Company does not designate foreign currency forward contracts as hedging instruments under SFAS No. 133, "Accounting for Derivative Instruments and Hedging Activities." As a result, the Company marks to market its foreign currency forward contracts each period and any gains and losses are recognized in net income. At April 30, 2006, the Company had no outstanding foreign currency forward contracts.

**Reclassifications**

Certain prior year amounts have been reclassified to conform to current year presentation.

**Recently Issued Accounting Pronouncements**

Effective November 1, 2005, the Company adopted Statement of Financial Accounting Standards No. 123 (revised 2004) ("SFAS 123(R)", "Share-Based Payment," which revised Statement of Financial Accounting Standards 123 ("SFAS 123"), "Accounting for Stock-Based Compensation." Refer to Note 3 to the unaudited condensed consolidated financial statements for further information. There were no other accounting policies adopted during the six months ended April 30, 2006 that had a material effect on the Company's financial condition and results of operations.

**TAKE-TWO INTERACTIVE SOFTWARE, INC. and SUBSIDIARIES****Notes to Unaudited Condensed Consolidated Financial Statements**

(Dollars in thousands, except per share amounts)

In May 2005, the Financial Accounting Standards Board (“FASB”) issued SFAS No. 154, “Accounting Changes and Error Corrections” (“SFAS 154”), which replaces APB Opinion No. 20, “Accounting Changes” and SFAS No. 3, “Reporting Accounting Changes in Interim Financial Statements – An Amendment of APB Opinion No. 28.” SFAS 154 provides guidance on the accounting for and reporting of accounting changes and error corrections. It establishes retrospective application, or the latest practicable date, as the required method for reporting a change in accounting principle and the reporting of a correction of an error. SFAS 154 is effective for accounting changes and corrections of errors made in fiscal years beginning after December 15, 2005. Management does not believe the adoption of SFAS 154 will have a material impact on the Company’s condensed consolidated financial statements.

**3. STOCK-BASED COMPENSATION**

Effective November 1, 2005, the Company adopted SFAS 123(R), which revised Statement of Financial Accounting Standard 123. SFAS 123(R) requires all share-based payment transactions with employees, including grants of employee stock options, to be recognized as compensation expense over the requisite service period based on their relative fair values. Prior to the adoption of SFAS 123(R), stock-based compensation expense related to employee stock options was not recognized in the statement of operations if the exercise price was at least equal to the market value of the common stock on the grant date, in accordance with Accounting Principles Board Opinion No. 25, “Accounting for Stock Issued to Employees.” Prior to November 1, 2005, the Company had adopted the disclosure-only provisions under SFAS 123.

The Company elected to use the Modified Prospective Application (“MPA”) method for implementing SFAS 123(R). Under the MPA method, prior periods are not restated and new awards are valued and accounted for prospectively upon adoption. Outstanding prior stock option awards that are non-vested as of October 31, 2005 are recognized as compensation expense in the statement of operations over the remaining requisite service period.

The Company has stock-based compensation plans under which directors, officers and other employees are eligible to receive stock options and restricted stock awards. Generally, stock options are granted with an exercise price equal to the market value of a share of common stock on the date of grant, expire within five years and vest over three years. As of April 30, 2006, the Company’s 2002 stock option plan provides for a total of 11.0 million shares of common stock to be issued of which approximately 1.1 million shares were available for grant. As of April 30, 2006, the Company’s Incentive Stock Plan (restricted stock awards) provides for a total of 2.5 million shares of common stock to be issued of which approximately 0.25 million shares were available for grant.

The following table summarizes the activity in options under the Company’s stock based compensation plans:

	Shares (in thousands)	Weighted Average Exercise Price
Options outstanding at October 31, 2005	7,495	\$ 20.47
Granted-exercise price equal to fair value	65	18.13
Exercised	(86)	12.87
Forfeited	(65)	19.56
Options outstanding at January 31, 2006	7,409	\$ 20.55
Granted-exercise price equal to fair value	116	16.77
Exercised	(98)	10.37
Forfeited	(296)	20.87
Options outstanding at April 30, 2006	7,131	\$ 20.61
Options exercisable at April 30, 2006	4,341	\$ 19.12

As of April 30, 2006, the weighted average remaining contractual term of the Company’s options outstanding and exercisable is 3.0 years and 2.5 years, respectively. As of April 30, 2006, due to the Company’s stock price, there is no aggregate intrinsic value related to options outstanding or exercisable. As of April 30, 2006, the total future unrecognized compensation cost related to outstanding unvested options is \$29.4 million which will be recognized as compensation expense over the remaining vesting period.

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

**Notes to Unaudited Condensed Consolidated Financial Statements**

(Dollars in thousands, except per share amounts)

The weighted average per share fair values of options granted were \$7.43 and \$14.85 for the three months ended April 30, 2006 and 2005, respectively, and \$7.86 and \$13.81 for the six months ended April 30, 2006 and 2005, respectively. The fair value of the Company's options was estimated using the Black-Scholes option-pricing model. This model requires the input of assumptions regarding a number of complex and subjective variables that will usually have a significant impact on the fair value estimate. These variables include, but are not limited to, the volatility of the Company's stock price and employee stock option exercise behaviors. The assumptions and variables used for the current period grants were developed based on SFAS 123(R) and SEC guidance contained in Staff Accounting Bulletin (SAB) No. 107, "Share-Based Payment." The following table summarizes the assumptions and variables used by the Company to compute the weighted average fair value of stock option grants:

	Three months ended April 30,		Six months ended April 30,	
	2006	2005	2006	2005
Risk free interest rate	4.7%	4.0%	4.6%	3.8%
Expected stock price volatility	55.0%	66.1%	55.0%	66.8%
Expected term until exercise (years)	3.5	5.0	3.7	4.8
Dividends	None	None	None	None

For the three and six months ended April 30, 2006, the Company used a combination of historical volatility and the implied volatility for publicly traded options on the Company's stock as the expected volatility assumption required in the Black-Scholes option-pricing model consistent with SFAS 123(R) and SAB 107. Prior to fiscal 2006, the Company had used its historical stock price volatility in accordance with SFAS 123 for purposes of its pro forma information. The selection of the implied volatility approach was based upon the availability of actively traded options on the Company's stock and the Company's assessment that implied volatility is more representative of future stock price trends than historical volatility.

SFAS 123(R) requires the recognition of stock-based compensation for the number of awards that are ultimately expected to vest. As a result, for most awards, recognized stock compensation was reduced for estimated forfeitures prior to vesting primarily based on a historical annual forfeiture rate of approximately 7%. Estimated forfeitures will be reassessed at each balance sheet date and may change based on new facts and circumstances. Prior to October 31, 2005, actual forfeitures were accounted for as they occurred for purposes of required pro forma stock compensation disclosures.

Restricted stock awards are expensed on a straight-line basis over the vesting period, which typically ranges from one to four years. The following table summarizes the activity in non-vested restricted stock under the Company's stock based compensation plans:

	Shares (in thousands)	Weighted Average Grant Date Fair Value
Non-vested restricted stock at October 31, 2005	600	\$ 23.03
Granted	45	19.24
Vested	(52)	22.35
Forfeited	(6)	19.00
Non-vested restricted stock at January 31, 2006	587	\$ 22.84
Granted	962	15.59
Vested	(57)	22.25
Forfeited	(5)	22.78
Non-vested restricted stock at April 30, 2006	1,487	\$ 18.17

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

The following table summarizes the components and classification of stock-based compensation expense in the Company's condensed consolidated statements of operations:

	Three months ended April 30,		Six months ended April 30,	
	2006	2005	2006	2005
Stock options	\$ 2,134	\$ —	\$ 6,662	\$ —
Restricted stock	1,727	4,464	2,032	9,266
<b>Total stock-based compensation expense</b>	<b>\$ 3,861</b>	<b>\$ 4,464</b>	<b>\$ 8,694</b>	<b>\$ 9,266</b>
Selling and marketing	\$ 517	\$ 1,126	\$ 1,224	\$ 2,259
General and administrative	2,211	1,186	5,404	2,130
Research and development	1,133	2,152	2,066	4,877
<b>Total stock-based compensation expense</b>	<b>\$ 3,861</b>	<b>\$ 4,464</b>	<b>\$ 8,694</b>	<b>\$ 9,266</b>

Effective November 1, 2005, in connection with the adoption of SFAS 123(R), the Company capitalizes a portion of its stock-based compensation costs as software development costs. Stock-based compensation expense for the three and six months ended April 30, 2006 excludes approximately \$1.9 million and \$3.2 million, respectively, in stock-based compensation costs which were capitalized as software development costs in connection with the development of software titles. In prior periods, the Company's disclosures regarding the pro forma impact on net income of stock-based compensation do not reflect the capitalization of these costs. For the three and six months ended April 30, 2005, stock-based compensation expense of approximately \$1.3 million and \$2.2 million, respectively, would have been capitalized.

Amortization of such capitalized costs as a component of costs of goods sold is recorded on a title-by-title basis based on the greater of the proportion of current year sales to the total of current and estimated future sales for the title or the straight-line method over the remaining estimated useful life of the title. At each balance sheet date, the Company evaluates the recoverability of capitalized software costs based on undiscounted future cash flows and charges to cost of goods sold any amounts that are deemed unrecoverable.

For the three and six months ended April 30, 2005, had the compensation cost for the Company's stock option plans been determined based on the fair value at the grant date for awards consistent with the provisions of SFAS 123, the Company's net income and net income per share would have been adjusted to the pro forma amounts indicated below:

	Three months ended April 30, 2005	Six months ended April 30, 2005
Net income (loss), as reported	\$ (8,186)	\$ 47,063
Add: Stock-based employee compensation expense included in reported net income (loss), net of related tax effects	2,727	5,661
Deduct: Total stock-based employee compensation expense determined under the fair value based method for all awards, net of related tax effects	(7,530)	(14,371)



Pro forma net income (loss)	\$	(12,989)	\$	38,353
<hr/>				
Earnings (loss) per share:				
Basic – as reported	\$	(.12)	\$	.68
<hr/>				
Basic – pro forma	\$	(.19)	\$	.55
<hr/>				
Diluted – as reported	\$	(.12)	\$	.67
<hr/>				
Diluted – pro forma	\$	(.19)	\$	.54
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**4. BUSINESS ACQUISITIONS**

The acquisitions described below have been accounted for as purchase transactions. Accordingly, the results of operations and financial position of the acquired businesses are included in the Company's condensed consolidated financial statements from the respective dates of acquisition. To the extent that the purchase price allocation for these acquisitions is preliminary, the Company does not expect that the final purchase price allocation will be materially different. Pro forma information has not been provided as the impact of these acquisitions was not material.

In November 2005, the Company acquired all of the outstanding capital stock of Firaxis Games, Inc. ("Firaxis"), a developer of PC and strategy titles, including the *Civilization* franchise. The purchase price of approximately \$15,442 consisted of \$12,500 of unregistered common stock and \$4,085 of development advances previously paid to Firaxis reduced by net cash acquired of \$1,143. In connection with the acquisition, the Company recorded \$5,644 of identifiable intangible assets, comprised of \$1,130 of non-competition agreements and \$4,514 of intellectual property, \$11,085 of goodwill, which is not deductible for tax purposes, \$333 of net assets and \$1,620 of deferred tax liabilities, on a preliminary basis. The Company also agreed to make additional payments up to \$11,250 based on future product sales, of which approximately \$10,000 will be recorded as additional purchase price when the conditions requiring their payment are met and \$1,250 will be recorded as employee compensation expense.

In August 2005, the Company acquired all of the outstanding membership interests in Irrational Studios ("Irrational"), the developer of certain of the Company's titles. The purchase price consisted of \$4,212 in cash and \$2,000 of unregistered common stock, which was payable at closing, \$1,550 of development advances previously paid to Irrational and \$2,000 of deferred consideration which is payable in equal amounts on the first and second anniversary of the acquisition. In connection with the acquisition, the Company recorded \$2,250 of identifiable intangible assets, \$7,665 of goodwill, which is deductible for tax purposes, \$187 of non-current assets and \$340 of net current liabilities, on a preliminary basis. The Company also agreed to make additional payments of \$2,000 based on the delivery of products which will be recorded as additional purchase price when the conditions requiring their payment are met.

In June 2005, the Company acquired all of the outstanding capital stock of Gaia Capital Group and its wholly-owned subsidiaries ("Gaia"), the developers of certain of the Company's titles for console and handheld platforms. The purchase price consisted of \$5,748 in cash, \$4,055 of development advances previously paid to Gaia and deferred consideration of \$1,597. In connection with the acquisition, the Company recorded \$3,940 of identifiable intangible assets, \$7,918 of goodwill, which is deductible for tax purposes, \$528 of non-current assets, and \$986 of net current liabilities, on a preliminary basis.

In January 2005, the Company acquired from SEGA all of the outstanding capital stock of Visual Concepts Entertainment and its wholly-owned subsidiary, Kush Games, the developers of certain of the Company's sports titles, and certain intellectual property rights associated with these products. The purchase price consisted of \$27,794 in cash, \$1,866 of prepaid royalties previously advanced to SEGA and contingent consideration of \$2,593 based on the release of certain titles. In connection with the acquisition, the Company recorded \$7,980 of identifiable intangible assets, \$29,433 of goodwill, which is not deductible for tax purposes, \$1,196 of non-current assets, \$3,164 of net current liabilities and \$3,192 of deferred tax liabilities related to identifiable intangible assets.

**5. INCOME TAXES**

The provision (benefit) for income taxes for the three and six months ended April 30, 2006 and 2005 are based on the Company's estimated annualized effective tax rates for the respective years. The estimated annualized effective tax rate for the six months ended April 30, 2006 is a benefit of 36.8% compared to an estimated annualized effective tax rate for the comparable period in fiscal 2005, which was an expense of 24.6%. The higher estimated annual effective tax rate in fiscal 2006 is primarily attributable to forecasted losses in higher tax rate jurisdictions. The lower effective tax rate for the comparable period in fiscal 2005 was primarily attributable to a higher proportion of forecasted earnings in lower tax rate jurisdictions.

The realization of deferred tax assets, including deferred tax assets attributable to net operating losses carried forward to future years, depends on whether the Company generates future taxable income of the appropriate type. In addition, the Company may adopt tax planning strategies to realize these assets. If future taxable income does not materialize or tax planning strategies are not effective, the Company may be required to record a valuation allowance, in whole or in part, if the Company determines that it is more likely than not that the future benefit of the deferred tax assets will not be realized.

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At each balance sheet date, the Company evaluates its estimated annual effective tax rate based on updated information on forecasted income generated in each of its jurisdictions. Any revisions to the rates are recorded in the current period to reflect management's current best estimate of the annual effective tax rate.

Recent tax legislation replaced the extraterritorial income ("ETI") exclusion, subject to a phase-out of the exclusion. The Company currently derives benefits from the ETI exclusion, which is limited to 80% and 60% of the otherwise allowable exclusion in calendar years 2005 and 2006, respectively. There will be no ETI deduction available after calendar year 2006. This recent legislation replaces the ETI with a deduction from taxable income based on certain qualified income from domestic production activities. The Company does not expect to benefit from this deduction in fiscal 2006.

This legislation also provides for a one-time 85% dividends received deduction on repatriation of foreign earnings, which was applicable to the Company if utilized by December 31, 2005. Historically, the Company has considered undistributed earnings of its foreign subsidiaries to be indefinitely reinvested and, accordingly, no incremental taxes have been provided thereon. The Company did not repatriate any foreign earnings under this provision. The total amount of undistributed earnings of foreign subsidiaries was approximately \$174,000 as of April 30, 2006.

The Company adopted FAS 123(R) on November 1, 2005, which requires, among other items, the recognition of stock option expense in the results of operations. As a result of the adoption of SFAS 123(R), the income tax effects of compensatory stock options are included in the computation of the income tax expense (benefit), and deferred tax assets and liabilities, subject to certain prospective adjustments to stockholders' equity for the differences between the income tax effects of expenses recognized in the results of operations and the related amounts deducted for income tax purposes. Prior to the Company's adoption of SFAS 123(R), the tax benefits relating to the income tax deductions for compensatory stock options were recorded directly to stockholders' equity.

#### 6. NET INCOME (LOSS) PER SHARE

The following table provides a reconciliation of basic net income (loss) per share to diluted net income (loss) per share for the three and six months ended April 30, 2006 and 2005:

	Net Income (loss)	Shares (in thousands)	Per Share Amount
Three Months Ended April 30, 2006:			
Basic and Diluted	\$ (50,373)	70,979	\$ (0.71)
Three Months Ended April 30, 2005:			
Basic and Diluted	\$ (8,186)	70,112	\$ (0.12)
Six Months Ended April 30, 2006:			
Basic and Diluted	\$ (79,495)	70,890	\$ (1.12)
Six Months Ended April 30, 2005:			
Basic	\$ 47,063	69,365	\$ 0.68
Effect of dilutive securities – Stock options, restricted stock and warrants	—	1,313	
Diluted	\$ 47,063	70,678	\$ 0.67

The computation of diluted number of shares excludes unexercised stock options, warrants and non-vested restricted shares which are antidilutive. A net loss was reported for the three and six months ended April 30, 2006, therefore, the diluted number of shares excludes 8,618 of unexercised stock options, warrants and non-vested restricted shares, which are antidilutive due to the net loss. The computation of diluted number of shares excludes 7,824 and 948 of unexercised stock options and warrants for the three and six months ended April 30, 2005, which are antidilutive.

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**7. INVENTORIES**

As of April 30, 2006 and October 31, 2005, inventories consist of:

	April 30, 2006	October 31, 2005
Finished products	\$ 82,198	\$ 128,753
Parts and supplies	9,622	7,474
<b>Total</b>	<b>\$ 91,820</b>	<b>\$ 136,227</b>

Estimated product returns included in the inventory balance were \$10,753 and \$8,857 at April 30, 2006 and October 31, 2005, respectively.

**8. SOFTWARE DEVELOPMENT COSTS**

The Company utilizes both internal development teams and third-party software developers to develop the Company's products and the titles it publishes.

The Company capitalizes internal software development costs (including stock-based compensation, specific employee payroll and incentive compensation costs related to the completion and release of titles), as well as film production and other content costs, subsequent to establishing technological feasibility of a title. Amortization of such costs as a component of cost of goods sold (software development costs) is recorded on a title-by-title basis based on the greater of the proportion of current year net revenues to the total of current and estimated future net revenues for the title or the straight-line method over the remaining estimated useful life of the title. At each balance sheet date, the Company evaluates the recoverability of capitalized software costs based on undiscounted future cash flows and charges to cost of goods sold any amounts that are deemed unrecoverable. The amount of internally developed software included in software development costs was \$54,196 and \$60,324 at April 30, 2006 and October 31, 2005, respectively. Royalties earned under the Company's internal royalty program continue to be expensed as incurred as a component of cost of goods sold (royalties).

Agreements with third-party developers generally provide the Company with exclusive publishing and distribution rights and require the Company to make advance payments that are recouped against royalties due to the developer based on the contractual amounts of product sales, adjusted for certain costs. Advance payments are capitalized subsequent to establishing technological feasibility and amortized as royalties in cost of goods sold on a title-by-title basis based on the greater of the proportion of current year net revenues to the total of current and estimated future net revenues for that title or the contractual royalty rate based on actual product net revenues as defined in the respective agreements. At each balance sheet date, the Company evaluates the recoverability of advanced development payments and unrecognized minimum commitments not yet paid to determine the amounts unlikely to be realized through product sales. Advance payments are charged to cost of goods sold in the amount that management determines is unrecoverable in the period in which such determination is made or if management determines that it will cancel a development project. Criteria used to evaluate expected product performance and to estimate future net revenues for a title include historical performance of comparable titles, orders for titles prior to release and the estimated performance of a sequel title based on the performance of the title on which the sequel is based.

The amount of software development costs resulting from advance payments and guarantees to third-party developers was \$42,418 and \$48,104 at April 30, 2006 and October 31, 2005, respectively.

The following table provides the details of software development costs:

	Fiscal 2006	Fiscal 2005
Balance, November 1	\$ 108,428	\$ 64,322
Additions	32,268	39,510
Amortization	(22,583)	(13,358)
Write down	(520)	(2,964)
Foreign exchange	337	498
Balance, January 31	117,930	88,008
Additions	34,354	23,066
Amortization	(38,437)	(12,779)
Write down	(17,942)	(33)
Foreign exchange	709	(37)
Balance, April 30	96,614	98,225
Less: current portion	69,431	50,802
Non-current portion	\$ 27,183	\$ 47,423



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Software development costs at April 30, 2006 and October 31, 2005 included amounts of \$88,405 and \$77,544, respectively, related to titles that have not yet been released.

The increase in write-downs for the three months ended April 30, 2006 was due to impairment charges related to several titles in development. The impairment charges were based on an assessment of the future recoverability of capitalized software balances related to these titles and the determination that these titles were unlikely to recover capitalized costs given a change in sales expectations as a result of weaker market conditions, the closure and anticipated closure of development studios, uncertainty involved in the console transition and historical performance of the titles.

**9. LICENSES**

Licenses consist of payments and guarantees made to licensors of intellectual property rights. The Company's agreements with certain licensors provide for minimum guaranteed payments for intellectual property and other licensing rights which may be recouped against amounts due to the licensor based on product net revenues. Minimum guaranteed payments are initially recorded as an asset (licenses) and as a liability (accrued licenses) at the contractual amount upon execution of the contract when no significant performance remains with the licensor. When significant performance remains with the licensor, the Company records payments when actually due.

Licenses are amortized as royalties in cost of goods sold on a title-by-title basis based on the greater of the proportion of current year net revenues to the total of current and estimated future net revenues for that title or the contractual royalty rate based on actual net product sales as defined in the respective agreements. At each balance sheet date, the Company evaluates licenses as well as any unrecognized minimum commitments not yet paid to determine the amounts unlikely to be realized through product sales. License-based assets are charged to cost of goods sold in the amount that management determines is not probable of being recouped at the contractual royalty rate based on current and future net revenues in the period in which such determination is made. Criteria used to evaluate expected product performance and to estimate future sales for a title include historical performance of comparable titles, orders for titles prior to release and the estimated performance of a sequel title based on the performance of the title on which the sequel is based.

The following table provides the details of licenses:

	Fiscal 2006	Fiscal 2005
Balance, November 1	\$ 9,981	\$ 5,665
Additions	6,096	4,480
Amortization	(4,943)	(1,256)
Write down	—	(400)
Balance, January 31	11,134	8,489
Additions	1,122	1,076
Amortization	(3,019)	(934)
Write down	—	—
Balance, April 30	9,237	8,631
Less: current portion	4,253	5,981
Non-current portion	\$ 4,984	\$ 2,650

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Included in licenses at April 30, 2006 and October 31, 2005 are \$8,066 and \$5,466, respectively, related to titles that have not yet been released.

**10. FIXED ASSETS, NET**

As of April 30, 2006 and October 31, 2005, fixed assets consist of:

	April 30, 2006	October 31, 2005
Computer equipment	\$ 27,174	\$ 22,893
Office equipment	15,707	13,940
Computer software	31,239	26,411
Furniture and fixtures	6,667	6,338
Leasehold improvements	19,635	19,031
Capital leases	398	398
	<b>100,820</b>	<b>89,011</b>
Less: accumulated depreciation and amortization	51,024	40,394
<b>Total</b>	<b>\$ 49,796</b>	<b>\$ 48,617</b>

Depreciation expense for the three and six months ended April 30, 2006 and 2005 was \$5,479 and \$3,876, respectively, and \$10,656 and \$7,325, respectively.

**11. INTANGIBLES, NET**

Intangible assets consist of trademarks, customer lists and relationships, intellectual property, non-competition agreements and acquired technology in connection with acquisitions. Intangible assets are amortized under the straight-line method over the period of expected benefit ranging from three to ten years or amortized based on the expected revenue stream.

	Range of Useful Life (Years)	April 30, 2006			October 31, 2005		
		Gross Carrying Amount	Accumulated Amortization	Net	Gross Carrying Amount	Amortization Accumulated	Net
Trademarks	7-10 years	\$ 17,716	\$ (7,780)	\$ 9,936	\$ 29,365	\$ (14,145)	\$ 15,220
Customer lists and relationships	5-10 years	4,673	(3,420)	1,253	4,673	(3,282)	1,391
Intellectual property	2-6 years	70,393	(40,375)	30,018	69,927	(36,371)	33,556
Non-competition agreements	3-6 years	7,700	(4,579)	3,121	8,738	(4,472)	4,266
Technology	3 years	11,509	(6,921)	4,588	9,032	(4,799)	4,233
<b>Total</b>		<b>\$ 111,991</b>	<b>\$ (63,075)</b>	<b>\$ 48,916</b>	<b>\$ 121,735</b>	<b>\$ (63,069)</b>	<b>\$ 58,666</b>

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Amortization expense for the three and six months ended April 30, 2006 and 2005 is as follows:

	Three months ended April 30,		Six months ended April 30,	
	2006	2005	2006	2005
Included in:				
Cost of goods sold – product costs	\$ 4,233	\$ 3,238	\$ 6,310	\$ 5,909
Depreciation and amortization	1,371	1,226	2,845	2,563
Total amortization expense	\$ 5,604	\$ 4,464	\$ 9,155	\$ 8,472

Estimated amortization expense for the fiscal years ending October 31, is as follows:

Remainder of 2006	\$ 6,637
2007	12,117
2008	11,239
2009	10,252
2010	4,164
Thereafter	4,507
<b>Total</b>	<b>\$ 48,916</b>

For the six months ended April 30, 2006, the decrease in intangible assets is primarily due to impairment charges of approximately \$6.3 million related to the write-off of certain trademarks and acquired intangibles in the three months ended April 30, 2006 offset by an increase in trademarks and other intangibles in connection with the acquisition of Firaxis (See Note 4).

## 12. LINES OF CREDIT

In August 2005, the Company entered into a new credit agreement with JPMorgan Chase Bank, N.A. (“JPMorgan”), and terminated its credit agreement with Bank of America, N.A. The JPMorgan credit agreement provides for borrowings of up to \$50,000 through the expiration of the agreement on August 23, 2006. Advances under the credit agreement bear interest at a rate of 0.25% to 0.75% over the bank’s prime rate, or at the Eurodollar rate plus 1.25% to 1.75% depending on the Company’s consolidated leverage ratio. The Company is required to pay a commitment fee to the bank equal to 0.25% of the unused loan balance and borrowings under the agreement are collateralized by certain of the Company’s assets. The credit agreement also contains financial and other covenants (including a consolidated asset coverage ratio) and limits or prohibits the Company from paying cash dividends, merging or consolidating with another corporation, selling or acquiring assets (other than in the ordinary course of business), creating liens and incurring additional indebtedness. Available borrowings under the agreement are reduced by the amount of any outstanding stand-by letters of credit, which is \$1,560 at April 30, 2006. The Company had no borrowings under the credit agreement and was in compliance with all financial and other covenants at April 30, 2006.

In May 2006, the Company’s United Kingdom subsidiary renewed its credit facility agreement with Lloyds TSB Bank plc (“Lloyds”) under which Lloyds agreed to make available borrowings of up to approximately \$23,000. Advances under the credit facility bear interest at the rate of 1.25% per annum over the bank’s base rate, and are guaranteed by the Company. Available borrowings under the agreement are reduced by the amount of outstanding guarantees. The facility expires on March 31, 2007. The Company had no outstanding guarantees and no borrowings under this facility as of April 30, 2006.



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

Accrued expenses and other current liabilities as of April 30, 2006 and October 31, 2005 consist of:

	April 30, 2006	October 31, 2005
Royalties	\$ 57,635	\$ 17,940
Compensation and benefits	15,544	23,729
Licenses	25,891	9,743
Deferred revenue	6,882	6,414
Rent and deferred rent obligations	7,352	6,484
Co-op advertising	4,523	3,802
Professional fees	3,906	7,219
Freight	1,261	2,321
Other	12,514	13,050
Total	\$ 135,508	\$ 90,702

**14. LEGAL AND OTHER PROCEEDINGS**

The Federal Trade Commission ("FTC") has concluded its previously reported inquiry regarding the advertising claims for *Grand Theft Auto: San Andreas* following the re-rating of the title by the Entertainment Software Rating Board ("ESRB"). In June 2006, the Company entered into an agreement with the FTC containing a Consent Order under which the Company agreed to settle all outstanding matters pending before the FTC. The proposed consent agreement with the FTC requires Take-Two and Rockstar Games to clearly and prominently disclose on product packaging and in any promotion or advertisement for electronic games, content relevant to the rating, unless that content had been disclosed sufficiently in prior submissions to the rating authority. In addition, the companies cannot misrepresent the rating or content descriptors for an electronic game and the companies must establish, implement, and maintain a comprehensive system reasonably designed to ensure that all content in an electronic game is considered and reviewed in preparing submissions to a rating authority. The Consent Order, under which no penalties or fines have been assessed, and an accompanying Complaint are subject to a 30-day period for public comment.

In July 2005, the Company received three purported class action complaints against the Company and its subsidiary, Rockstar Games, two of which were filed in the United States District Court for the Southern District of New York and one such complaint which was filed in the United States District Court, Eastern District of Pennsylvania. On September 8, 2005, another similar complaint was filed in the Circuit Court for the Twentieth Judicial District, St. Clair County, Illinois and then removed to United States District Court for the Southern District of Illinois. The plaintiffs, alleged purchasers of the Company's *Grand Theft Auto: San Andreas* game, allege that the Company and Rockstar Games engaged in consumer deception, false advertising and common law fraud and were unjustly enriched as a result of the alleged failure of the Company and Rockstar Games to disclose that *Grand Theft Auto: San Andreas* contained "hidden" content, which resulted in the game receiving an "M" rating from the ESRB rather than an "AO" rating. The complaints seek unspecified damages, declarations of various violations of law and litigation costs. The New York and Pennsylvania actions have been consolidated in the Southern District of New York under the caption *In re Grand Theft Auto Video Game Consumer Litigation*, (05-CV-6734 (BSJ)) and the Illinois action has been transferred to the Southern District of New York for coordinated pretrial proceedings pursuant to an Order of Judicial Panel on Multidistrict Litigation. The plaintiffs must now file an Amended Consolidated Complaint.

In January 2006, the City Attorney for the City of Los Angeles filed a complaint against the Company and Rockstar Games in the Superior Court of the State of California. The complaint alleges that the Company and Rockstar Games violated sections of the California Business and Professions Code prohibiting untrue and misleading statements and unfair competition and that the Company and Rockstar Games were unjustly enriched as a result of the alleged failure to disclose that *Grand Theft Auto: San Andreas* contained "hidden" content which should have resulted in the game receiving an Adults Only ("AO") rating from the ESRB rather than a Mature ("M") rating. The complaint also alleges that the Company made misleading statements as to the origin of the "hidden" content. The complaint seeks injunctive relief, restitution for purchasers of the game and civil fines. The action has been removed to the United States District Court, Central District of California and the Company has moved to dismiss the complaint. The plaintiff has moved to remand the action to state court and the Judicial Panel on Multidistrict Litigation has issued an order transferring the action to the Southern District of New York. The Company has also received requests for documents and information from the Attorneys General of the States of North Carolina and Connecticut relating to *Grand Theft Auto: San Andreas*. These matters have remained dormant.

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In February and March 2006, an aggregate of four purported class action complaints were filed against the Company, its Chief Executive Officer, Chief Financial Officer and former Chief Global Operating Officer in the United States District Court for the Southern District of New York (the “New York Actions”) and one such purported class action was filed in the United States District Court for the Eastern District of Michigan (the “Michigan Action”). The New York plaintiffs are Max Kaplan, John Fenninger, David Andrews and David Toth and the Michigan plaintiff was The City of Flint and Daniel J. Hall on behalf of The City of Flint Employees’ Retirement Pension Fund. The complaints allege that the defendants violated Sections 10(b), 20(a) and Rule 10b-5 of the Securities Exchange Act of 1934 (“Exchange Act”) by making or causing the Company to make untrue statements or failing to disclose in certain press releases and SEC periodic reports that, among other things: *Grand Theft Auto: San Andreas* contained “hidden” content which should have resulted in the game receiving an Adults Only (“AO”) rating from the ESRB rather than a Mature (“M”) rating; the defendants attempted to bolster sales of *Grand Theft Auto: San Andreas* by concealing the “adult content” from retailers who refused to carry AO material; the Company’s management failed to keep the Board of Directors informed of important issues or failed to do so in a timely fashion; and the Company was misstating capitalized software development costs and amortization expense and had inadequate internal controls and procedures to ensure accuracy in its reported financial results. The plaintiffs seek to recover unspecified damages and their costs. The plaintiffs in the Michigan Action voluntarily dismissed their complaint without prejudice. A motion to consolidate the New York Actions and appoint a lead plaintiff is pending.

In January 2006, the St. Clair Shores General Employees Retirement System filed a purported class and derivative action complaint in the Southern District of New York against the Company, as nominal defendant, and certain of the Company’s officers and directors and certain former officers and directors. The factual allegations in this action are similar to the allegations contained in the New York Actions. Plaintiff asserts that certain defendants breached their fiduciary duty by selling Company stock while in possession of certain material non-public information and breached their fiduciary duty and violated Section 14(a) and Rule 14a-9 of the Exchange Act by failing to disclose material facts in the Company’s 2003, 2004 and 2005 proxy statements in which the Company solicited approval to increase share availability under its 2002 Stock Option Plan. Plaintiff seeks the return of all profits from the alleged insider trading conducted by the individual defendants who sold Company stock, unspecified compensatory damages with interest and their costs in the action. A motion to stay the action pending the determination of an investigation by a Special Litigation Committee of the Board is pending.

In January 2006, Todd Veeck filed a complaint in the Court of Chancery of the State of Delaware against the Company pursuant to the 8 *Del. C.* § 220 to compel inspection of the Company’s books and records in order to “investigate” possible breaches of fiduciary duties with regard to the creation, development, marketing and sale of the Company’s *Grand Theft Auto* line of products.

In February 2005, the personal representatives of the Estates of Arnold Strickland and Ace Mealer brought an action in the Circuit Court of Fayette County, Alabama against the Company, Sony Computer Entertainment America Inc. (“SCEA”), Sony Corporation of America (“SCA”), Wal-Mart, GameStop and Devin Moore alleging under Alabama’s manufacturers’ liability and wrongful death statutes that the Company’s video games designed, manufactured, marketed and/or supplied to Mr. Moore resulted in “copycat violence” that caused the death of Messrs. Strickland and Mealer. The suit seeks damages (including punitive damages) against all of the defendants in excess of \$600 million. Wal-Mart, SCEA and SCA have tendered their defense and requested indemnification from the Company, and the Company has accepted such tender. The Company’s motion to dismiss the action was denied and the Company moved to have certain issues certified for an immediate interlocutory appeal before the Alabama Supreme Court. The Company also separately pursued a petition to dismiss claims against it and its subsidiary, Rockstar Games, for lack of personal jurisdiction. The Alabama Supreme Court declined to accept the interlocutory appeal, but agreed to hear the petition to dismiss the action for lack of personal jurisdiction. Briefing has been completed on such petition, and the matter is now pending before the Supreme Court. In April 2006, the plaintiffs filed a Third Amended Complaint to add a claim for civil conspiracy; the Company and its co-defendants have moved to dismiss that claim and the motion is scheduled for hearing before the trial court. In April 2006, the trial court entered a Scheduling Order that set (a) a hearing on the admissibility of Plaintiffs’ expert opinions for October 5, 2006; (b) completion of all fact and expert discovery by May 15, 2007; (c) mediation for June 1, 2007; and (d) trial (if necessary) to commence on July 1, 2007.

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The Company intends to vigorously defend and seek dismissal of these matters and, with respect to the derivative actions, the Company has been advised that the individual defendants will vigorously defend such actions. However, the Company cannot predict the outcome of these matters and, if determined adversely to the Company, such matters, either singly or in the aggregate, could result in the imposition of significant judgments, fines and/or penalties which could have a material adverse effect on the Company's financial condition, cash flows or results of operations.

The Company is also involved in routine litigation in the ordinary course of its business, which in management's opinion will not have a material adverse effect on the Company's financial condition, cash flows or results of operations.

**15. COMMITMENTS AND CONTINGENCIES**

A summary of annual minimum contractual obligations and commitments as of April 30, 2006 is as follows:

Fiscal Years Ending October 31,	Licensing and Marketing Agreements	Software Development Agreements	Leases	Distribution Agreements	Total
Remainder of 2006	\$ 46,138	\$ 25,822	\$ 8,743	\$ 4,042	\$ 84,745
2007	60,602	26,807	16,506	—	103,915
2008	54,826	13,075	15,124	—	83,025
2009	55,634	39	14,809	—	70,482
2010	55,692	—	13,079	—	68,771
Thereafter	102,655	—	34,793	—	137,448
	<u>\$ 375,547</u>	<u>\$ 65,743</u>	<u>\$ 103,054</u>	<u>\$ 4,042</u>	<u>\$ 548,386</u>

*Licensing and Marketing Agreements:* The Company's license expense consists primarily of payments made to licensors for intellectual property rights under agreements which expire at various times through December 2012. As of April 30, 2006, the Company has minimum guaranteed licensing and marketing commitments of \$375,547 outstanding, of which \$3,328 are recorded in the Company's condensed consolidated balance sheet as the licensor does not have any significant performance obligation to the Company. Minimum guaranteed licensing and marketing commitments primarily reflect the Company's agreements with major sports leagues and players' associations.

*Software Development Agreements:* The Company's payments made to third-party software developers include contractual advances and royalties under agreements which expire at various times through November 2008. Assuming performance by third-party developers, the Company has aggregate outstanding commitments of \$65,743 under various software development agreements at April 30, 2006. The Company has also established an internal royalty program pursuant to which it pays royalties to certain of its development personnel based on product sales. Royalties earned under the Company's internal royalty program continue to be expensed as incurred.

*Lease Commitments:* The Company's offices and warehouse facilities are occupied under non-cancelable operating leases expiring at various times from June 2006 to July 2015. The Company also leases certain furniture, equipment and automobiles under non-cancelable leases expiring through April 2010. Future minimum rental payments for fiscal 2006 are \$8,743 and aggregate minimum rental payments through applicable lease expirations are \$103,054.

*Distribution Agreements:* The Company periodically enters into distribution agreements to purchase various software games. These agreements, which expire at various dates through January 2007, require remaining aggregate minimum guaranteed payments of \$4,042 at April 30, 2006.

*Contingent Consideration:* In November 2005, in connection with the acquisition of Firaxis, the Company agreed to make additional payments of \$11,250 based on future product sales, of which approximately \$10,000 will be recorded as additional purchase price and \$1,250 will be recorded as employee compensation expense.

In fiscal 2005, in connection with the acquisition of Irrational, the Company agreed to make additional payments of \$2,000 to the former owners of Irrational based on the delivery of products. The Company does not anticipate making these contingent payments within the next twelve months due to the expected timing of product releases. Additionally, in fiscal 2005, in connection with the acquisition of Visual Concepts and Kush Games, the Company agreed to make additional payments of approximately \$1,400 to SEGA based on the commercial release of products. The additional payments to SEGA are expected to be made in fiscal 2006.

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In March 2005, the Company renegotiated a \$6,000 contingent obligation due upon delivery of the final PC version of *Duke Nukem Forever* through the payment of \$4,250 and issuance of a promissory note in the principal amount of \$500. The payment of the promissory note is contingent upon the commercial release of such product prior to December 31, 2006.

In fiscal 2004, in connection with the acquisition of Mobius Entertainment Limited (“Mobius”), the Company agreed to make additional contingent payments of approximately \$2,000 based on the delivery of products. In fiscal 2003, the Company also agreed to make additional payments of up to \$2,500 to the former owners of Cat Daddy Games LLC (“Cat Daddy”) based on a percentage of Cat Daddy’s future profits for the first three years after acquisition. The Company does not anticipate making these contingent payments within the next twelve months.

**16. SEGMENT REPORTING**

The Company is a publisher and distributor of interactive software games designed for personal computers, video game consoles and handheld platforms. The Company’s operations involve similar products and customers worldwide and include products which are developed and sold domestically and internationally. Publishing revenues are derived from the sale of internally developed software titles and software titles developed by third parties. Distribution revenues are derived from the sale of third-party software titles, accessories and hardware to retail outlets in North America. Generally, publishing activities generate higher margins than distribution activities, with sales of PC software titles resulting in higher margins than sales of product designed for video game consoles and handheld platforms.

The Company’s chief operating decision maker is considered to be the Chief Executive Officer. The Company continues to be centrally managed and the chief operating decision maker primarily uses consolidated financial information supplemented by sales information by product category, major product title and platform for making operational decisions and assessing financial performance.

Beginning February 1, 2006, the Company’s chief operating decision maker has been presented with financial information that contains additional information that separately identifies the Company’s publishing and distribution activities, including gross margin information. Accordingly, the Company currently considers its publishing and distribution activities as two separate reportable segments. The Company is presenting prior period financial information to reflect this change and to conform to current year presentation.

The Company’s view and reporting of business segments may change due to variations in the underlying business facts and circumstances and the evolution of the reporting to its chief operating decision maker.

Information about the Company’s reportable segments as of April 30, 2006 and October 31, 2005 and for the three and six months ended April 30, 2006 and 2005 is as follows:

	As of April 30, 2006			As of October 31, 2005		
	Publishing	Distribution	Total	Publishing	Distribution	Total
Accounts receivable	\$ 43,323	\$ 87,005	\$ 130,328	\$ 133,966	\$ 64,102	\$ 198,068
Inventory	47,162	44,658	91,820	55,119	81,108	136,227
Long-term assets	302,587	30,585	333,172	289,190	30,444	319,634
Total assets	693,097	212,920	906,017	735,975	196,901	932,876

	Three months ended April 30, 2006			Three months ended April 30, 2005		
	Publishing	Distribution	Total	Publishing	Distribution	Total
Net revenues	\$ 200,060	\$ 65,062	\$ 265,122	\$ 146,923	\$ 75,145	\$ 222,068
Gross profit	11,104	6,668	17,772	70,375	1,471	71,846

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	Six months ended April 30, 2006			Six months ended April 30, 2005		
	Publishing	Distribution	Total	Publishing	Distribution	Total
Net revenues	\$ 358,349	\$ 171,754	\$ 530,103	\$ 502,307	\$ 222,235	\$ 724,542
Gross profit	59,254	14,185	73,439	238,973	13,448	252,421

The publishing segment gross profit for the three and six months ended April 30, 2006 included impairment charges of approximately \$17.9 million and \$18.5 million, respectively, due to the write-down of several titles.

Information about the Company's total non-current assets in the United States, Canada and international areas as of April 30, 2006 and October 31, 2005 is presented below:

	April 30, 2006	October 31, 2005
Non-current assets:		
United States	\$ 236,775	\$ 208,947
Canada	10,946	13,353
International:		
United Kingdom	36,648	28,013
Switzerland	14,511	29,410
All other Europe	23,566	29,749
Other	10,726	10,162
<b>Total</b>	<b>\$ 333,172</b>	<b>\$ 319,634</b>

Information about the Company's net revenues in the United States, Canada and international areas for the three and six months ended April 30, 2006 and 2005 is presented below (net revenues are attributed to geographic areas based on product destination):

	Three months ended April 30,		Six months ended April 30,	
	2006	2005	2006	2005
Net revenues:				
United States	\$ 172,896	\$ 136,937	\$ 329,823	\$ 433,104
Canada	19,084	17,919	51,757	52,095
International:				
United Kingdom	18,848	18,397	39,036	83,373
All other Europe	46,013	41,110	93,654	135,460
Asia Pacific	7,512	6,752	13,524	18,289
Other	769	953	2,309	2,221
<b>Total</b>	<b>\$ 265,122</b>	<b>\$ 222,068</b>	<b>\$ 530,103</b>	<b>\$ 724,542</b>
North America	72.4%	69.7%	72.0%	67.0%
International	27.6%	30.3%	28.0%	33.0%

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Information about the Company's net revenues by product platforms for the three and six months ended April 30, 2006 and 2005 is presented below:

	Three months ended April 30,		Six months ended April 30,	
	2006	2005	2006	2005
Platforms:				
Sony PlayStation 2	\$ 48,109	\$ 100,660	\$ 112,312	\$ 453,272
Microsoft Xbox 360	80,053	—	98,166	—
Sony PSP	17,740	3,334	71,653	3,334
Microsoft Xbox	14,525	46,389	32,765	88,762
PC	56,896	31,111	88,943	53,751
Nintendo Handhelds	13,372	15,369	40,859	41,914
Nintendo GameCube	2,706	5,118	8,870	18,635
Hardware	19,971	10,283	49,511	34,803
Accessories and other	11,750	9,804	27,024	30,071
Total	\$ 265,122	\$ 222,068	\$ 530,103	\$ 724,542

**TAKE-TWO INTERACTIVE SOFTWARE, INC. and SUBSIDIARIES**  
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**Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operation**

**Overview**

We are a leading global publisher of interactive software games designed for personal computers, and video game consoles and handheld platforms manufactured by Sony, Microsoft and Nintendo. We also distribute our products as well as third-party software, hardware and accessories to retail outlets in North America through our Jack of All Games subsidiary, and we have sales, marketing and publishing operations in Australia, Austria, Canada, China, France, Germany, Italy, Japan, The Netherlands, New Zealand, Spain, Switzerland and the United Kingdom.

Our principal sources of revenue are derived from publishing and distribution operations. Publishing revenues are derived from the sale of internally developed software titles and software titles developed by third parties. Operating margins in our publishing business are dependent in part upon our ability to continually release new, commercially successful products and to manage costs associated with business and product acquisitions and software product development. We develop most of our frontline products internally, and we own major intellectual properties, which we believe positions us to maximize profitability. Operating margins for titles developed by third parties, or for which we do not own the intellectual property, are affected by costs to acquire licenses and amounts due to developers.

Our distribution revenues are derived from the sale of third-party software titles, accessories and hardware. Operating margins in our distribution business are dependent in part on the mix of software and hardware sales, with software generating higher margins than hardware. Publishing activities generate significantly higher margins than distribution activities, with sales of PC software titles resulting in higher margins than sales of products designed for video game consoles and handheld platforms.

We have pursued a growth strategy by capitalizing on the widespread market acceptance of video game consoles, as well as the growing popularity of innovative action games that appeal to mature audiences. We have established a portfolio of successful proprietary software content for the major hardware platforms. We expect to continue to be a leader in the mature, action product category by leveraging our existing franchises and developing new brands.

We have diversified our product offerings by capitalizing on significant growth opportunities in the market for sports and other licensed action and strategy titles. During fiscal 2005 and the six months ended April 30, 2006, we made several strategic acquisitions of leading sports and strategy game development studios and entered into license agreements with major sports leagues to develop sports titles. We also entered into license agreements for several popular entertainment properties, acquired well-known intellectual property rights, and entered into distribution and publishing arrangements for major action and strategy PC titles.

The video game industry is currently undergoing a transition due to the introduction of next generation hardware platforms and new software for these platforms. In 2005, Sony introduced the PlayStation Portable (PSP), a new handheld gaming system, followed by Microsoft's release of the Xbox 360, a next generation console platform. Sony is expected to introduce the PlayStation 3 and Nintendo is planning the launch of the Wii console system during 2006. During the transition to next generation hardware platforms, our operating results may become more volatile and more difficult to predict. Additionally, our publishing and distribution net revenues may slow or decline during the transition period, due to downward pressure on software pricing on current generation platforms, limited initial availability of new hardware platforms and a decline in consumer purchases in anticipation of next generation platforms becoming available. See Part II-Item 1A. "Risk Factors."

In response to the current business environment during the industry transition and our assessment of market conditions, we have taken steps to streamline our operations by implementing cost saving initiatives including the closure of two underperforming development studios. In the second quarter of fiscal 2006, we recorded non-cash impairment charges of approximately \$24.3 million related to several titles, certain trademarks and acquired intangibles, and incurred severance and other costs of approximately \$2.0 million associated with development studio closings. We expect to incur additional costs in connection with the closure of a third studio in May 2006.

**Estimates**

The preparation of financial statements in conformity with generally accepted accounting principles in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the dates of the financial statements and the reported amounts of net revenues and expenses during the reporting periods. The most significant estimates and assumptions relate to the adequacy of allowances for returns, price concessions and doubtful accounts; the amortization and recoverability of capitalized software development costs, licenses and other intangibles; valuation of inventories, fair value of stock compensation and realization of deferred income taxes. Actual amounts could differ significantly from these estimates.

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**Stock Split**

In April 2005, we effected a three-for-two stock split in the form of a stock dividend. Accordingly, all share and per-share data in the accompanying unaudited condensed consolidated financial statements and notes thereto give retroactive effect to the stock split.

**Critical Accounting Policies**

*Revenue Recognition*

We recognize revenue upon the transfer of title and risk of loss to our customers. We apply the provisions of Statement of Position 97-2, "Software Revenue Recognition" in conjunction with the applicable provisions of Staff Accounting Bulletin No. 104, "Revenue Recognition." Accordingly, we recognize revenue for software when there is (1) persuasive evidence that an arrangement with our customer exists, which is generally a customer purchase order, (2) the software is delivered, (3) the selling price is fixed or determinable and (4) collection of the customer receivable is deemed probable. Our payment arrangements with customers typically provide net 30 and 60-day terms.

Revenue is recognized after deducting estimated reserves for returns and price concessions. In specific circumstances when we do not have a reliable basis to estimate returns and price concessions or are unable to determine that collection of receivables is probable, we defer the revenue until such time as we can reliably estimate any related returns and allowances and determine that collection of the receivables is probable.

*Allowances for Returns and Price Concessions*

We accept returns and grant price concessions in connection with our publishing arrangements. Following reductions in the price of our products, we grant price concessions to permit customers to take credits against amounts they owe us with respect to merchandise unsold by them. Our customers must satisfy certain conditions to entitle them to return products or receive price concessions, including compliance with applicable payment terms and confirmation of field inventory levels.

Our distribution arrangements with customers do not give them the right to return titles or to cancel firm orders. However, we sometimes accept returns from our distribution customers for stock balancing and make accommodations to customers, which include credits and returns, when demand for specific titles falls below expectations.

We make estimates of future product returns and price concessions related to current period product revenue. We estimate the amount of future returns and price concessions for published titles based upon, among other factors, historical experience and performance of the titles in similar genres, historical performance of the hardware platform, customer inventory levels, analysis of sell-through rates, sales force and retail customer feedback, industry pricing, market conditions and changes in demand and acceptance of our products by consumers.

Significant management judgments and estimates must be made and used in connection with establishing the allowance for returns and price concessions in any accounting period. We believe we can make reliable estimates of returns and price concessions. However, actual results may differ from initial estimates as a result of changes in circumstances, market conditions and assumptions. Adjustments to estimates are recorded in the period in which they become known.

*Software Development Costs*

We utilize both internal development teams and third-party software developers to develop our products. We capitalize internal software development costs (including stock-based compensation, specific employee payroll and incentive compensation costs related to the completion and release of titles), as well as film production and other content costs, subsequent to establishing technological feasibility of a title. Amortization of such costs as a component of cost of goods sold (software development costs) is recorded on a title-by-title basis based on the greater of the proportion of current year sales to the total of current and estimated future sales for the title or the straight-line method over the remaining estimated useful life of the title. At each balance sheet date, we evaluate the recoverability of capitalized software costs based on undiscounted future cash flows and charge to cost of goods sold any amounts that are deemed unrecoverable. Royalties earned under our internal royalty program continue to be expensed as incurred as a component of cost of goods sold (royalties).



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Our agreements with third-party developers generally provide us with exclusive publishing and distribution rights and require us to make advance payments that are recouped against royalties due to the developer based on the contractual amounts of product sales, adjusted for certain costs. Advance payments are capitalized subsequent to establishing technological feasibility and amortized as royalties in cost of goods sold on a title-by-title basis based on the greater of the proportion of current year sales to the total of current and estimated future sales for that title or the contractual royalty rate based on actual net product sales as defined in the respective agreements. At each balance sheet date, we evaluate the recoverability of advanced development payments and unrecognized minimum commitments not yet paid to determine the amounts unlikely to be realized through product sales. Advance payments are charged to cost of goods sold in the amount that management determines is unrecoverable in the period in which such determination is made or if management determines that it will cancel a development project. Criteria used to evaluate expected product performance and to estimate future sales for a title include historical performance of comparable titles, orders for titles prior to release and the estimated performance of a sequel title based on the performance of the title on which the sequel is based.

*Licenses*

Licenses consist of payments and guarantees made to licensors of intellectual property rights. Our agreements with certain licensors provide for minimum guaranteed payments for intellectual property licenses and other licensing rights which may be recouped against amounts due to the licensor or developer based on product sales. Minimum guaranteed payments are initially recorded as an asset (licenses) and as a liability (accrued licenses) at the contractual amount upon execution of the contract when no significant performance remains with the licensor. When significant performance remains with the licensor, we record payments when actually due.

Licenses are amortized as royalties in cost of goods sold on a title-by-title basis based on the greater of the proportion of current year sales to the total of current and estimated future sales for that title or the contractual royalty rate based on actual net product sales as defined in the respective agreements. At each balance sheet date, we evaluate licenses as well as any unrecognized minimum commitments not yet paid to determine the amounts unlikely to be realized through product sales. License-based assets are charged to cost of goods sold in the amount that management determines is not probable of being recouped at the contractual royalty rate based on current and future sales in the period in which such determination is made. Criteria used to evaluate expected product performance and to estimate future sales for a title include historical performance of comparable titles, orders for titles prior to release and the estimated performance of a sequel title based on the performance of the title on which the sequel is based.

*Income Taxes*

Income tax assets and liabilities are determined by taxable jurisdiction. We do not provide taxes on undistributed earnings of our international subsidiaries. The total amount of undistributed earnings of foreign subsidiaries was approximately \$174,000 as of April 30, 2006. It is currently our intention to reinvest undistributed earnings of our foreign subsidiaries and thereby indefinitely postpone their remittance. Accordingly, no provision has been made for foreign withholding taxes or United States income taxes which may become payable if undistributed earnings of foreign subsidiaries are paid as dividends. The realization of deferred tax assets depends on whether we generate future taxable income of the appropriate type. In addition, we may adopt tax planning strategies to realize these assets. If future taxable income does not materialize or tax planning strategies are not effective, we may be required to record a valuation allowance.

Recent tax legislation currently in place is intended to replace the extraterritorial income ("ETI") exclusion. We currently derive benefits from the ETI exclusion, which is limited to 80% and 60% of the otherwise allowable exclusion for calendar years 2005 and 2006, respectively. There will be no ETI deduction available after calendar year 2006. The recent legislation permits a deduction from taxable income based on certain qualified income from domestic production activities. We do not expect to generate any taxable benefits from this deduction in fiscal 2006.

This recent legislation also provides for a one-time 85% dividends received deduction on repatriation of foreign earnings, which was applicable to us if utilized by December 31, 2005. Historically, we have considered undistributed earnings of our foreign subsidiaries to be indefinitely reinvested and, accordingly, no incremental taxes have been provided thereon. We did not repatriate foreign earnings under this provision.

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The provision (benefit) for income taxes for the three and six months ended April 30, 2006 and 2005 are based on our estimated annualized effective tax rates for the respective years. The estimated annualized effective tax rate for fiscal 2006 is a benefit of 36.8% compared to an estimated annualized effective tax rate for fiscal 2005, which was an expense of 24.6%. The higher estimated annualized effective tax rate in fiscal 2006 is primarily attributable to forecasted losses in higher tax rate jurisdictions and the U.S. tax benefit from the extraterritorial income exclusion. The lower effective tax rate for the comparable period in fiscal 2005 was primarily attributable to a higher proportion of forecasted earnings in lower tax rate jurisdictions.

At each balance sheet date, we evaluate the estimated annualized effective tax rate based on updated information regarding forecasted income in each of our jurisdictions. Any revisions to the tax rate are recorded in the current period to reflect our current best estimate of the annualized effective tax rate.

We adopted FAS 123(R) on November 1, 2005, which requires, among other items, the recognition of stock option expense in the results of operations. As a result of the adoption of SFAS 123(R), the income tax effects of compensatory stock options are included in the computation of the income tax expense (benefit), and deferred tax assets and liabilities, subject to certain prospective adjustments to stockholders' equity for the differences between the income tax effects of expenses recognized in the results of operations and the related amounts deducted for income tax purposes. Prior to our adoption of SFAS 123(R) the tax benefits relating to the income tax deductions for compensatory stock options were recorded directly to stockholders' equity.

**Recently Issued and Adopted Accounting Pronouncements**

Effective November 1, 2005, we adopted Statement of Financial Accounting Standards No. 123 (revised 2004) ("SFAS 123(R)", "Share-Based Payment," which revised Statement of Financial Accounting Standards 123 ("SFAS 123"), "Accounting for Stock-Based Compensation." SFAS 123(R) requires all share-based payment transactions with employees, including grants of employee stock options, to be recognized as compensation expense over the requisite service period based on their relative fair values. Prior to the adoption of SFAS 123(R), stock-based compensation expense related to employee stock options was not recognized in the statement of operations if the exercise price was at least equal to the market value of the common stock on the grant date, in accordance with Accounting Principles Board Opinion No. 25, "Accounting for Stock Issued to Employees." Prior to November 1, 2005, we had adopted the disclosure-only provisions under SFAS 123. In the six months ended April 30, 2006, stock-based compensation expense of approximately \$8.7 million, which excludes capitalizable costs of \$3.2 million, was recorded in the condensed consolidated statement of operations in connection with adoption of SFAS 123(R). There was no cumulative effect of adoption. Refer to Note 3 to our unaudited condensed consolidated financial statements for further information. There were no other new accounting pronouncements adopted during the six months ended April 30, 2006.

In May 2005, the Financial Accounting Standards Board ("FASB") issued SFAS No. 154, "Accounting Changes and Error Corrections" ("SFAS 154"), which replaces APB Opinion No. 20, "Accounting Changes" and SFAS No. 3, "Reporting Accounting Changes in Interim Financial Statements – An Amendment of APB Opinion No. 28". SFAS 154 provides guidance on the accounting for and reporting of accounting changes and error corrections. It establishes retrospective application, or the latest practicable date, as the required method for reporting a change in accounting principle and the reporting of a correction of an error. SFAS 154 is effective for accounting changes and corrections of errors made in fiscal years beginning after December 15, 2005. We do not believe the adoption of SFAS 154 will have a material impact on our condensed consolidated financial statements.

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**Results of Operations**

The following table sets forth for the periods indicated the percentage of net revenues represented by certain items reflected in our statement of operations, and sets forth net revenues by territory, sales mix, platform and principal products:

Operating data:	Three months ended April 30,		Six months ended April 30,	
	2006	2005	2006	2005
Net revenues	100.0%	100.0%	100.0%	100.0%
Cost of goods sold				
Product costs	49.4	55.6	55.0	49.8
Royalties	31.0	9.9	21.7	14.1
Software development costs	12.9	2.2	9.4	1.2
Total cost of goods sold	93.3	67.6	86.1	65.2
Selling and marketing	12.1	16.3	13.9	12.0
General and administrative	12.7	12.9	13.6	7.9
Research and development	6.1	6.2	6.4	5.1
Depreciation and amortization	4.9	2.3	3.7	1.4
Interest income, net	0.0	0.5	0.1	0.2
Provision (benefit) for income taxes	(10.1)	(1.2)	(8.7)	2.1
Net income (loss)	(19.0)	(3.7)	(15.0)	6.5

**Net Revenues by Territory:**

North America	72.4%	69.7%	72.0%	67.0%
International	27.6	30.3	28.0	33.0

**Net Sales Mix:**

Publishing	75.5%	66.2%	67.6%	69.3%
Distribution	24.5	33.8	32.4	30.7

**Platform Mix (publishing):**

Console	65.5%	85.0%	57.6%	92.6%
PC	20.9	11.4	17.0	4.6
Handheld	10.4	1.5	21.2	1.2
Accessories	3.2	2.1	4.2	1.6

Our best-selling titles for the three and six months ended April 30, 2006 and 2005 as a percentage of net revenues are as follows:

Top Ten Titles – Three months ended April 30, 2006	Platform	Release Date	% of Net Revenues
<i>The Elder Scrolls IV: Oblivion</i>	Xbox 360	March 2006	18.2%
<i>The Elder Scrolls IV: Oblivion</i>	PC	March 2006	12.3
	Xbox 360	April 2006	4.0

<i>Major League Baseball 2K6</i>			
<i>Grand Theft Auto: Liberty City Stories</i>	PSP	October 2005	3.7
<i>Top Spin 2</i>	Xbox 360	March 2006	3.7
<i>Major League Baseball 2K6</i>			
<i>Grand Theft Auto: San Andreas</i>	PS2	October 2004	2.6
<i>Major League Baseball 2K6</i>			
<i>Midnight Club 3: DUB Edition Remix</i>	PS2	March 2006	2.0
<i>24: The Game</i>	PS2	February 2006	2.0

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Top Ten Titles – Three months ended April 30, 2005	Platform	Release Date	% of Net Revenues
<i>Midnight Club 3: DUB Edition</i>	PS2	April 2005	19.4%
<i>Midnight Club 3: DUB Edition</i>	Xbox	April 2005	9.6
<i>Grand Theft Auto: San Andreas</i>	PS2	October 2004	9.0
<i>Stronghold 2</i>	PC	April 2005	4.4
<i>Major League Baseball 2K5</i>	PS2	February 2005	3.3
<i>Major League Baseball 2K5</i>	Xbox	February 2005	2.6
<i>Close Combat: First to Fight</i>	Xbox	April 2005	2.3
<i>Grand Theft Auto: Vice City</i>	PS2	October 2002	1.6
<i>Grand Theft Auto Double Pack</i>	Xbox	November 2003	1.0
<i>Grand Theft Auto 3</i>	PS2	October 2001	1.0

Top Ten Titles – Six months ended April 30, 2006	Platform	Release Date	% of Net Revenues
<i>Grand Theft Auto: Liberty City Stories</i>	PSP	October 2005	11.6%
<i>The Elder Scrolls IV: Oblivion</i>	Xbox 360	March 2006	9.1
<i>The Elder Scrolls IV: Oblivion</i>	PC	March 2006	6.2
<i>Grand Theft Auto: San Andreas</i>	PS2	October 2004	4.0
<i>Sid Meier's Civilization IV</i>	PC	October 2005	2.9
<i>Major League Baseball 2K6</i>	Xbox 360	April 2006	2.0
<i>Top Spin 2</i>	Xbox 360	March 2006	1.8
<i>NBA 2K6</i>	Xbox 360	November 2005	1.8
<i>Major League Baseball 2K6</i>	PS2	April 2006	1.7
<i>Torino 2006™</i>	PS2	January 2006	1.5

Top Ten Titles – Six months ended April 30, 2005	Platform	Release Date	% of Net Revenues
<i>Grand Theft Auto: San Andreas</i>	PS2	October 2004	42.3%
<i>Midnight Club 3: DUB Edition</i>	PS2	April 2005	5.9
<i>Midnight Club 3: DUB Edition</i>	Xbox	April 2005	2.9
<i>Grand Theft Auto: Vice City</i>	PS2	October 2002	1.4
<i>Stronghold 2</i>	PC	April 2005	1.3
<i>ESPN NBA 2K5</i>	PS2	September 2004	1.2
<i>Major League Baseball 2K5</i>	PS2	February 2005	1.0
<i>ESPN NFL 2K5</i>	PS2	July 2004	0.9
<i>Major League Baseball 2K5</i>	Xbox	February 2005	0.8
<i>Grand Theft Auto Double Pack</i>	Xbox	November 2003	0.8

### Business Acquisitions

During fiscal 2005 and the six months ended April 30, 2006, we consummated the acquisitions described below. To the extent that the purchase price allocation for these acquisitions is preliminary, we do not expect that the final purchase price allocation will be materially different. The acquisitions have been accounted for as purchase transactions and, accordingly, the results of operations and financial position of the acquired businesses are included in our condensed consolidated financial statements from the respective dates of acquisition. Pro forma information has not been provided as the impact of these acquisitions was not material.

*Firaxis Games, Inc.* In November 2005, we acquired all of the outstanding capital stock of Firaxis Games, Inc., a developer of PC and strategy titles, including the *Civilization* franchise. The purchase price of approximately \$15,442 consisted of \$12,500 of unregistered common stock and \$4,085 of development advances previously paid to Firaxis reduced by net cash acquired of \$1,143. In connection with the acquisition, we recorded \$5,644 of identifiable intangible assets, comprised of \$1,130 of non-competition agreements and \$4,514 of intellectual property, \$11,085 of goodwill, which is not deductible for tax purposes, \$333 of net assets and \$1,620 of deferred tax liabilities, on a preliminary basis. We also agreed to make additional payments up to \$11,250 based on future product sales, of which approximately \$10,000 will be recorded as additional purchase price when the conditions requiring their payment are met and \$1,250 will be recorded as employee compensation expense.

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

(Dollars in thousands, except per share amounts)

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*Irrational Studios LLC.* In August 2005, we acquired all of the outstanding membership interests in Irrational Studios, the developer of certain of our titles. The purchase price consisted of \$4,212 in cash and \$2,000 of unregistered common stock, which was payable at closing, \$1,550 of development advances previously paid to Irrational and \$2,000 of deferred consideration which is payable in equal amounts on the first and second anniversary of the acquisition. In connection with the acquisition, we recorded \$2,250 of identifiable intangible assets, \$7,665 of goodwill, which is deductible for tax purposes, \$187 of non-current assets and \$340 of net current liabilities, on a preliminary basis. We also agreed to make additional payments of \$2,000 based on the delivery of products which will be recorded as additional purchase price when the conditions requiring their payment are met.

*Gaia Capital Group.* In June 2005, we acquired all of the outstanding capital stock of Gaia Capital Group and its wholly-owned subsidiaries, the developers of certain of our titles. The purchase price consisted of \$5,748 in cash, \$4,055 of development advances previously paid to Gaia and deferred consideration of \$1,597. In connection with the acquisition, we recorded \$3,940 of identifiable intangible assets, \$7,918 of goodwill, which is deductible for tax purposes, \$528 of non-current assets and \$986 of net current liabilities, on a preliminary basis.

*Visual Concepts Entertainment and Kush Games.* In January 2005, we acquired from SEGA all of the outstanding capital stock of Visual Concepts Entertainment and its wholly-owned subsidiary, Kush Games, the developers of certain of our sports titles, and certain intellectual property rights associated with these products. The purchase price consisted of \$27,794 in cash, \$1,866 of development advances previously paid to SEGA and contingent consideration of \$2,593 based on the release of certain titles. In connection with the acquisition, we recorded \$7,980 of identifiable intangible assets, \$29,433 of goodwill, which is not deductible for tax purposes, \$1,196 of non-current assets, \$3,164 of net current liabilities and \$3,192 of deferred tax liabilities related to identifiable intangible assets.

## TAKE-TWO INTERACTIVE SOFTWARE, INC. and SUBSIDIARIES

(Dollars in thousands, except per share amounts)

## Three Months ended April 30, 2006 and 2005

## Net Revenues

	Three months ended April 30,					
	2006	% of Net Revenues	2005	% of Net Revenues	\$ Increase (Decrease)	% Incr (Decr)
<b>Publishing</b>	\$ 200,060	75.5	\$ 146,923	66.2	\$ 53,137	36.2
<b>Distribution</b>	65,062	24.5	75,145	33.8	(10,083)	(13.4)
<b>Total net revenues</b>	\$ 265,122	100.0	\$ 222,068	100.0	\$ 43,054	19.4

**Net Revenues.** The increase in net revenues for the three months ended April 30, 2006 was primarily due to higher publishing revenues resulting from additional title releases in the current period. The increase in net revenues was slightly offset by a decline in the prices of current generation software titles due to weaker market conditions and the ongoing transition to next generation hardware platforms. Publishing revenues for the three months ended April 30, 2006 primarily reflect sales of *The Elder Scrolls IV: Oblivion* for the PC and Xbox 360, *Grand Theft Auto: Liberty City Stories* for the PSP and *Grand Theft Auto: San Andreas*, *Midnight Club 3: DUB Edition Remix* and *Major League Baseball 2K6* across multiple platforms. Publishing revenues for the three months ended April 30, 2006 and 2005 include licensing revenues of \$2,745 and \$7,078, respectively.

Products designed for video game console platforms accounted for 65.5% of publishing revenues as compared to 85.0% for the comparable period last year. Products designed for PC platforms accounted for 20.9% of publishing revenues as compared to 11.4% for the prior comparable period. The increase in sales of products for PC platforms as a percentage of publishing revenues was primarily attributable to sales of *The Elder Scrolls IV: Oblivion*, *Sid Meier's Civilization IV* and *Grand Theft Auto: San Andreas* for the PC. For the three months ended April 30, 2005, sales of products for PC platforms was primarily attributable to sales of *Stronghold 2* for the PC. We anticipate that our platform mix will be weighted toward console platforms and the PSP handheld system, but may fluctuate from period to period.

Distribution revenues are derived from the sale of third-party software titles, accessories and hardware. The decrease in distribution revenues was primarily attributable to a continued decline in sales volume of value and front-line software titles, a decrease in average selling prices of interactive entertainment products as our industry transitions to next generation platforms and increased competition in the value software segment. The decline in sales of software titles was partially offset by an increase in hardware sales and peripherals, primarily attributable to the Xbox 360 and related accessories and to continued demand for the PSP.

International operations accounted for approximately \$73,142, or 27.6% of net revenues for the three months ended April 30, 2006 compared to \$67,212, or 30.3% of net revenues for the three months ended April 30, 2005. The increase was primarily attributable to sales of *The Elder Scrolls IV: Oblivion* for the PC and Xbox 360, which was released in March 2006. International revenues for the three months ended April 30, 2006 also included sales of *Top Spin 2* for the Xbox 360 and *Grand Theft Auto: Liberty City Stories* for the PSP.

Net revenues related to international operations decreased by approximately \$6,762 and increased by \$4,884 due to changes in foreign exchange rates (including Canada) in the three months ended April 30, 2006 and April 30, 2005, respectively. We expect international revenues to continue to account for a significant portion of our revenues.



## TAKE-TWO INTERACTIVE SOFTWARE, INC. and SUBSIDIARIES

(Dollars in thousands, except per share amounts)

*Cost of Goods Sold*

	Three months ended April 30,					
	2006	% of Net Revenues	2005	% of Net Revenues	\$ Increase	% Incr
<b>Product costs</b>	\$ 130,940	49.4	\$ 123,504	55.6	\$ 7,436	6.0
<b>Royalties</b>	82,282	31.0	21,938	9.9	60,344	275.1
<b>Software development costs</b>	34,128	12.9	4,780	2.1	29,348	614.0
<b>Total cost of goods sold</b>	\$ 247,350	93.3	\$ 150,222	67.6	\$ 97,128	64.7

**Product costs.** The increase in product costs in absolute dollars was consistent with the increase in publishing revenues. The decrease as a percentage of net revenues was primarily due to the higher proportion of publishing revenues, including an increase in sales of PC products, which have lower product costs than console products. The decrease as a percentage of net revenues was slightly offset by lower prices of current generation software titles, which resulted in an increase in product costs as a percentage of net revenues in the current period.

**Royalties.** The increase in royalties was primarily due to the increase in publishing revenues and higher royalty costs related to sales of certain of our published products. Royalty expense for the three months ended April 30, 2006 was primarily attributable to higher external royalty costs related to sales of *The Elder Scrolls IV: Oblivion* and *Major League Baseball 2K6*. In the comparable prior period, royalty costs were primarily related to sales of *Midnight Club 3: DUB Edition*, *Major League Baseball 2K5* and *Grand Theft Auto: San Andreas* for the PlayStation 2. Royalty costs related to sales of our internally developed products accounted for \$6.0 million and \$7.2 million, respectively, of royalty expense for the three months ended April 30, 2006 and 2005.

**Software development costs.** The increase in software development costs was primarily due to impairment charges of approximately \$17.0 million related to several titles in development. The impairment charges were based on an assessment of the future recoverability of capitalized software balances related to these titles and the determination that these titles were unlikely to recover capitalized costs given a change in sales expectations as a result of weaker market conditions, the closure and anticipated closure of development studios, uncertainty involved in the console transition and historical performance of the titles.

The increase in costs was also due to sales of a larger number of internally developed titles resulting in higher amortization of capitalized costs as compared to the prior period. In the current period, software development costs related to sales of internally developed sports and other titles included *Major League Baseball 2K6*, *Top Spin 2* and *Midnight Club 3: DUB Edition Remix* for current and next generation console platforms. In the comparable fiscal 2005 period, software development costs were primarily attributable to sales of *Midnight Club 3: DUB Edition* across multiple platforms.

In future periods, cost of goods sold may be adversely affected by manufacturing and other costs, price competition and by changes in product and sales mix, distribution channels and royalty arrangements.

*Operating Expenses*

	Three months ended April 30,					
	2006	% of Net Revenues	2005	% of Net Revenues	\$ Increase (Decrease)	% Incr (Decr)
<b>Selling and marketing</b>	\$ 32,194	12.1	\$ 36,275	16.3	\$ (4,081)	(11.3)
<b>General and administrative</b>	33,705	12.7	28,705	12.9	5,000	17.4
<b>Research and development</b>	16,097	6.1	13,785	6.2	2,312	16.8
<b>Depreciation and amortization</b>	12,944	4.9	5,102	2.3	7,842	153.7
<b>Total operating expenses</b>	\$ 94,940	35.8	\$ 83,867	37.7	\$ 11,073	13.2



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

(Dollars in thousands, except per share amounts)

**Selling and marketing.** The decrease in selling and marketing expense was primarily due to a decrease in personnel expenses of approximately \$1.0 million and lower marketing and promotional spending of approximately \$3.5 million in the current period. In the comparable fiscal 2005 period, higher advertising and marketing costs were primarily attributable to additional spending to promote titles under our 2K Games and 2K Sports publishing labels, which were established in fiscal 2005.

**General and administrative.** The increase in general and administrative expense in absolute dollars was primarily due to additional rent and office related expenses of approximately \$1.4 million attributable to development studios acquired subsequent to the second quarter of fiscal 2005, an increase in information technology expenses of \$1.5 million related to system improvements and an increase in professional fees of approximately \$1.9 million related to legal matters and process improvement.

**Research and development.** The increase in research and development costs was primarily due to an increase in personnel expenses of approximately \$3.1 million, which included approximately \$1.5 million of severance costs related to the closure of two development studios in the current period. The increase in personnel expenses was primarily attributable to additional staffing associated with development studios acquired subsequent to the second quarter of fiscal 2005 offset by a decrease in incentive compensation costs, which was consistent with lower net revenues.

A substantial portion of our research and development costs are capitalized once software development projects reach technological feasibility, which is relatively early in the development process, and subsequently amortized as cost of goods sold. However, amounts earned under our internal royalty program continue to be expensed as incurred in cost of goods sold.

**Depreciation and amortization.** Depreciation and amortization expense increased primarily due to impairment charges of approximately \$6.1 million related to the write-off of certain trademarks and acquired intangibles. The impairment charges were based on management's assessment of the future value of these assets including future business prospects and estimated cash flows to be derived from these assets. The increase in depreciation and amortization expense was also due to higher depreciation related to the upgrading of software systems, our new office and warehouse facility for our Jack of All Games subsidiary and additional leasehold improvements related to development studios acquired subsequent to the second quarter of fiscal 2005.

**Loss from operations.** Loss from operations increased by \$65,147 or 541.9%, to a loss of \$77,168 for the three months ended April 30, 2006 from a loss of \$12,021 for the three months ended April 30, 2005, due to the changes referred to above. Changes in foreign exchange rates decreased the loss from operations by approximately \$435 for the three months ended April 30, 2006 and increased the loss from operations by approximately \$510 for the three months ended April 30, 2005.

**Interest income, net.** Interest income decreased by \$1,160, or 99.7% to \$4 for the three months ended April 30, 2006 from \$1,164 for the prior comparable period primarily due to interest earned on a lower average cash balance offset by bank finance charges incurred in international locations.

**Benefit for income taxes.** Income tax benefit was \$26,791 for the three months ended April 30, 2006 as compared to income tax benefit of \$2,671 for the three months ended April 30, 2005. The increase was primarily attributable to a higher net loss and an increase in the effective tax rate for the period. The effective tax rate was a benefit of 34.7% for the three months ended April 30, 2006, compared to an effective tax rate for the comparable period in fiscal 2005, which was a benefit of 24.6%. The higher effective tax rate in fiscal 2006 was primarily attributable to forecasted losses in higher tax rate jurisdictions. The lower effective tax rate for the comparable period in fiscal 2005 was primarily attributable to a higher proportion of forecasted earnings in lower tax rate jurisdictions.

We adopted FAS 123(R) on November 1, 2005, which requires, among other items, the recognition of stock option expense in the results of operations. As a result of the adoption of SFAS 123(R), the income tax effects of compensatory stock options are included in the computation of the income tax expense (benefit), and deferred tax assets and liabilities, subject to certain prospective adjustments to stockholders' equity for the differences between the income tax effects of expenses recognized in the results of operations and the related amounts deducted for income tax purposes. Prior to our adoption of SFAS 123(R) the tax benefits relating to the income tax deductions for compensatory stock options were recorded directly to stockholders' equity.

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

(Dollars in thousands, except per share amounts)

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 loss.** For the three months ended April 30, 2006, net loss was \$50,373 as compared to a net loss of \$8,186 for the three months ended April 30, 2005, an increase of \$42,187, or 515.4%. The increase resulted from the changes referred to above.

**Diluted net loss per share.** Diluted net loss per share for the three months ended April 30, 2006 of \$0.71, increased \$0.59 as compared to diluted net loss per share of \$0.12 for the three months ended April 30, 2005, principally due to the increase in the net loss for the period and increase in the weighted average common shares outstanding.

**Six Months ended April 30, 2006 and 2005**

*Net Revenues*

	Six months ended April 30,					
	2006	% of Net Revenues	2005	% of Net Revenues	\$ (Decrease)	% (Decr)
<b>Publishing</b>	\$ 358,349	67.6	\$ 502,307	69.3	\$ (143,959)	(28.7)
<b>Distribution</b>	171,754	32.4	222,235	30.7	(50,480)	(22.7)
<b>Total net revenues</b>	\$ 530,103	100.0	\$ 724,542	100.0	\$ (194,439)	(26.8)

**Net Revenues.** The decrease in net revenues for the six months ended April 30, 2006 primarily reflects an unfavorable comparison to a period with strong sales of *Grand Theft Auto: San Andreas* for the PlayStation 2, which was released in October 2004. The decrease was also attributable to lower distribution revenues and a decline in the prices of current generation software titles due to weaker market conditions and the ongoing transition to next generation hardware platforms.

Publishing revenues for the six months ended April 30, 2006 primarily reflects sales of *Grand Theft Auto: Liberty City Stories* for the PSP, *Grand Theft Auto: San Andreas* across multiple platforms, *The Elder Scrolls IV: Oblivion* for the PC and Xbox 360, sales of our sports titles, including *NBA 2K6*, *NHL 2K6* and *Major League Baseball 2K6* for current and next generation console platforms, and *Sid Meier's Civilization IV* for PC. Publishing revenues for the six months ended April 30, 2006 and 2005 include licensing revenues of \$5,786 and \$9,409, respectively.

Products designed for video game console platforms accounted for 57.6% of publishing revenues as compared to 92.6% for the comparable period last year. Products designed for PC platforms accounted for 17.0% of publishing revenues as compared to 4.6% for the prior comparable period. The increase in sales of products for the PC platform as a percentage of publishing revenues was primarily attributable to sales of *The Elder Scrolls IV: Oblivion*, *Sid Meier's Civilization IV* and *Grand Theft Auto: San Andreas* for the PC. We anticipate that our platform mix will be weighted toward console platforms and the PSP handheld system, but may fluctuate from period to period.

Distribution revenues are derived from the sale of third-party software titles, accessories and hardware. The decrease in distribution revenues was primarily attributable to a continued decline in sales volume of value and front-line software titles, a decrease in average selling prices of interactive entertainment products as our industry transitions to next generation platforms and increased competition in the value software segment. The decline in sales of software titles was partially offset by an increase in hardware sales and peripherals, primarily attributable to the Xbox 360 and related accessories and to continued demand for the PSP.

International operations accounted for approximately \$148,523, or 28.0% of net revenues for the six months ended April 30, 2006 compared to \$239,343, or 33.0% of net revenues for the six months ended April 30, 2005. The decrease was primarily attributable to lower publishing revenues in Europe, which reflected the unfavorable comparison to a period with significant sales of *Grand Theft Auto: San Andreas* for the PlayStation 2, which was launched in Europe in October 2004. International revenues for the six months ended April 30, 2006 are primarily attributable to sales of *The Elder Scrolls IV: Oblivion* for the PC and Xbox 360, *Grand Theft Auto: Liberty City Stories* for the PSP, and *Grand Theft Auto: San Andreas* and *Torino 2006*<sup>TM</sup> across multiple platforms.

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Net revenues related to international operations decreased by \$13,558 and increased by \$21,470 due to changes in foreign exchange rates (including Canada) in the six months ended April 30, 2006 and April 30, 2005, respectively. We expect international revenues to continue to account for a significant portion of our revenues.

*Cost of Goods Sold*

	Six months ended April 30,					
	2006	% of Net Revenues	2005	% of Net Revenues	\$ Increase (Decrease)	% Incr (Decr)
<b>Product costs</b>	\$ 291,793	55.0	\$ 360,989	49.8	\$ (69,196)	(19.2)
<b>Royalties</b>	115,149	21.7	102,147	14.1	13,002	12.7
<b>Software development costs</b>	49,722	9.4	8,985	1.3	40,737	453.4
<b>Total cost of goods sold</b>	\$ 456,664	86.1	\$ 472,121	65.2	\$ (15,457)	(3.3)

**Product costs.** The decrease in product costs in absolute dollars was consistent with the decrease in publishing and distribution revenues. The increase as a percentage of net revenues was primarily due to the higher proportion of distribution revenues, including sales of hardware products, which have higher product costs than publishing revenues. Additionally, net revenues for the six months ended April 30, 2006 were reduced by lower prices on current generation software titles, which resulted in an increase in product costs as a percentage of net revenues for the current period.

**Royalties.** The increase in royalties was primarily due to higher royalty costs related to sales of certain of our published products. Royalty expense for the six months ended April 30, 2006 was primarily attributable to sales of *The Elder Scrolls IV: Oblivion* for PC and Xbox 360, *Major League Baseball 2K6* for current and next generation console platforms, *Grand Theft Auto: Liberty City Stories* for the PSP and *Grand Theft Auto: San Andreas* for the PlayStation 2 and Xbox. In the comparable prior period, royalty costs were primarily related to sales of *Grand Theft Auto: San Andreas* for the PlayStation 2, which was released in October 2004. Royalty costs related to sales of our internally developed products accounted for \$20.2 million and \$65.9 million, respectively, of our royalty expense for the six months ended April 30, 2006 and 2005.

**Software development costs.** The increase in software development costs was primarily due to impairment charges of approximately \$17.0 million related to several titles in development. The impairment charges were based on an assessment of the future recoverability of capitalized software balances related to these titles and the determination that these titles were unlikely to recover capitalized costs given a change in sales expectations as a result of weaker market conditions, the closure and anticipated closure of development studios, uncertainty involved in the console transition and historical performance of the titles.

The increase in costs was also due to sales of a larger number of internally developed titles resulting in higher amortization of capitalized costs as compared to the prior period. In the current period, software development costs related to sales of internally developed sports and other titles included *The Warriors*, *Amped 3*, *Major League Baseball 2K6*, *NBA 2K6*, *Top Spin 2* and *Midnight Club 3: DUB Edition Remix* for current and next generation console platforms. In the comparable fiscal 2005 period, software development costs were primarily attributable to sales of *Midnight Club 3: Dub Edition* and *Grand Theft Auto: San Andreas* across multiple platforms.

In future periods, cost of goods sold may be adversely affected by manufacturing and other costs, price competition and by changes in product and sales mix, distribution channels and royalty arrangements.

**TAKE-TWO INTERACTIVE SOFTWARE, INC. and SUBSIDIARIES**  
(Dollars in thousands, except per share amounts)

*Operating Expenses*

	Six months ended April 30,					
	2006	% of Net Revenues	2005	% of Net Revenues	\$ Increase (Decrease)	% Incr (Decr)
<b>Selling and marketing</b>	\$ 73,838	13.9	\$ 87,206	12.0	\$ (13,368)	(15.3)
<b>General and administrative</b>	72,158	13.6	57,392	7.9	14,766	25.7
<b>Research and development</b>	33,806	6.4	37,202	5.1	(3,396)	(9.1)
<b>Depreciation and amortization</b>	19,595	3.7	9,888	1.4	9,707	98.2
<b>Total operating expenses</b>	\$ 199,397	37.6	\$ 191,688	26.4	\$ 7,709	4.0

**Selling and marketing.** The decrease in selling and marketing expense in absolute dollars was primarily due to lower marketing and promotional spending by approximately \$12.1 million in the current period. The increase as a percentage of net revenues was primarily due to a decrease in net revenues for the six months ended April 30, 2006. In the comparable fiscal 2005 period, higher advertising and marketing costs were primarily attributable to the release of *Grand Theft Auto: San Andreas* for the PlayStation 2, which occurred in October 2004, and additional spending to promote titles under our 2K Games and 2K Sports publishing labels, which were established in fiscal 2005.

**General and administrative.** The increase in general and administrative expense was primarily due to increased compensation and payroll related costs of \$6.1 million for additional personnel to support the expected growth of our business. Compensation and payroll related costs included approximately \$3.3 million of additional stock compensation expense primarily due to the adoption of SFAS 123(R), effective November 1, 2005. The increase was also due to additional rent and office related expenses of approximately \$3.9 million primarily due to development studios acquired subsequent to the second quarter of fiscal 2005, an increase in information technology expenses of \$1.9 million related to system improvements and an increase in professional fees of approximately \$3.4 million related to Sarbanes-Oxley compliance, legal matters and process improvement. The increase in general and administrative expenses as a percentage of net revenues was also impacted by a decline in net revenues for the six months ended April 30, 2006.

**Research and development.** The decrease in research and development expense in absolute dollars is primarily due to a decrease of approximately \$5.4 million in incentive compensation costs for personnel, which is consistent with lower net revenues. The decrease in incentive compensation costs is slightly offset by approximately \$1.5 million of severance costs related to the closure of two development studios in the current period. The increase as a percentage of net revenues was primarily due to a decline in net revenues for the six months ended April 30, 2006.

A substantial portion of our research and development costs are capitalized once software development projects reach technological feasibility, which is relatively early in the development process, and subsequently amortized as cost of goods sold. However, amounts earned under our internal royalty program continue to be expensed as incurred in cost of goods sold.

**Depreciation and amortization.** Depreciation and amortization expense increased primarily due to impairment charges of approximately \$6.1 million related to the write-off of certain trademarks and acquired intangibles. The impairment charges were based on management's assessment of the future value of these assets including future business prospects and estimated cash flows to be derived from these assets. The increase in depreciation and amortization expense was also due to higher depreciation related to the upgrading of software systems, our new office and warehouse facility for our Jack of All Games subsidiary and additional leasehold improvements related to development studios acquired subsequent to the second quarter of 2005.

**Income (Loss) from operations.** Income (loss) from operations decreased by \$186,691 or 307.4%, to a loss of \$125,958 for the six months ended April 30, 2006 from income of \$60,733 for the six months ended April 30, 2005, due to the changes referred to above. Changes in foreign exchange rates decreased the loss from operations by approximately \$917 for the six months ended April 30, 2006 and increased income from operations by approximately \$2,000 for the six months ended April 30, 2005.

**TAKE-TWO INTERACTIVE SOFTWARE, INC. and SUBSIDIARIES**  
(Dollars in thousands, except per share amounts)

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**Interest income, net.** Interest income decreased by \$1,447, or 84.9% to \$257 for the six months ended April 30, 2006 from \$1,704 for the prior comparable period primarily due to interest earned on a lower average cash balance offset by bank finance charges incurred in international locations.

**Provision (benefit) for income taxes.** Income tax benefit was \$46,206 for the six months ended April 30, 2006 as compared to income tax expense of \$15,374 for the six months ended April 30, 2005. The decrease was primarily attributable to our net loss for the fiscal 2006 period and an increase in the estimated annual effective tax rate.

The estimated annual effective tax rate was a benefit of 36.8% for the six months ended April 30, 2006, compared to an estimated effective tax rate for the comparable period in fiscal 2005, which was an expense of 24.6%. The higher estimated annual effective tax rate in fiscal 2006 was primarily attributable to forecasted losses in higher tax rate jurisdictions. The lower effective tax rate for the comparable period in fiscal 2005 was primarily attributable to a higher proportion of forecasted earnings in lower tax rate jurisdictions.

We adopted FAS 123(R) on November 1, 2005, which requires, among other items, the recognition of stock option expense in the results of operations. As a result of the adoption of SFAS 123(R), the income tax effects of compensatory stock options are included in the computation of the income tax expense (benefit), and deferred tax assets and liabilities, subject to certain prospective adjustments to stockholders' equity for the differences between the income tax effects of expenses recognized in the results of operations and the related amounts deducted for income tax purposes. Prior to our adoption of SFAS 123(R) the tax benefits relating to the income tax deductions for compensatory stock options were recorded directly to stockholders' equity.

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).** For the six months ended April 30, 2006, net loss was \$79,495 as compared to net income of \$47,063 for the six months ended April 30, 2005, a decrease of \$126,558, or 268.9%. The decrease resulted from the changes referred to above.

**Diluted net income (loss) per share.** Diluted net loss per share for the six months ended April 30, 2006 of \$1.12, decreased \$1.79 as compared to diluted net income per share of \$0.67 for the six months ended April 30, 2005, principally due to the net loss for the period and increase in the weighted average common shares outstanding.

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### Liquidity and Capital Resources

Our primary cash requirements are to fund the development and marketing of our products. We satisfy our working capital requirements primarily through cash flow from operations. At April 30, 2006, we had working capital of \$314,760 as compared to working capital of \$378,967 at October 31, 2005.

Cash and cash equivalents increased by \$33,873 for the six months ended April 30, 2006 as follows:

	Six months ended April 30,	
	2006	2005
Cash provided by operating activities	\$ 42,643	\$ 98,619
Cash used in investing activities	(13,200)	(66,246)
Cash provided by financing activities	2,068	24,393
Effect of foreign exchange rates on cash and cash equivalents	2,362	(1,620)
<b>Net increase in cash and cash equivalents</b>	<b>\$ 33,873</b>	<b>\$ 55,146</b>

**Operating Activities.** Cash provided by operating activities for the six months ended April 30, 2006 was \$42,643 compared to \$98,619 for the six months ended April 30, 2005. The decrease is primarily due to the net loss in the current period, adjusted for non-cash items including amortization and write-offs of software development costs.

**Investing Activities.** Net cash used in investing activities for the six months ended April 30, 2006 was \$13,200 compared to \$66,246 for the six months ended April 30, 2005. Net cash used in the current period primarily reflects the purchase of fixed assets partially offset by net cash acquired in the acquisition of Firaxis. The prior year period primarily reflects the acquisition of Visual Concepts and Kush and the intellectual property of *Civilization*.

**Financing Activities.** Net cash provided by financing activities for the six months ended April 30, 2006 was \$2,068 as compared to \$24,393 for the six months ended April 30, 2005. The decrease was primarily attributable to lower proceeds from the exercise of stock options.

### Significant Balance Sheet Changes

**Accounts receivable:** The decrease of \$49,824 in gross accounts receivable, before allowances, from October 31, 2005 to April 30, 2006, was primarily due to lower net revenues in the current period and is consistent with the seasonal fluctuations of our business. Our allowances, which include doubtful accounts, returns, price concessions, rebates and other sales allowances, increased to \$87,820 at April 30, 2006 from \$69,904 at October 31, 2005 and increased as a percentage of receivables to 40.3% at April 30, 2006 from 26.1% at October 31, 2005. The increase in the allowance is due to weaker market conditions and the ongoing transition to next generation hardware platforms.

As of April 30, 2006, the receivable balances from our five largest retail customers accounted for approximately 53.9% of our gross receivable balance. Wal-Mart, Best Buy and GameStop accounted for approximately 15.6%, 13.0% and 12.8%, respectively, of our gross receivable balance. Generally, we have been able to collect our receivables in the ordinary course of business.

We do not hold any collateral to secure payment from customers and our domestic receivables are not covered by insurance. However, from time to time we purchase insurance from financial institutions on our receivables, with certain limits, to help protect us from loss in the event of a customer's bankruptcy or insolvency.

We are subject to credit risks, particularly in the event that any of the receivables represent a limited number of retailers. If we are unable to collect our accounts receivable as they become due, it could adversely affect our liquidity and working capital position and we would be required to increase our provision for doubtful accounts.

**Inventories:** The decrease of \$44,407 in inventories from October 31, 2005 to April 30, 2006 was primarily due to a decrease in distribution inventories and is consistent with the decrease in trade accounts payable. The lower inventories balance was also consistent with lower seasonal inventory level requirements.



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*Prepaid taxes and taxes receivable:* The increase of prepaid taxes and taxes receivable of \$29,547 from October 31, 2005 to April 30, 2006 was primarily attributable to an increase in carry-back claims anticipated for fiscal 2006.

*Deferred revenue:* We have entered into various agreements to provide online content, in-game advertising and licensing of our intellectual property. We have received approximately \$35 million in our fiscal third quarter ending July 31, 2006, and also expect to receive additional amounts by October 31, 2006. To the extent that we have not performed the obligations required under the agreements, cash received is accounted for as deferred revenue.

*Loan Facilities:* In August 2005, we entered into a new credit agreement with JPMorgan Chase Bank, N.A. ("JPMorgan"), and terminated our credit agreement with Bank of America, N.A, which would have expired on August 28, 2005. The JPMorgan credit agreement provides for borrowings of up to \$50,000 through the expiration of the agreement on August 23, 2006. Advances under the credit agreement bear interest at a rate of 0.25% to 0.75% over the bank's prime rate, or at the Eurodollar rate plus 1.25% to 1.75% depending on our consolidated leverage ratio. We are required to pay a commitment fee to the bank equal to 0.25% of the unused loan balance and borrowings under the agreement are collateralized by certain of our assets. The credit agreement also contains financial and other covenants (including a consolidated asset coverage ratio) and prohibits us from paying cash dividends, merging or consolidating with another corporation, selling or acquiring assets (other than in the ordinary course of business), creating liens and incurring additional indebtedness. Available borrowings under the agreement are reduced by the amount of any outstanding stand-by letters of credit, which is \$1,560 at April 30, 2006. We had no borrowings under the credit agreement and we were in compliance with all financial and other covenants at April 30, 2006.

In May 2006, our United Kingdom subsidiary renewed its credit facility agreement with Lloyds TSB Bank plc ("Lloyds") under which Lloyds agreed to make available borrowings of up to approximately \$23,000. Advances under the credit facility bear interest at the rate of 1.25% per annum over the bank's base rate, and are guaranteed by us. Available borrowings under the agreement are reduced by the amount of outstanding guarantees. The facility expires on March 31, 2007. We had no outstanding guarantees and no borrowings under this facility as of April 30, 2006.

*Capital Expenditures:* In fiscal 2006, we expect to spend an additional \$4,000 in connection with the continued improvement of our network infrastructure and software systems and approximately \$1,500 for leasehold improvements and equipment for our domestic and international operations. We also expect to spend \$1,000 in connection with our warehouse facilities in Ohio and Canada. As of the date of this report, we have no other material commitments for capital expenditures.

*Stock Split:* In April 2005, we effected a three-for-two stock split in the form of a stock dividend. Accordingly, all share and per share data in the accompanying unaudited condensed consolidated financial statements and notes thereto give retroactive effect to the stock split.

*Legal and Accounting Expenses:* We have incurred and may continue to incur significant legal, accounting and other professional fees and expenses in connection with pending regulatory and litigation matters.

Based on our currently proposed operating plans and assumptions, we believe that projected cash flow from operations and available cash resources, including amounts available under our line of credit, will be sufficient to satisfy our cash requirements for the foreseeable future. If our projected cash flow and available cash is insufficient to fund our operations or if our plans and assumptions change or prove to be inaccurate, we may be required to seek additional financing or curtail our diversification activities.

#### Contractual Obligations and Contingent Liabilities and Commitments

A summary of annual minimum contractual obligations and commitments as of April 30, 2006 is as follows:

Fiscal Years Ending October 31,	Licensing and Marketing Agreements	Software Development Agreements	Leases	Distribution Agreements	Total
Remainder of 2006	\$ 46,138	\$ 25,822	\$ 8,743	\$ 4,042	\$ 84,745
2007	60,602	26,807	16,506	—	103,915
2008	54,826	13,075	15,124	—	83,025
2009	55,634	39	14,809	—	70,482
2010	55,692	—	13,079	—	68,771
Thereafter	102,655	—	34,793	—	137,448
	<u>\$ 375,547</u>	<u>\$ 65,743</u>	<u>\$ 103,054</u>	<u>\$ 4,042</u>	<u>\$ 548,386</u>

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*Licensing and Marketing Agreements:* Our license expense consists primarily of payments made to licensors for intellectual property rights under agreements which expire at various times through December 2012. As of April 30, 2006, we have minimum guaranteed licensing and marketing commitments of \$375,547, of which \$3,328 are recorded in our condensed consolidated balance sheet as the licensor does not have any significant performance obligation. Minimum guaranteed licensing and marketing commitments primarily reflect our agreements with major sports leagues and players' associations.

*Software Development Agreements:* Our payments made to third-party developers include contractual advances and royalty payments under agreements which expire at various times through November 2008. Assuming performance by third-party developers, we have aggregate outstanding commitments of \$65,743 under various software development agreements at April 30, 2006. We have also established an internal royalty program pursuant to which we pay royalties to certain of our development personnel based on product sales. Royalties earned under our internal royalty program are expensed as incurred.

*Lease Commitments:* Our offices and warehouse facilities are occupied under non-cancelable operating leases expiring at various times from June 2006 to July 2015. We also lease certain furniture, equipment and automobiles under non-cancelable leases expiring through April 2010. Future minimum rental payments for fiscal 2006 are \$8,743 and aggregate minimum rental payments through applicable lease expirations are \$103,054.

*Distribution Agreements:* We periodically enter into distribution agreements to purchase various software games. These agreements, which expire at various dates through January 2007, require remaining aggregate minimum guaranteed payments of \$4,042 at April 30, 2006.

*Contingent Consideration:* In November 2005, in connection with the acquisition of Firaxis, we agreed to make additional payments of \$11,250 based on future product sales, of which approximately \$10,000 will be recorded as additional purchase price and \$1,250 will be recorded as employee compensation expense.

In fiscal 2005, in connection with the acquisition of Irrational, we agreed to make additional payments of \$2,000 to the former owners of Irrational based on the delivery of products. We do not anticipate making these contingent payments within the next twelve months due to the expected timing of product releases. Additionally, in fiscal 2005, in connection with the acquisition of Visual Concepts and Kush Games, we agreed to make additional payments of approximately \$1,400 to SEGA based on the commercial release of products. The additional payments to SEGA are expected to be made in fiscal 2006.

In March 2005, we renegotiated a \$6,000 contingent obligation due upon the delivery of the final PC version of *Duke Nukem Forever* through the payment of \$4,250 and issuance of a promissory note in the principal amount of \$500. The payment of the promissory note is contingent upon the commercial release of such product prior to December 31, 2006.

In fiscal 2004, in connection with the acquisition of Mobius, we agreed to make additional contingent payments of approximately \$2,000 based on the delivery of products. In fiscal 2003, we also agreed to make additional payments of up to \$2,500 to the former owners of Cat Daddy based on a percentage of Cat Daddy's future profits for the first three years after acquisition. We do not anticipate making these contingent payments within the next twelve months.

**Fluctuations in 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 peak shipments typically occurring in the fourth calendar quarter (our fourth and first fiscal quarters) 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.

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**International Operations**

Net revenues in international markets, principally in the United Kingdom and other countries in Europe, have accounted for a significant portion of our net revenues. For the six months ended April 30, 2006 and 2005, net revenues in international markets accounted for approximately 28.0% and 33.0%, respectively, of our net revenues. 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 impact on our operating results.

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

We are subject to market risks in the ordinary course of our business, primarily risks associated with interest rate and foreign currency fluctuations.

Historically, fluctuations in interest rates have not had a significant impact on our operating results. At April 30, 2006, we had no outstanding variable rate indebtedness.

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 quarter end. Translation adjustments are included as a separate component of stockholders' equity. For the six months ended April 30, 2006, our foreign currency translation adjustment gain was \$4,355. Foreign exchange transaction gain for the six months ended April 30, 2006 was \$1,252. A hypothetical 10% change in applicable currency exchange rates at April 30, 2006 would result in a material translation adjustment.

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**Item 4. Controls and Procedures**

*Evaluation of disclosure controls and procedures*

The Company maintains disclosure controls and procedures that are designed to ensure that information required to be disclosed in the Company's reports under the Securities Exchange Act of 1934 is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms, and that such information is accumulated and communicated to management, as appropriate, to allow timely decisions regarding required disclosure. The Company's management, with participation of the company's Chief Executive Officer and Chief Financial Officer, has conducted an evaluation of the effectiveness of the Company's disclosure controls and procedures (as defined in the Securities Exchange Act of 1934 Rules 13a-15(e) and 15d-15(e)) as of the end of the period covered by this quarterly report on Form 10-Q.

As previously disclosed in our Annual Report on Form 10-K for the fiscal year ended October 31, 2005, the Company determined that, as of October 31, 2005, there were two material weaknesses affecting our internal control over financial reporting and, as a result of those weaknesses, the Company's disclosure controls and procedures were not effective. As described below, the Company is in the process of remediating those material weaknesses. Consequently, based on the evaluation described above, the Company's management, including our Chief Executive Officer and Chief Financial Officer, has concluded that, as of April 30, 2006, the Company's disclosure controls and procedures were not effective.

*Management's Remediation Initiatives*

As previously reported in the Company's Annual Report on Form 10-K for the fiscal year ended October 31, 2005, management determined that, as of October 31, 2005, there were material weaknesses in the Company's internal control over financial reporting relating to (i) ineffective controls over the existence and valuation of its accounts payable related to inventory purchases and (ii) ineffective controls over the accuracy of the amortization of its capitalized costs. As reported in the Annual Report for fiscal 2005, the Company initiated a number of changes in our internal controls to remediate these material weaknesses. Although these changes were initiated during the six months ended April 30, 2006, the remediation effort is not yet completed. Specifically, the Company is in the process of implementing the following measures to remediate the control deficiencies:

- The Company has developed reports to assist in the analysis of accounts payable related to inventory purchases to ensure there is adequate and timely reconciliation of these accounts. Although management believes that this control is in place, it has not been tested for a sufficient period to conclude that the control is effective.
- The Company has added an additional level of review of the amortization of capitalized software development costs to ensure the accuracy of the information used in this calculation. The Company has also redesigned the reconciliation schedules in this area to make it easier to review. Further, the Company has initiated a feasibility study to determine ways to automate the inputs and/or calculation of these amounts to reduce or eliminate the data entry involved in the current process. Although management believes that this control is in place, it has not been tested for a sufficient period to conclude that the control is effective.

*Changes in Internal Control over Financial Reporting*

Other than as described above, there have been no changes in our internal control over financial reporting that occurred during the second quarter ended April 30, 2006 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

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**PART II – OTHER INFORMATION**

**Item 1. Legal Proceedings**

The Federal Trade Commission (“FTC”) has concluded its previously reported inquiry regarding the advertising claims for *Grand Theft Auto: San Andreas* following the re-rating of the title by the Entertainment Software Rating Board (“ESRB”). In June 2006, we entered into an agreement with the FTC containing a Consent Order under which we agreed to settle all outstanding matters pending before the FTC. The proposed consent agreement with the FTC requires Take-Two and Rockstar Games to clearly and prominently disclose on product packaging and in any promotion or advertisement for electronic games, content relevant to the rating, unless that content had been disclosed sufficiently in prior submissions to the rating authority. In addition, the companies cannot misrepresent the rating or content descriptors for an electronic game and the companies must establish, implement, and maintain a comprehensive system reasonably designed to ensure that all content in an electronic game is considered and reviewed in preparing submissions to a rating authority. The Consent Order, under which no penalties or fines have been assessed, and an accompanying Complaint are subject to a 30-day period for public comment.

In July 2005, we received three purported class action complaints against the company and its subsidiary, Rockstar Games, two of which were filed in the United States District Court for the Southern District of New York and one such complaint which was filed in the United States District Court, Eastern District of Pennsylvania. On September 8, 2005, another similar complaint was filed in the Circuit Court for the Twentieth Judicial District, St. Clair County, Illinois and then removed to United States District Court for the Southern District of Illinois. The plaintiffs, alleged purchasers of the *Grand Theft Auto: San Andreas* game, allege that the company and Rockstar Games engaged in consumer deception, false advertising and common law fraud and were unjustly enriched as a result of the alleged failure of the company and Rockstar Games to disclose that *Grand Theft Auto: San Andreas* contained “hidden” content, which resulted in the game receiving an “M” rating from the ESRB rather than an “AO” rating. The complaints seek unspecified damages, declarations of various violations of law and litigation costs. The New York and Pennsylvania actions have been consolidated in the Southern District of New York under the caption In re Grand Theft Auto Video Game Consumer Litigation, (05-CV-6734 (BSJ)) and the Illinois action has been transferred to the Southern District of New York for coordinated pretrial proceedings pursuant to an Order of the Judicial Panel on Multidistrict Litigation. The plaintiffs must now file an Amended Consolidated Complaint.

In January 2006, the City Attorney for the City of Los Angeles filed a complaint against the company and Rockstar Games in the Superior Court of the State of California. The complaint alleges that the company and Rockstar Games violated sections of the California Business and Professions Code prohibiting untrue and misleading statements and unfair competition and that the company and Rockstar Games were unjustly enriched as a result of the alleged failure to disclose that *Grand Theft Auto: San Andreas* contained “hidden” content which should have resulted in the game receiving an Adults Only (“AO”) rating from the ESRB rather than a Mature (“M”) rating. The complaint also alleges that the company made misleading statements as to the origin of the “hidden” content. The complaint seeks injunctive relief, restitution for purchasers of the game and civil fines. The action has been removed to the United States District Court, Central District of California and we have moved to dismiss the complaint. The plaintiff has moved to remand the action to state court and the Judicial Panel on Multidistrict Litigation has issued an order transferring the action to the Southern District of New York. The company has also received requests for documents and information from the Attorneys General of the States of North Carolina and Connecticut relating to *Grand Theft Auto: San Andreas*. These matters have remained dormant.

In February and March 2006, an aggregate of four purported class action complaints were filed against the company, its Chief Executive Officer, Chief Financial Officer and former Chief Global Operating Officer in the United States District Court for the Southern District of New York (the “New York Actions”) and one such purported class action was filed in the United States District Court for the Eastern District of Michigan (the “Michigan Action”). The New York plaintiffs are Max Kaplan, John Fenninger, David Andrews and David Toth and the Michigan plaintiff was The City of Flint and Daniel J. Hall on behalf of The City of Flint Employees’ Retirement Pension Fund. The complaints allege that the defendants violated Sections 10(b), 20(a) and Rule 10b-5 of the Securities Exchange Act of 1934 (“Exchange Act”) by making or causing the company to make untrue statements or failing to disclose in certain press releases and SEC periodic reports that, among other things: *Grand Theft Auto: San Andreas* contained “hidden” content which should have resulted in the game receiving an Adults Only (“AO”) rating from the ESRB rather than a Mature (“M”) rating; the defendants attempted to bolster sales of *Grand Theft Auto: San Andreas* by concealing the “adult content” from retailers who refused to carry AO material; the company’s management failed to keep the Board of Directors informed of important issues or failed to do so in a timely fashion; and the company was misstating capitalized software development costs and amortization expense and had inadequate internal controls and procedures to ensure accuracy in its reported financial results. The plaintiffs seek to recover unspecified damages and their costs. The plaintiffs in the Michigan Action voluntarily dismissed their complaint without prejudice. A motion to consolidate the New York Actions and appoint a lead plaintiff is pending.

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In January 2006, the St. Clair Shores General Employees Retirement System filed a purported class and derivative action complaint in the Southern District of New York against the company, as nominal defendant, and certain of the company's officers and directors and certain former officers and directors. The factual allegations in this action are similar to the allegations contained in the New York Actions. Plaintiff asserts that certain defendants breached their fiduciary duty by selling company stock while in possession of certain material non-public information and breached their fiduciary duty and violated Section 14(a) and Rule 14a-9 of the Exchange Act by failing to disclose material facts in the company's 2003, 2004 and 2005 proxy statements in which the company solicited approval to increase share availability under its 2002 Stock Option Plan. Plaintiff seeks the return of all profits from the alleged insider trading conducted by the individual defendants who sold company stock, unspecified compensatory damages with interest and their costs in the action. A motion to stay the action pending the determination of an investigation by a Special Litigation Committee of the Board is pending.

In January 2006, Todd Veeck filed a complaint in the Court of Chancery of the State of Delaware against the company pursuant to the 8 *Del. C.* § 220 to compel inspection of the company's books and records in order to "investigate" possible breaches of fiduciary duties with regard to the creation, development, marketing and sale of the company's *Grand Theft Auto* line of products.

In February 2005, the personal representatives of the Estates of Arnold Strickland and Ace Mealer brought an action in the Circuit Court of Fayette County, Alabama against the company, Sony Computer Entertainment America Inc. ("SCEA"), Sony Corporation of America ("SCA"), Wal-Mart, GameStop and Devin Moore alleging under Alabama's manufacturers' liability and wrongful death statutes that the company's video games designed, manufactured, marketed and/or supplied to Mr. Moore resulted in "copycat violence" that caused the death of Messrs. Strickland and Mealer. The suit seeks damages (including punitive damages) against all of the defendants in excess of \$600 million. Wal-Mart, SCEA and SCA tendered their defense and requested indemnification from the company, and the company has accepted such tender. The company's motion to dismiss the action was denied and the company moved to have certain issues certified for an immediate interlocutory appeal before the Alabama Supreme Court. The company also separately pursued a petition to dismiss claims against it and its subsidiary, Rockstar Games, for lack of personal jurisdiction. The Alabama Supreme Court declined to accept the interlocutory appeal, but agreed to hear the petition to dismiss the action for lack of personal jurisdiction. Briefing has been completed on such petition, and the matter is now pending before the Supreme Court. In April 2006, the plaintiffs filed a Third Amended Complaint to add a claim for civil conspiracy; the company and its co-defendants have moved to dismiss that claim and the motion is scheduled for hearing before the trial court. In April 2006, the trial court entered a Scheduling Order that set (a) a hearing on the admissibility of Plaintiffs' expert opinions for October 5, 2006; (b) completion of all fact and expert discovery by May 15, 2007; (c) mediation for June 1, 2007; and (d) trial (if necessary) to commence on July 1, 2007.

We intend to vigorously defend and seek dismissal of these matters and, with respect to the derivative actions, we have been advised that the individual defendants will vigorously defend such actions. However, we cannot predict the outcome of these matters and, if determined adversely to the company, such matters, either singly or in the aggregate, could result in the imposition of significant judgments, fines and/or penalties which could have a material adverse effect on our financial condition, cash flows or results of operations.

We are involved in routine litigation in the ordinary course of our business, which in management's opinion will not have a material adverse effect on our financial condition, cash flows or results of operations.

**Item 1A. Risk Factors**

***Safe Harbor Statement under the Securities Litigation Reform Act of 1995.***

We make statements in this report that are considered forward-looking statements under federal securities laws. Such forward-looking statements are based on the beliefs of management as well as assumptions made by and information currently available to them. The words "expect," "anticipate," "believe," "may," "estimate," "intend" and similar expressions are intended to identify such forward-looking statements. Forward-looking statements involve risks, uncertainties and assumptions including, but not limited to, the following risks, many of which are substantially the same as the risks set forth in our Annual Report on Form 10-K for the fiscal year ended October 31, 2005. These risks could cause our actual results, performance or achievements to be materially different from results, performance or achievements, expressed or implied by such forward-looking statements.

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***We have incurred a net loss for the six months ended April 30, 2006, and we may incur future net losses.***

Although we have achieved increasing levels of revenue and have generated profits in each of our last three fiscal years, we have incurred a net loss for the six months ended April 30, 2006 primarily as a result of a weak retail environment during the holiday season and lower than expected sales of interactive entertainment products as our industry transitions to next generation technology. We expect to incur increased levels of expenses associated with significant product development and licensing commitments over the next year in connection with the diversification of our product offerings and the transition to next generation platforms. We anticipate that we will continue to incur losses until such time as we generate sufficient levels of revenues to offset these increased costs. Continued losses could adversely affect the price of our common stock.

***Rapidly changing technology and hardware cycles could adversely affect our operations and our ability to forecast our operating results.***

The interactive entertainment industry is cyclical and is associated with rapidly changing technology. Microsoft introduced its next generation hardware platform into the marketplace in November 2005, and we expect that Sony and Nintendo will introduce their respective next generation hardware platforms during 2006. As a result, consumer demand for software for older platforms has declined as newer and more advanced hardware platforms achieve market acceptance. During the transition to next generation platforms, we expect to continue to devote significant development resources to products designed for current generation platforms, including Sony's PlayStation 2 and Microsoft's Xbox. Consumers may elect to defer purchases of game software for these platforms until newer platforms become available. Consumer demand for these platforms may continue to decline generally or as a result of the next generation platform transition. Additionally, we have reduced prices for our current generation software titles and we may continue to reduce prices for our current generation software titles, which may result in lower than expected sales or losses from products designed for older platforms.

During the transition to next generation platforms, we are devoting significant development resources to products designed for next generation hardware platforms, initially for the Xbox 360 video game and entertainment system from Microsoft. Our ultimate success will depend on our ability to accurately predict which platforms will achieve widespread consumer acceptance. The time, resources and costs associated with the development of next generation software have increased substantially, which increases our risk of loss in the event that new platforms do not achieve commercial success. It is difficult to anticipate hardware development cycles, and we have made and will continue to make both internal and external software development commitments and product investment decisions well in advance of the introduction of new hardware platforms, resulting in net cash outflows. If new hardware platforms are delayed, are shipped in limited quantities or do not achieve consumer acceptance, we may be unable to recover our investments and our business and operating results could be materially adversely affected. Furthermore, during such transition, our operating results may become more volatile and more difficult to predict, which could cause wide fluctuations in our stock price.

A number of software publishers who compete with us have developed and commercialized or are currently developing online games for use by consumers over the Internet. Future increased consumer acceptance and increases in the availability of online games or technological advances in online game software sales or the Internet could result in a decline in platform-based software sales and negatively impact sales of our products. Direct sales of software over the Internet by our competitors could materially adversely affect our distribution business.

***The market for our titles is characterized by short product life cycles. Delays in product releases or disruptions following the commercial release of our products may have a material adverse effect on our operating results.***

The market for our titles is characterized by short product life cycles and frequent introductions of new products. New products may not achieve significant market acceptance or generate sufficient sales to permit us to recover development, manufacturing and marketing costs associated with these products. The life cycle of a title generally involves a relatively high level of sales during the first few months after introduction followed by a rapid decline in sales. Because revenues associated with an initial product launch generally constitute a high percentage of the total revenues associated with the life of a product, delays in product releases or disruptions following the commercial release of one or more new products could have a material adverse effect on our operating results and cause our operating results to be materially different from expectations. We have experienced delays in product releases and in fiscal 2005 our revenues were negatively impacted by product returns due to the re-rating by the ESRB of *Grand Theft Auto: San Andreas* from "M" (age 17 and older) to "AO" (age 18 and older). Such delays and disruptions may occur in the future. In addition, if we release a limited number of new products during any period, the failure of one or more of such products to achieve market acceptance could result in lower than anticipated revenues and significant operating losses.

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***A substantial portion of our revenues is derived from a limited number of titles, and we must continue to publish “hit” titles in order to succeed.***

*Grand Theft Auto* and certain of our other titles are “hit” products and have historically accounted for a substantial portion of our revenues. For the six months ended April 30, 2006, our ten best selling titles accounted for approximately 42.6% of our revenues, with *Grand Theft Auto: Liberty City Stories* for the PSP accounting for 11.6% of our revenues; *The Elder Scrolls IV: Oblivion* for the Xbox 360 accounting for 9.1% of our revenues; *The Elder Scrolls IV: Oblivion* for the PC accounting for 6.2% of our revenues; *Grand Theft Auto: San Andreas* for the PlayStation 2 accounting for 4.0% of our revenues; *Sid Meier’s Civilization IV* for the PC accounting for 2.9% of our revenues; and *Major League Baseball 2K6* for the Xbox 360 accounting for 2.0% of our revenues. For the six months ended April 30, 2005, our ten best selling titles accounted for approximately 58.5% of our revenues, with *Grand Theft Auto: San Andreas* for the PlayStation 2 accounting for 42.3% of our revenues; *Midnight Club 3: DUB Edition* for the PlayStation 2 accounting for 5.9% of our revenues; *Midnight Club 3: DUB Edition* for Xbox accounting for 2.9% of our revenues; *Grand Theft Auto: Vice City* for the PlayStation 2 accounting for 1.4% of our revenues; and *Stronghold 2* for PC accounting for 1.3% of our revenues. For the years ended October 31, 2005 and October 31, 2004, our ten best selling titles accounted for approximately 48.2% and 46.3%, respectively, of our revenues, with *Grand Theft Auto* products accounting for 38.2% and 34.3%, respectively of such revenues for these periods. If we fail to continue to develop and sell new commercially successful “hit” titles or experience any delays in product releases or disruptions following the commercial release of our “hit” titles, our revenues and profits may decrease substantially and we may incur losses.

***We are dependent on our management and other key personnel for our success. If we fail to retain creative and product development personnel, our business could be seriously harmed.***

We rely on our management and other key personnel for the successful operation of our business. In particular, we are highly dependent on the expertise, skills and knowledge of certain of our Rockstar employees responsible for content creation and development of *Grand Theft Auto* and other titles. Although we recently entered into three-year employment agreements with such Rockstar employees, and we have granted them incentives including an internal royalty program based on sales of Rockstar published products, there can be no assurance that we will be able to continue to retain these personnel at current compensation levels, or at all. The compensation arrangements with such Rockstar employees could result in increased expenses and have a negative impact on our operating results. If one or more of these individuals leave the company, we may lose additional personnel, experience material interruptions in product development and delays in bringing products to market, which could have a material adverse effect on our operating results. Additionally, failure to continue to attract and retain qualified management personnel could adversely affect our business and prospects.

***Our efforts to diversify our product offerings and expand into the market for sports and other licensed titles may not be successful. Our significant investments in licenses for sports titles may not result in profitable operations.***

We have recently diversified our product offerings by capitalizing on significant growth opportunities in the market for sports and other licensed action and strategy titles. Our success in this market will depend in part on our ability to attract licensors with popular properties and to enter into favorable arrangements with these licensors, including licensors representing the major sports leagues and players’ associations. Competition for sports and other licensed properties is intense. If we are unable to continue to obtain and maintain licenses to popular properties, our revenue and profitability with respect to these products could decline dramatically. Competition for licenses has also increased advances and royalties payable to licensors, which currently represent substantial financial commitments on our behalf. We may be unable to continue to enter into favorable license agreements, for financial or other reasons, and despite our efforts to diversify our product offerings, we may be unable to achieve increased levels of revenues or profitability.

***Our business is dependent on our ability to enter into favorable publishing and intellectual property licensing arrangements with third parties.***

Our success depends on our ability to continually identify and develop new titles on a timely basis. We have entered into agreements with third parties to acquire the rights to publish and distribute interactive entertainment software as well as to use licensed intellectual properties in our titles. These agreements typically require us to make advance payments, pay royalties and satisfy other conditions. Our advance payments may not be sufficient to permit developers to develop new software successfully, which could result in material delays and significantly increase our costs to bring particular products to market. Software development costs, promotion and marketing expenses and royalties payable to software developers and third-party licensors have increased significantly in recent years and reduce potential profits derived from sales of our software. Future sales of our titles may not be sufficient to recover advances to software developers and licensors, and we may not have adequate financial and other resources to satisfy our contractual commitments, which are approximately \$46.1 million for licensing and marketing and approximately \$25.8 million for software development for the remainder of our fiscal year ending October 31, 2006. If we fail to satisfy our obligations under agreements with third-party developers and licensors, the agreements may be terminated or modified in ways that may be burdensome to us, and materially adversely affect our operating results. Failure to commercialize products that require significant investments could result in corresponding charges to earnings. See “Management’s Discussion and Analysis of Financial Condition and Results of Operations – Contractual Obligations and Contingent Liabilities and Commitments.”



**TAKE-TWO INTERACTIVE SOFTWARE, INC. and SUBSIDIARIES**  
(Dollars in thousands, except per share amounts)

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***We are subject to product development risks which could result in delays and additional costs, and we must adapt to changes in software technologies.***

We rely on third-party software developers for the development of certain of our titles. Quality third-party developers are continually in high demand. Software developers who have developed titles for us in the past may not be available to develop software for us in the future. Due to the limited number of third-party software developers and the limited control that we exercise over them, these developers may not be able to complete titles for us on a timely basis or within acceptable quality standards, if at all. We depend on third-party software developers and our internal development studios to develop new interactive entertainment software within anticipated release schedules and cost projections. The development cycle for new titles ranges from twelve to thirty-six months and is expected to increase in connection with the development of next generation software. After development of a product, it may take between nine to twelve additional months to develop the product for other hardware platforms. If developers experience financial difficulties, additional costs or unanticipated development delays, we will not be able to release titles according to our schedule and at budgeted costs.

Additionally, in order to stay competitive, our internal development studios must anticipate and adapt to rapid technological changes affecting software development. Any inability to respond to technological advances and implement new technologies could render our products obsolete or less marketable.

***The interactive entertainment software industry is highly competitive both for our publishing and distribution operations.***

We compete for both licenses to properties and the sale of interactive entertainment software with Sony, Microsoft and Nintendo, each of which is a large developer and marketer of software for its own platforms. Each of these competitors has the financial resources to withstand significant price competition and to implement extensive advertising campaigns, particularly for television spots. These companies may also increase their own software development efforts or focus on developing software products for third-party platforms. We also compete with domestic game publishers such as Electronic Arts, Activision, THQ, Midway Games and Atari and international publishers, such as SEGA, Vivendi, Ubi Soft, SCi Entertainment, Capcom, Konami and Namco. As our business is driven by hit titles, which require increasing budgets for development and marketing, the availability of significant financial resources has become a major competitive factor in developing and marketing software games. Some of our competitors have greater financial, technical, personnel and other resources than we do and are able to finance larger budgets for development and marketing and make higher offers to licensors and developers for commercially desirable properties. Our titles also compete with other forms of entertainment such as motion pictures, television and audio and video products featuring similar themes, online computer programs and forms of entertainment which may be less expensive or provide other advantages to consumers.

Our distribution business also operates in a highly competitive environment. Competition is based primarily on breadth, availability and quality of product lines; price; terms and conditions of sale; credit terms and availability; speed and accuracy of delivery; and effectiveness of sales and marketing programs. Our competitors include regional, national and international distributors, as well as hardware manufacturers and software publishers. We may lose market share or be forced in the future to reduce our prices in response to our competitors. Our distribution business has been adversely affected by lower sales volume of software titles, a decrease in average selling prices of interactive entertainment products as our industry transitions to next generation technology and increased competition in the value software market.

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***Increased competition for limited shelf space and promotional support from retailers could affect the success of our business and require us to incur greater expenses to market our titles.***

Retailers have limited shelf space and promotional resources, and competition is intense among an increasing number of newly introduced interactive entertainment software titles for adequate levels of shelf space and promotional support. Competition for retail shelf space is expected to increase, which may require us to increase our marketing expenditures to maintain desirable levels of sales of our titles. Competitors with more extensive lines and popular titles may have greater bargaining power with retailers. Accordingly, we may not be able to achieve the levels of promotional support and shelf space that such competitors receive.

***A limited number of customers account for a significant portion of our sales. The loss of a principal customer could seriously hurt our business.***

A substantial portion of our product sales are made to a limited number of customers, two of which have recently merged. Sales to our five largest customers accounted for approximately 48.7% and 39.3% of our net revenues, respectively, for the six months ended April 30, 2006 and 2005 with Wal-Mart and Best Buy accounting for 15.7% and 10.4%, respectively, of such revenues for the six months ended April 30, 2006. For the fiscal year ended October 31, 2005, sales to our five largest customers accounted for 40.7% of our net revenues. Our sales are made primarily pursuant to purchase orders without long-term agreements or other commitments, and our customers may terminate their relationship with us at any time. Certain of our customers may decline to carry products containing mature content. The loss of our relationships with principal customers or a decline in sales to principal customers, including as a result of a product being re-rated to "AO" (age 18 and over), could materially adversely affect our business and operating results. Bankruptcies or consolidations of certain large retail customers could seriously hurt our business.

***Returns of our published titles by our customers and price concessions granted to our customers may adversely affect our operating results.***

We are exposed to the risk of product returns and price concessions with respect to our customers. Our distribution arrangements with customers generally do not give them the right to return titles to us or to cancel firm orders. However, we sometimes accept product returns from our distribution customers for stock balancing and negotiate accommodations to customers which include credits and returns, when demand for specific products falls below expectations. We accept returns and grant price concessions in connection with our publishing arrangements and revenue is recognized after deducting estimated reserves for returns and price concessions. While we believe that we can reliably estimate future returns and price concessions, if return rates and price concessions for our published titles exceed our reserves, our revenues could decline.

***Failure to collect our accounts receivable on a timely basis will negatively impact our cash flow.***

Our sales are typically made on credit. We do not hold any collateral to secure payment by our customers. As a result, we are subject to credit risks, particularly in the event that any of our receivables represent sales to a limited number of retailers or are concentrated in foreign markets. Although we continually assess the creditworthiness of our customers, which are principally large, national retailers, if we are unable to collect our accounts receivable as they become due, it could adversely affect our financial condition and cash flow. From time to time we purchase insurance from financial institutions on our receivables, with certain limits, to help protect us from loss in the event of a customer's bankruptcy or insolvency.

***We are subject to the rating of our content by the Entertainment Software Rating Board. Failure to obtain "M" ratings for certain of our products could negatively impact our sales as would a game re-rating. We entered into a Consent Order with the Staff of the Federal Trade Commission and we are subject to class action complaints.***

The Entertainment Software Rating Board, sometimes referred to as the ESRB, requires game publishers to provide consumers with information relating to graphic violence, profanity or sexually explicit material contained in software titles, and imposes significant penalties for noncompliance. Certain countries have also established similar rating systems as prerequisites for product sales in those countries. In some instances, we may be required to modify our products to comply with the requirements of rating systems, which could delay or disrupt the release of our products. Sales of certain of our titles have been prohibited in certain countries. Our software titles receive a rating of "E" (age 6 and older), "E10+" (age 10 and older), "T" (age 13 and over) or "M" (age 17 and over). Many of our Rockstar titles have received an "M" rating. We believe that we comply with rating systems and properly display the ratings and content descriptions received for our titles. Although game publishers have been able to modify content to satisfy ESRB ratings standards for "M" ratings, if we are unable to obtain "M" ratings as a result of changes in the ESRB's ratings standards or for other reasons, including the adoption of legislation in this area, our business and prospects could be negatively affected. In the event any of our games are re-rated by the ESRB, we may be required to record a reserve for anticipated product returns and inventory obsolescence which could expose us to additional litigation, administrative fines and penalties and other potential liabilities, and could adversely affect our operating results.

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The Federal Trade Commission (“FTC”) has concluded its previously reported inquiry regarding the advertising claims for *Grand Theft Auto: San Andreas* following the re-rating of the title by the ESRB. In June 2006, we entered into an Agreement with the staff of the FTC containing a Consent Order under which we agreed to settle all outstanding matters pending before the FTC. The proposed consent agreement with the FTC requires Take-Two and Rockstar Games to clearly and prominently disclose on product packaging and in any promotion or advertisement for electronic games, content relevant to the rating, unless that content had been disclosed sufficiently in prior submissions to the rating authority. In addition, the companies cannot misrepresent the rating or content descriptors for an electronic game and the companies must establish, implement, and maintain a comprehensive system reasonably designed to ensure that all content in an electronic game is considered and reviewed in preparing submissions to a rating authority. The Consent Order, under which no penalties or fines have been assessed, and an accompanying Complaint are subject to a 30-day period for public comment, after which the FTC may withdraw its agreement.

We have also received requests for documents and information relating to *Grand Theft Auto: San Andreas* from certain states, which matters have been dormant, and we are subject to class action complaints alleging consumer deception, false advertising and common law fraud, class action complaints alleging violations of certain federal securities laws and an action brought by the City Attorney of Los Angeles. We cannot predict the outcome of these pending matters, which could result in the imposition of significant fines and penalties and judgments. Additionally, we have incurred and may continue to incur significant legal and other professional fees and expenses in connection with pending regulatory matters and litigation, and these matters have also diverted management’s attention from our business. See Part II – Item 1. – “Legal Proceedings.”

***Our business and products are subject to increasing potential legislation. The adoption of such proposed legislation could limit the retail market for our products.***

Several proposals have been made for federal legislation to regulate our industry, including a bill, referred to as The Family Entertainment Protection Act, which was recently introduced into the Senate. Such bill proposes to prohibit the sale of “M” rated, “AO” rated and “Rating Pending” products to under-17 audiences. If the bill is adopted into law, it may limit the potential market for our “M” rated products, and adversely affect our operating results. Proposals have also been made by numerous state legislators to regulate the sale of interactive entertainment software products containing violent or sexually explicit material by prohibiting the sale of such products to under 17 or 18 audiences and proposing penalties for noncompliance and certain states have adopted such laws which have been enjoined in litigation. The state of Minnesota recently adopted a law (effective August 1, 2006) that would fine underage purchasers of “M” or “AO” rated products. While such legislation has been successfully enjoined by industry and retail groups, the adoption into law of such legislation in federal and/or in state jurisdictions in which we do significant business could severely limit the retail market for our “M” rated titles.

***Content policies adopted by retailers, consumer opposition and litigation could negatively impact sales of our products.***

Retailers may decline to sell interactive entertainment software containing graphic violence or sexually explicit material or other content that they deem inappropriate for their businesses. If retailers decline to sell our “M” rated products or products containing graphic violence or sexually explicit material or other objectionable content generally, or if our “M” rated products are re-rated “AO,” we might be required to significantly change or discontinue particular titles, which in the case of our best selling *Grand Theft Auto* titles could seriously hurt our business. Consumer advocacy groups have opposed sales of interactive entertainment software containing graphic violence or sexually explicit material or other objectionable content by pressing for legislation in these areas and by engaging in public demonstrations and media campaigns. Additionally, although lawsuits seeking damages for injuries allegedly suffered by third parties as a result of video games have been unsuccessful in the courts, claims of this kind have been asserted against us from time to time. See Part II – Item 1. “Legal Proceedings.”

***We cannot publish our console titles without the approval of hardware licensors who are also our competitors.***

We are required to obtain a license from Sony, Microsoft and Nintendo, who are also our competitors, to develop and publish titles for their respective hardware platforms. Our existing platform licenses require that we obtain approval for the publication of new titles on a title-by-title basis. As a result, the number of titles we are able to publish for these hardware platforms, and our ability to manage the timing of the release of these titles and, accordingly, our net revenues from titles for these hardware platforms, may be limited. If any licensor chooses not to renew or extend our license agreement at the end of its current term, or if the licensor were to terminate our license for any reason, we would be unable to publish additional titles for that licensor’s platform. Termination of any such agreements could seriously hurt our business and prospects.

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Microsoft released its next generation hardware platform into the marketplace in November 2005, and we expect that each of Sony and Nintendo will introduce their respective next generation platforms into the marketplace during calendar year 2006. In order to publish products for a new platform, we will be required to enter into a license agreement in advance of a platform's commercial introduction, which gives the platform licensor the opportunity to set our fee structure. Certain platform licensors have retained the right to change fee structures for online game play, and each licensor's ability to set royalty rates makes it difficult for us to forecast our costs. Increased costs could negatively impact our operating margins. We may be unable to enter into license agreements for certain next generation platforms on satisfactory terms or at all. Failure to enter into any such agreement could also seriously hurt our business.

Sony and Nintendo are the sole manufacturers of the titles we publish under license from them. Games for the Xbox and Xbox 360 must be manufactured by manufacturers pre-approved by Microsoft. Each of these manufacturers also publishes software for its own platforms and manufactures titles for all of its other licensees and may choose to give priority to its own titles or those of other publishers if it has insufficient manufacturing capacity or if there is increased demand for its or other publishers' products. In addition, these manufacturers may not have sufficient production capacity to satisfy our scheduling requirements during any period of sustained demand. If manufacturers do not supply us with finished titles on favorable terms without delays, our operations would be materially interrupted, and we would be unable to obtain sufficient amounts of our product to sell to our customers. If we cannot obtain sufficient product supplies, our net revenues will decline and we could incur losses.

***Our quarterly operating results are highly seasonal and may fluctuate significantly, which could cause our stock price to decline.***

We have experienced and may continue to experience wide fluctuations in quarterly operating results. The interactive entertainment industry is highly seasonal, with sales typically higher during the fourth calendar quarter (our fourth and first fiscal quarters), due primarily to increased demand for games during the holiday buying season. Our failure or inability to introduce products on a timely basis to meet seasonal fluctuations in demand could adversely affect our business and operating results. The uncertainties associated with software development, manufacturing lead times, production delays and the approval process for products by hardware manufacturers and other licensors make it difficult to predict the quarter in which our products will ship and therefore may cause us to fail to meet financial expectations. In future quarters, our operating results may fall below the expectations of securities analysts and investors and the price of our stock could decline significantly.

***Our expansion and acquisitions may strain our operations, and we may not have sufficient financial resources to continue to expand our operations at previous levels.***

We have expanded through internal growth and acquisitions, which has placed and may continue to place a significant strain on our management, administrative, operational, financial and other resources. We have expanded our publishing operations, significantly increased our advances to licensors and developers and manufacturing expenditures and enlarged our work force. To successfully manage this growth, we must continue to implement and improve our operating systems as well as hire, train and manage a substantial and increasing number of management, technical, marketing, administrative and other personnel. We may be unable to effectively manage our expanding and geographically dispersed operations.

We have acquired rights to various properties and businesses, and we intend to continue to pursue opportunities by making selective acquisitions consistent with our business strategy. We may be unable to successfully integrate new personnel, properties or businesses into our operations. If we are unable to successfully integrate personnel, properties or businesses into our operations, we may incur significant charges.

Our publishing and distribution activities require significant cash resources. We may be required to seek debt or equity financing to fund the cost of continued expansion. The issuance of equity securities would result in dilution to the interests of our stockholders.

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***Our business is subject to risks generally associated with the entertainment industry, and we may fail to properly assess consumer tastes and preferences.***

Our business is subject to all of the risks generally associated with the entertainment industry and, accordingly, our future operating results will depend on numerous factors beyond our control, including the popularity, price and timing of new hardware platforms being released; economic, political and military conditions that adversely affect discretionary consumer spending; changes in consumer demographics; the availability and popularity of other forms of entertainment; and critical reviews and public tastes and preferences, which may change rapidly and cannot be predicted. In order to plan for acquisition and promotional activities, we must anticipate and respond to rapid changes in consumer tastes and preferences. A decline in the popularity of certain game genres or particular platforms could cause sales of our titles to decline dramatically. The period of time necessary to develop new game titles, obtain approvals of platform licensors and produce finished products is unpredictable. During this period, consumer appeal for a particular title may decrease, causing product sales to fall short of expectations.

***We may not be able to protect our proprietary rights or avoid claims that we infringe on the proprietary rights of others.***

We develop proprietary software and have obtained the rights to publish and distribute software developed by third parties. We attempt to protect our software and production techniques under copyright, trademark and trade secret laws as well as through contractual restrictions on disclosure, copying and distribution. Our software is susceptible to piracy and unauthorized copying. Unauthorized third parties may be able to copy or to reverse engineer our software to obtain and use programming or production techniques that we regard as proprietary. Well organized piracy operations have also proliferated in recent years resulting in the ability to download pirated copies of our software over the Internet. Although we attempt to incorporate protective measures into our software, piracy of our products could negatively impact our future profitability.

With advances in technology, game content and software graphics are expected to become more realistic. As a result, we believe that interactive entertainment software will increasingly become the subject of claims that such software infringes the intellectual property rights of others. From time to time, we receive notices from third parties or are named in lawsuits by third parties alleging infringement of their proprietary rights. Although we believe that our software and technologies and the software and technologies of third-party developers and publishers with whom we have contractual relations do not and will not infringe or violate proprietary rights of others, it is possible that infringement of proprietary rights of others has or may occur. Any claims of infringement, with or without merit, could be time consuming, costly and difficult to defend. Moreover, intellectual property litigation or claims could require us to discontinue the distribution of products, obtain a license or redesign our products, which could result in additional substantial costs and material delays.

***Our software is susceptible to errors, which can harm our financial results and reputation.***

The technological advancements of new hardware platforms result in the development of more complex software products. As software products become more complex, the risk of undetected errors in products when first introduced increases. If, despite testing, errors are found in new products or releases after shipments have been made, we could experience a loss of or delay in timely market acceptance, product returns, loss of revenues and damage to our reputation.

***Gross margins relating to our distribution business have been historically narrow which increases the impact of variations in costs on our operating results.***

As a result of intense price competition, our gross margins in our distribution business have historically been narrow and may continue to be narrow in the future. Accordingly, slight variations in operating costs and expenses could result in losses in our distribution business from period to period.

***We may not be able to adequately adjust our cost structure in a timely fashion in response to a sudden decrease in demand.***

A significant portion of our selling and general and administrative expense is comprised of personnel and facilities. In the event of a significant decline in revenues, we may not be able to exit facilities, reduce personnel, or make other changes to our cost structure without disruption to our operations or without significant termination and exit costs. Management may not be able to implement such actions in a timely manner, if at all, to offset an immediate shortfall in revenues and profit. We are seeking to reduce our costs, and we recently closed three of our underperforming development studios.

**TAKE-TWO INTERACTIVE SOFTWARE, INC. and SUBSIDIARIES**  
(Dollars in thousands, except per share amounts)

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***Our distribution business is dependent on suppliers to maintain an adequate supply of products to fulfill customer orders on a timely basis.***

Our ability to obtain particular products in required quantities and to fulfill customer orders on a timely basis is important to our success. In most cases, we have no guaranteed price or delivery agreements with suppliers. In certain product categories, limited price concessions or return rights offered by publishers may have a bearing on the amount of product we may be willing to purchase. Our industry may experience significant hardware supply shortages from time to time due to the inability of certain manufacturers to supply certain products on a timely basis. As a result, we have experienced, and may in the future continue to experience, short-term hardware inventory shortages. Further, manufacturers or publishers who currently distribute their products through us may decide to distribute, or to substantially increase their existing distribution, through other distributors, or directly to retailers.

***We are subject to the risk that our inventory values may decline and protective terms under supplier arrangements may not adequately cover the decline in values.***

The interactive entertainment software and hardware industry is characterized by the introduction of new and enhanced generations of products and evolving industry standards. These changes may cause inventory to decline substantially in value over time or to become obsolete. We are exposed to inventory risk in our distribution business to the extent that supplier price concessions are not available to us on all products or quantities. In addition, suppliers may become insolvent and unable to fulfill price concession obligations.

***We are subject to risks and uncertainties of international trade, including fluctuations in the values of local foreign currencies against the dollar.***

Sales in international markets, primarily in the United Kingdom and other territories in Europe, have accounted for a significant portion of our net revenues. Sales in international markets accounted for approximately 28.0% and 33.0%, respectively, of our net revenues for the six months ended April 30, 2006 and 2005. 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 impact on our operating results. All of our international sales are made in local currencies, which could fluctuate against the dollar. While we may use forward exchange contracts to a limited extent to seek to mitigate foreign currency risk, our results of operations could be adversely affected by unfavorable foreign currency fluctuations.

***The market price for our common stock may be highly volatile as a result of, among other things, factors affecting the industry.***

The market price of our common stock has been and may continue to be highly volatile. Factors such as our operating results, announcements by us or our competitors and various factors affecting the interactive entertainment software industry may have a significant impact on the market price of our common stock.

***We are subject to rapidly evolving regulation affecting financial reporting, accounting and corporate governance matters.***

In response to recent corporate events, legislators and government agencies have focused on the integrity of financial reporting, and regulatory accounting bodies have recently announced their intention to issue several new accounting standards, including a recently adopted standard that accounts for stock options as compensation expense. Additionally, recently enacted legislation focused on corporate governance, auditing and internal accounting controls imposes compliance burdens on us, and will require us to continue to devote substantial financial, technical and personnel resources to address various compliance issues and audit requirements.

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**Item 6. Exhibits**

Exhibits:

- 10.1 Xbox 360 Publisher License Agreement dated November 17, 2006, between Microsoft Licensing, GP and the Company.\*
- 10.2 Loan Agreement with Lloyds TSB Bank plc and Take Two Interactive Software Europe Limited.
- 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.

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

**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: June 8, 2006

By: /s/ Paul Eibeler

Paul Eibeler  
Chief Executive Officer and President  
(Principal Executive Officer)

Date: June 8, 2006

By: /s/ Karl H. Winters

Karl H. Winters  
Chief Financial Officer  
(Principal Financial Officer)

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XXXX 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.

CONTRACT NO. 149237

### XBOX 360 PUBLISHER LICENSE AGREEMENT

This Xbox 360 Publisher License Agreement (“Agreement”) is entered into and effective as of the later of the two signature dates below (the “Effective Date”) by and between Microsoft Licensing, GP, a Nevada general partnership (“Microsoft”), and Take-Two Interactive Software, Inc. a Delaware corporation (“Publisher”).

#### RECITALS

**A.** Microsoft and its affiliated companies develop and license a computer game system known as the Xbox 360 game system and a proprietary online service accessible via the Xbox 360 game system known as Xbox Live.

**B.** Publisher wishes to develop and/or publish one or more software products running on the Xbox 360 game system, which software products may also be made available to subscribers of Xbox Live, and to license proprietary materials from Microsoft on the terms and conditions set forth herein.

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. Exhibits

The following exhibits are hereby incorporated to this Agreement (some require completion and/or execution by one or both parties):

Exhibit 1:	Payments
Exhibit 2:	Xbox 360 Royalty Tier Selection Form
Exhibit 3:	Xbox 360 Publisher Enrollment Form
Exhibit 4:	Authorized Subsidiaries
Exhibit 5:	Non-Disclosure Agreement
Exhibit 6:	Japan/Asian Royalty Incentive Program
Exhibit 7:	Xbox Live Incentive Program

#### 2. Definitions

As further described in this Agreement and the Xbox 360 Publisher Guide (defined below), the following terms have the following respective meanings:

2.1 “**Asian Manufacturing Region**” means the region for manufacturing comprising Taiwan, Hong Kong, Singapore, Korea, Japan and any other countries that are included by Microsoft from time to time as set forth in the Xbox 360 Publisher Guide.

2.2 “**Asian Sales Territory**” means the territory for sales distribution comprising Taiwan, Hong Kong, Singapore, Korea, and any other countries that are included by Microsoft from time to time as set forth in the Xbox 360 Publisher Guide. The Asian Sales Territory does not include Japan.

2.3 “**Authorized Replicator**” means a software replicator certified and approved by Microsoft for replication of FPU’s (defined below) that run on the Xbox 360.

- 2.4 “**Branding Specifications**” means the specifications as provided by Microsoft from time to time for using the Licensed Trademarks in connection with a Software Title and/or Online Content and on Marketing Materials as set forth in the Xbox 360 Publisher Guide.
- 2.5 “**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 Xbox 360 Publisher Guide.
- 2.6 “**Certification**” means the final stage of the approval process by which Microsoft approves or disapproves of a Software Title or Online Content for manufacture and/or distribution. Certification is further defined in this Agreement and the Xbox 360 Publisher Guide.
- 2.7 “**Commercial Release**” with respect to a Software Title means the first commercial distribution of an FPU that is not designated as a Demo Version. With respect to Online Content, Commercial Release means its first availability via Xbox Live to Xbox Live Users.
- 2.8 “**Concept**” means the detailed description of Publisher’s proposed Software Title and/or Online Content in each case including such information as may be requested by Microsoft.
- 2.9 “**Demo Versions**” means a small portion of an applicable Software Title that is provided to end users to advertise or promote a Software Title.
- 2.10 “**European Sales Territory**” means the territory for sales distribution comprising the United Kingdom, France, Germany, Spain, Italy, Netherlands, Belgium, Sweden, Denmark, Norway, Finland, Austria, Switzerland, Ireland, Portugal, Greece, Australia, New Zealand and any other countries that are included by Microsoft from time to time as set forth in the Xbox 360 Publisher Guide.
- 2.11 “**European Manufacturing Region**” means the region for manufacturing comprising the United Kingdom, France, Germany, Spain, Italy, Netherlands, Belgium, Sweden, Denmark, Norway, Finland, Austria, Switzerland, Ireland, Portugal, Greece, Australia, New Zealand and any other countries that are included by Microsoft from time to time as set forth in the Xbox 360 Publisher Guide.
- 2.12 “**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 DVD disk and approved by Microsoft for release and manufacturing. Once the 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.
- 2.13 “**Japan Sales Territory**” means the territory for sales distribution comprising the country of Japan.
- 2.14 “**Licensed Trademarks**” means the Microsoft trademarks identified in the Xbox 360 Publisher Guide.
- 2.15 “**Marketing Materials**” collectively means the Packaging Materials and all press releases, marketing, advertising or promotional materials related to the Software Title, FPU(s) and/or Online Content (including without limitation Web advertising and Publisher’s Web pages to the extent they refer to the Software Title(s), FPU(s) and/or Online Content) that will be used and distributed by Publisher in the marketing of the Software Title(s), FPU(s) and/or Online Content.
- 2.16 “**Manufacturing Region**” means the Asian Manufacturing Region, European Manufacturing Region, and/or North American Manufacturing Region.
- 2.17 “**North American Sales Territory**” means the territory for sales distribution comprising the United States, Canada, Mexico, Colombia and any other countries that may be included by Microsoft from time to time as set forth in the Xbox 360 Publisher Guide.
- 2.18 “**North American Manufacturing Region**” means the region for manufacturing comprising the United States, Canada, Mexico, Colombia and any other countries that may be included by Microsoft from time to time as set forth in the Xbox 360 Publisher Guide.

2.19 **“Online Content”** means any content, feature, or access to software or online service that is distributed by Microsoft pursuant to this Agreement. Online Content includes, but is not limited to, Online Game Features, Title Updates, Demo Versions, trailers, “themes,” “gamer pictures” or any other category of online content or service approved by Microsoft from time to time. Trailers, “themes,” “gamer pictures” and any other approved Online Content will be further described in the Xbox 360 Publisher Guide.

2.20 **“Online Game Features”** means a Software Title’s content, features and/or services that are available to Xbox Live Users via Xbox Live, whether included in the Software Title’s FPU or otherwise distributed via Xbox Live.

2.21 **“Packaging Materials”** means art and mechanical formats for a Software Title including the retail packaging, end user instruction manual with end user license agreement and warranties, end user warnings, FPU media label, and any promotional inserts and other materials that are to be included in the retail packaging.

2.22 **“Pre-Certification”** means the first stage of the approval process wherein Microsoft tests to provide feedback and/or identify any issues that may prevent the Software Title from being approved during the Certification phase. Pre-Certification is further described in this Agreement and the Xbox 360 Publisher Guide.

2.23 **“Sales Territory”** means the Asian Sales Territory, European Sales Territory, Japan Sales Territory, and/or North American Sales Territory.

2.24 **“Software Title”** means the single software product as approved by Microsoft for use on Xbox 360, including any Title Updates thereto (if and to the extent approved by Microsoft) and all Online Game Features for such Software Title. If Microsoft approves one or more additional single software product(s) proposed by Publisher to run on Xbox 360, this Agreement, and the term “Software Title,” will be broadened automatically to cover the respective new software product(s) as additional Software Title(s) under this Agreement.

2.25 **“Subscriber”** means an Xbox Live User that establishes an account with Xbox Live.

2.26 **“Sub-Publisher”** means an entity that has a valid Xbox 360 publisher license agreement with Microsoft or a Microsoft affiliate and with whom Publisher has entered an agreement to allow such entity to publish a Software Title or Online Content in specific Sales Territories.

2.27 **“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 a particular Sales Territory. If the Suggested Retail Price of a particular Software Title varies among the countries in a single Sales Territory, then the highest Suggested Retail Price established for any of the countries will be used to determine the appropriate royalty fees for the entire Sales Territory.

2.28 **“Title Update”** means an update, upgrade, or technical fix to a Software Title that Xbox Live Users can automatically download to the Xbox Live User’s Xbox 360.

2.29 **“Wholesale Price”** means the highest per unit price that Publisher charges retailers and/or distributors in bona fide third party transactions for the right to distribute and sell the Software Title within a Sales Territory, it being agreed that (i) any transactions involving affiliates of Publisher (entities controlling, controlled by or under common control of, Publisher) are not to be considered in determining the Wholesale Price; (ii) if Publisher enters into an agreement with a third party (such as a Sub-Publisher) providing the third party with the exclusive right to distribute the Software Title in a Sales Territory, the Wholesale Price is governed by the price charged by the third party rather than the terms of the exclusive distribution agreement between Publisher and such third party; and (iii) if the Wholesale Price varies among countries in a single Sales Territory, the highest Wholesale Price used in the Sales Territory will be used to determine the appropriate royalty fees for the entire Sales Territory.

2.30 **“Xbox 360”** means the second version of Microsoft’s proprietary game system, successor to the Xbox game system, including operating system software and hardware design specifications.

2.31 **“Xbox 360 Publisher Guide”** means a document (in physical, electronic or Web site form) created by Microsoft that supplements this Agreement and provides detailed requirements regarding the Pre-Certification and Certification approval process, Branding Specifications, replication requirements, royalty payment process, marketing guidelines, technical specifications and certification requirements, Demo Version requirements, packaging requirements and other operational aspects of the Xbox 360 and Xbox Live. Microsoft may supplement, revise or update the Xbox 360 Publisher Guide from time to time in its reasonable discretion as set forth in this Agreement.

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

2.33 **“Xbox Live User”** means any individual that accesses and uses Xbox Live.

2.34 **Other Terms.** All other capitalized terms have the definitions set forth with the first use of such term as described in this Agreement.

### 3. Xbox 360 Development Kit License

Publisher shall enter into one or more development kit license(s) for the applicable territory(ies) to which Xbox 360 game development kits will be shipped for use by Publisher (each an “XDK License”) pursuant to which Microsoft or its affiliate may license to Publisher software development tools and hardware to assist Publisher in the development and testing of Software Titles, including redistributable code that Publisher must incorporate into Software Titles pursuant to the terms and conditions contained in the XDK License.

### 4. Approval Process

4.1.1 **Standard Approval Process.** The standard approval process for a Software Title is divided into four phases comprised of Concept approval, Pre-Certification, Certification, and Marketing Materials approval. Unless Publisher elects the EU Approval Option for a European FPU (described below), Publisher is required to submit its Software Title to Microsoft for evaluation at all four phases. Each phase is identified below and further described in the Xbox 360 Publisher Guide. Additional or alternate approval processes for Online Content may be further described in the Xbox 360 Publisher Guide. Microsoft shall not unreasonably withhold or delay its testing and/or approval under any of the four approval stages.

4.1.2 **Concept.** For each Software Title, Publisher shall deliver to Microsoft a completed Concept submission form (in the form provided by Microsoft to Publisher) that describes the Software Title. In the event that Publisher desires to host or have a third party host or provide to Xbox Live Users any of Publisher’s Online Game Features, Publisher shall so indicate on the Concept submission form and must execute an addendum to this Agreement, which addendum is available upon request and will be incorporated into this Agreement upon execution. Following evaluation of Publisher’s Concept submission, Microsoft will notify Publisher of whether the Concept is approved or rejected. If approved, the Concept submission form, in the form submitted and approved by Microsoft, is incorporated herein by reference and adherence to its terms is a requirement for Certification. Publisher may propose Online Content at any time after a Concept has been approved, in which case Publisher shall deliver to Microsoft a separate Concept submission for each proposed piece of Online Content.

4.1.3 **Pre-Certification.** If the Concept is approved, Publisher shall deliver to Microsoft a code-complete version of the Software Title or Online Content that includes all current features of the Software Title and such other content as may be required under the Xbox 360 Publisher Guide. Upon receipt, Microsoft shall conduct technical screen and/or other testing of the Software Title or Online Content consistent with the Xbox 360 Publisher Guide and will subsequently provide Publisher with advisory feedback regarding such testing.

4.1.4 **Certification.** Following Pre-Certification, Publisher shall deliver to Microsoft the proposed final release version of the applicable Software Title that is complete, ready for access via Xbox Live (if applicable), release, manufacture, and commercial distribution. Such version must include the final content rating certification required by Section 4.4, have identified program errors corrected, and have any and all changes previously required by Microsoft implemented. Microsoft shall conduct compliance, compatibility, functional and other testing consistent with the Xbox 360 Publisher Guide (“Certification Testing”) and shall subsequently provide Publisher with the results of such testing, including any required fixes required prior to achieving Certification. Release from Certification for a Software Title (and for Online Content as applicable) is based on (1) passing the Certification Testing; (2) conformance with the approved Concept and any required submission materials as stated in the Xbox 360 Publisher Guide; (3) Packaging Materials approval; (4) consistency with the goals and objectives of the Xbox 360 console platform and Xbox Live; and (5) continuing and ongoing compliance with all Certification requirements and other requirements as set forth in the Xbox 360 Publisher Guide and this Agreement, subject to Section 5 below.

**4.1.5 Marketing Materials Approval.** Publisher shall submit all Marketing Materials to Microsoft and shall not distribute such Marketing Materials unless and until Microsoft has approved them in writing. Prior to use or publication of any Marketing Materials, Publisher agrees to incorporate all changes relating to use of the Licensed Trademarks that Microsoft may request and will use its commercially reasonable efforts to incorporate other changes reasonably suggested by Microsoft (provided, however, that in any event Publisher shall at all times comply with the Branding Specifications).

**4.2 EU Approval Option.** For a Software Title that Publisher intends to distribute solely in the European Sales Territory (a “European FPU”), Publisher may choose to forego Concept approval (Section 4.1.1), Pre-Certification (Section 4.1.3) and/or Marketing Materials approval (Section 4.1.5) and submit such Software Title to Microsoft only for Certification approval. This option is referred to herein as the “EU Approval Option.” The EU Approval Option applies solely to distribution of European FPUs, and is not available for Online Content intended to be available in the European Sales Territory. If Publisher chooses the EU Approval Option, Publisher shall not use the Licensed Trademarks on the European FPU and the license grant set forth in Section 12.1 is withdrawn as to such European FPU. In addition, Publisher shall make no statements in advertising, marketing materials, packaging, Web sites or otherwise that the European FPU is approved or otherwise sanctioned by Microsoft or is an official Xbox 360 Software Title. The European FPU may not be distributed outside the European Sales Territory without complying with all terms of this Agreement concerning approvals and the release of the FPU as deemed relevant by Microsoft. Microsoft may provide additional information in the Xbox 360 Publisher Guide regarding the European Approval Option. Notwithstanding Publisher’s choice of the EU Approval Option, all other portions of this Agreement other than those specifically identified above shall remain in effect.

**4.3 Resubmissions and Additional Review.** If a Software Title or Online Content 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 or Online Content for Certification. Microsoft may charge Publisher a reasonable fee designed to offset the costs associated with testing upon resubmission. Publisher may request the ability to submit versions of the Software Title or Online Content at stages of development other than as identified above for review and feedback by Microsoft. Such review is within the discretion of Microsoft and may require the payment of reasonable fees by Publisher to offset the costs associated with the review of such Software Titles or Online Content.

**4.4 Content Rating.** For those Sales Territories that utilize a content rating system, Microsoft will not accept submission of a Software Title for Certification approval unless and until Publisher has obtained, at Publisher’s sole cost, a rating not higher than “Mature (17+)” or its equivalent from the appropriate rating bodies and/or any and all other independent content rating authority/authorities for the applicable Sales Territory(ies) reasonably designated by Microsoft (such as ESRB, ELSPA, CERO, *etc.*). Publisher shall include the applicable rating(s) prominently on FPUs and Marketing Materials, in accordance with the applicable rating body guidelines, and shall include the applicable rating in a header file of the Software Title and in Online Content, as described in the Xbox 360 Publisher Guide. For those Sales Territories that do not utilize a content rating system, Microsoft will not approve any Software Title or Online Content that, in its opinion, contains excessive sexual content or violence, inappropriate language or other elements deemed unsuitable for the Xbox 360 platform. If, after Commercial Release, a Software Title is determined as suitable for adults only or otherwise as indecent, obscene or otherwise prohibited by law, the Publisher shall at its own costs recall all FPUs. Publisher hereby represents and warrants that any Online Game Features and other game-related Online Content not included in the initial Software Title FPU will not be inconsistent with the content rating (or, in those countries that do not utilize a content rating system, with the overall nature of the content) of the underlying Software Title. Content rating information and requirements may be further described in the Xbox 360 Publisher Guide.

**4.5 Publisher Testing.** Publisher shall perform its own testing of the Software Title and FPUs and shall keep written or electronic records of such testing during the term of this Agreement and for no less than XXXX thereafter (“Test Records”). Upon Microsoft’s request, Publisher shall provide Microsoft with copies of, or reasonable access to inspect, the Test Records, FPUs and Software Title (either in pre-Commercial Release or Commercial Release versions, as Microsoft may request).

**4.6 Mutual Approval Required.** Publisher shall not distribute the Software Title, nor manufacture any FPU intended for distribution, unless and until Microsoft has given its final approval and release from Certification version of the Software Title and both parties have approved the FPU in writing.

#### 4.7 Title Updates

4.7.1 All Title Updates for Software Titles are subject to approval by Microsoft. Publisher may release one Title Update per Software Title free of charge. Any additional Title Updates proposed by Publisher may be subject to a reasonable charge.

4.7.2 Microsoft may require Publisher to develop and provide a Title Update if (a) a Software Title or Online Content adversely affects Xbox Live (b) if a change to the Xbox 360 Publisher Guide requires a Title Update, (c) if Certification is revoked for Online Content, or (d) for any other reason at Microsoft's reasonable discretion. Microsoft will not charge Publisher for the Certification, hosting, and distribution of Title Updates to Xbox Live Users for the first Title Update (if any) per Software Title or Online Content required by a specific change in the Xbox 360 Publisher Guide (which such first free Title Update shall be in addition to, and not in lieu of, the Title Update that may be released free of charge as per Section 4.7.1); provided that Microsoft will never charge Publisher for the Certification, hosting and distribution of Title Updates to Xbox Live Users for any Title Update required by Microsoft pursuant to clause (d) of the preceding sentence. Microsoft reserves the right to charge Publisher a reasonable fee to offset the costs associated with the Certification, hosting, and distribution of Title Updates to Xbox Live Users that are required because of revocation of Certification or a Software Title or Online Content adversely affecting Xbox Live.

### 5. Xbox 360 Publisher Guide

Publisher acknowledges that the Xbox 360 Publisher Guide is an evolving document and subject to change during the term of this Agreement. Publisher agrees to be bound by all provisions contained in the then-applicable version of the Xbox 360 Publisher Guide, unless otherwise provided in this Section 5. Publisher agrees that upon Publisher's receipt of notice of availability of the applicable supplement, revision, or updated version of the Xbox 360 Publisher Guide (which may be via a publisher newsletter or other electronic notification), Publisher automatically is bound by all provisions of the Xbox 360 Publisher Guide as supplemented, revised, or updated, unless otherwise provided in this Section 5. Publisher's continued distribution of FPUs after a notice of supplement, revision or update is included in the Xbox 360 Publisher Guide or made available to Publisher constitutes Publisher's agreement to the then-current Xbox 360 Publisher Guide as supplemented, revised or updated, unless otherwise provided in this Section 5. Microsoft will specify in each such supplement, revision or update a reasonable effective date of each change if such change is not required to be effective immediately. Anything contained herein to the contrary notwithstanding, only with respect to a Software Title that has passed Pre-Certification prior to the applicable revision or update, Publisher will not be obligated to comply with any changes made to the technical or content requirements for Software Titles in the Xbox 360 Publisher Guide, except in circumstances where (a) such change is deemed by Microsoft to be vitally important to the success of the Xbox 360 platform (e.g. changes due to piracy, technical failure) or (b) solely with respect to Software Titles that have passed Pre-Certification but not Certification, will not add significant expense to the Software Title's development. In addition, changes made in Branding Specifications or other Marketing Materials 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 and/or FPUs as are manufactured after Microsoft notifies Publisher of the change). Notwithstanding the foregoing, Publisher shall comply with such changes to the Xbox 360 Publisher Guide related to Branding Specifications or other Marketing Materials requirements retroactively only if Microsoft agrees to pay for Publisher's direct, out-of-pocket expenses necessarily incurred as a result of its retrospective compliance with the change.

### 6. Post-Release Compliance

**6.1 Correction of Bugs or Errors.** Notwithstanding Microsoft's Certification and subject to the provisions of Section 5 above, all Software Titles must remain in compliance with all Certification requirements and requirements set forth in the Xbox 360 Publisher Guide on a continuing and ongoing basis. Publisher must correct any material program bugs or errors in conformance with the Xbox 360 Publisher Guide whenever discovered and Publisher agrees to correct such material bugs and errors as soon as possible after discovery. With respect to such material bugs or errors discovered after Commercial Release of the applicable Software Title, Publisher will, at Microsoft's request or allowance, correct the bug or error in all FPUs manufactured after discovery and Microsoft may charge a reasonable amount to cover the costs of Certifying the Software Title again.

## 6.2 Online Content; Minimum Commitment

6.2.1 Publisher agrees that each Online Game Feature of a Software Title will be made available via Xbox Live for at least XXXX following the respective Commercial Release of the FPU of the Software Title in each Sales Territory in which Xbox Live is available (the "Minimum Commitment"). Publisher is obligated to provide all necessary support for such Online Game Feature during its availability and for XXXX after discontinuation. Following the Minimum Commitment period, Publisher may terminate Microsoft's license associated with such Online Game Feature upon XXXX prior written notice to Microsoft; and/or Microsoft may discontinue the availability of any or all such Online Game Feature via Xbox Live upon XXXX prior written notice to Publisher. Publisher is responsible for communicating the duration of Online Game Feature availability to Xbox Live Users, and for providing reasonable advance notice to Xbox Live Users of any discontinuation of such Online Game Feature.

6.2.2 Subject to Section 10.3, Publisher agrees that Microsoft has the right to make Online Content other than Online Games Features submitted by Publisher available to Xbox Live Users for the Term of this Agreement. Publisher agrees to provide all necessary support for such Online Content as long as such Online Content is made available to Xbox Live Users and for XXXX thereafter.

6.2.3 **Archive Copies.** Publisher agrees to maintain, and to possess the ability to support, copies in object code, source code and symbol format, of all Online Content available to Xbox Live Users during the term of this Agreement and for no less than XXXX thereafter.

## 7. Manufacturing

7.1 **Authorized Replicators.** Publisher will use only an Authorized Replicator to produce FPUs. Prior to placing an order with a replicator for FPUs, Publisher shall confirm with Microsoft that such entity is an Authorized Replicator. Microsoft will endeavor to keep an up-to-date list of Authorized Replicators in the Xbox 360 Publisher Guide. Publisher will notify Microsoft in writing of the identity of the applicable Authorized Replicator and the agreement for such replication services shall be as negotiated by Publisher and the applicable Authorized Replicator, subject to the requirements in this Agreement. Publisher acknowledges that Microsoft may charge the Authorized Replicator fees for rights, services or products associated with the manufacture of FPUs and that the agreement with the Authorized Replicator grants Microsoft the right to instruct the Authorized Replicator to cease the manufacture of FPU and/or prohibit the release of FPU to Publisher or its agents in the event Publisher is in breach of this Agreement or any credit arrangement entered into by Microsoft and Publisher or Publisher affiliates. Microsoft does not guarantee any level of performance by the Authorized Replicators, and Microsoft will have no liability to Publisher for any Authorized Replicator's failure to perform its obligations under any applicable agreement between Microsoft and such Authorized Replicator and/or between Publisher and such Authorized Replicator. Microsoft has no responsibility for ensuring that FPUs are free of all defects.

7.2 **Submissions to the 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 the manufacture of the FPUs including, without limitation, the Security Technology (as defined in Section 7.9 below). Publisher is responsible for preparing and delivering to the Authorized Replicator all other items required for manufacturing FPUs including approved Packaging Materials associated with the FPUs. Subject to the prior written approval of Publisher (which approval shall not be unreasonably withheld), Microsoft has the right to have include in the packaging of FPUs promotional materials for Xbox, Xbox 360, Xbox Live, and/or other Xbox or Xbox 360 products or services as Microsoft may determine in its reasonable discretion. Microsoft will be responsible for delivering to the Authorized Replicator all such promotional materials as it desires to include with FPUs, and, unless otherwise agreed by the parties, any incremental insertion costs relating to such marketing materials will be borne by Microsoft.

7.3 **Verification Versions.** Publisher shall cause the Authorized Replicator to create several test versions of each FPU ("Verification Version(s)") that will be provided to both Microsoft and Publisher for evaluation. Prior to full manufacture of a FPU by the Authorized Replicator, both Publisher and Microsoft must approve the applicable Verification Version. Throughout the manufacturing process and upon the request of Microsoft, Publisher shall cause the Authorized Replicator to provide additional Verification Versions of the FPU for evaluation by Microsoft. Microsoft's approval is a condition precedent to manufacture, however Publisher shall grant the final approval and shall 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.

**7.4 Samples.** For each Software Title sku, at Publisher’s cost, Publisher shall provide Microsoft with XXXX FPU’s and accompanying Marketing Materials per Sales Territory in which the FPU will be released. Such units may be used in marketing, as product samples, for customer support, testing and for archival purposes. Publisher will not have to pay a royalty fee for such samples nor will such samples count towards the Unit Discounts under Exhibit 1.

**7.5 Minimum Order Quantities**

7.5.1 Within XXXX after the date on which both Microsoft and Publisher have authorized the Authorized Replicator to begin replication of FPU’s for distribution to a specified Sales Territory, (receipt of both approvals is referred to as “Release to Manufacture”), Publisher must place orders to manufacture the minimum order quantities (“MOQs”) as described in the Xbox 360 Publisher Guide. Microsoft may update and revise the MOQs XXXX which will be effective starting the following XXXX. Currently, the MOQs are as follows:

	XXXX	XXXX
XXXX	XXXX	XXXX
XXXX	XXXX	XXXX
XXXX	XXXX	XXXX
XXXX	XXXX	XXXX

7.5.2 For the purposes of this section, a “Disc” shall mean an FPU that is signed for use on a certain defined range of Xbox 360 hardware, regardless of the number of languages or product skus contained thereon. The MOQs per Software Title are cumulative per Sales Territory. For example, if an FPU is released in both the North American Sales Territory and the European Sales Territory, the cumulative MOQ per Software Title would be XXXX . The MOQ per Software Title and the MOQ per Disc, however, are not cumulative. For example, a single Disc FPU released only in the North America Sales Territory will have a total minimum order quantity of XXXX , which would cover the XXXX MOQ per Software Title and the XXXX MOQ per Disc (rather than XXXX which would have been the total minimum order quantity if the MOQ per Software Title and the MOQ per Disc had been cumulative).

7.5.3 If Publisher fails to place orders to meet any applicable minimum order quantity within XXXX of Release to Manufacture, Publisher shall immediately pay Microsoft the applicable royalty fee for the number of FPU’s represented by the difference between the applicable MOQ and the number of FPU’s of the Software Title actually ordered by Publisher.

**7.6 Manufacturing Reports.** Subject to any limitations and/or restrictions imposed by applicable law (including, without limitation, federal and state securities laws), for purposes of assisting in the scheduling of manufacturing resources, on a XXXX basis, or as otherwise requested by Microsoft in its reasonable discretion, Publisher shall use its commercially reasonable efforts to provide Microsoft with forecasts showing manufacturing projections by Sales Territory XXXX out for each Software Title. Publisher will use commercially reasonable efforts to cause the Authorized Replicator to deliver to Microsoft true and accurate XXXX statements of FPU’s manufactured in each XXXX, on a Software Title-by-Software Title basis and in sufficient detail to satisfy Microsoft, XXXX .

**7.7 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 intellectual property and trade secrets, and procedures to protect Microsoft’s intellectual property and trade secrets. 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, and that the certification and approval process may be time-consuming.

**7.8 Alternate Manufacturing in Europe.** Publisher may, solely with respect to FPU’s manufactured for distribution in the European Sales Territory, 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.



**7.9 Security.** Microsoft has the right to add to the final release version of the Software Title delivered by Publisher to Microsoft, and to all FPU, such digital signature technology and other security technology and copyright management information (collectively, "Security Technology") as Microsoft may determine to be necessary, and/or Microsoft may modify the signature included in any Security Technology included in the Software Title by Publisher at Microsoft's discretion. Additionally, Microsoft may add Security Technology that prohibits the play of Software Titles on Xbox 360 units manufactured in a region or country different from the location of manufacture of the respective FPU or that have been modified in any manner not authorized by Microsoft.

**7.10 Demo Versions.** If Publisher wishes to distribute a Demo Version in FPU format, Publisher must obtain Microsoft's prior written approval and Microsoft may charge a reasonable fee to offset costs of the Certification. Subject to the terms of the Xbox 360 Publisher Guide, such Demo Version(s) may be placed on a single disc, either as a stand-alone or with other Demo Versions and the price of such units must be XXXX or its equivalent in local currency. Unless separately addressed in the Xbox 360 Publisher Guide, all rights, obligations and approvals set forth in this Agreement as applying to Software Titles shall separately apply to any Demo Version. XXXX If Publishers wishes to distribute a Demo Versions in an online downloadable format, such downloadable Demo Version shall be distributed via Microsoft Xbox Live in accordance with Section 10.3, and such downloadable Demo Version will be subject to all other terms and policies applicable to Online Content set forth herein and in the Xbox 360 Publisher Guide.

## **8. Payments**

The Parties shall make payments to each other under the terms of Exhibit 1.

## **9. Marketing, Sales and Support**

**9.1 Publisher Responsible.** As between Microsoft and Publisher, Publisher is solely responsible for the marketing and sales of the Software Title. Publisher is also solely responsible for providing technical and all other support relating to the FPU (including for Xbox Live Users of Online Content). Publisher shall provide all appropriate contact information (including without limitation Publisher's address and telephone number, and the applicable individual/group responsible for customer support), and shall also provide all such information to Microsoft for posting on <http://www.xbox.com>, or such successor or related Web site identified by Microsoft or in Xbox Live. Customer support shall at all times conform to the Customer Service Requirements set forth in the Xbox 360 Publisher Guide and industry standards in the console game industry.

**9.2 Warranty.** Publisher shall provide the original end user of any FPU a minimum warranty in accordance with local laws and industry practices. For example, in the United States, Publisher shall, as of the Effective Date, provide a minimum XXXX limited warranty that the FPU will perform in accordance with its user documentation or Publisher will provide a replacement FPU at no charge. Publisher may offer additional warranty coverage consistent with the traditions and practices of video game console game publishers within the applicable Sales Territory or as otherwise required by local law.

**9.3 Recall.** Notwithstanding anything to the contrary contained in this Agreement, if there is a material defect in a Software Title and/or any FPU, which defect in the reasonable judgment of Microsoft would significantly impair the ability of an end user to play such Software Title or FPU or would materially and adversely affect the gameplay of the Xbox 360 or Xbox Live, Microsoft may require Publisher to undertake prompt repair or replacement of such Software Title and/or FPU and, if Publisher is not able to repair or replace such defective Software Title and/or FPU within a reasonable time after exercising its best efforts to do the same, then Microsoft may require Publisher to recall such defective Software and/or FPU.

**9.4 No Bundling with Unapproved Peripherals, Products or Software.** Except as expressly stated in this section, Publisher shall not market or distribute a FPU bundled with any other product or service, nor shall Publisher knowingly permit or assist any third party in such bundling, without Microsoft's prior written consent. Publisher may market or distribute (i) FPU bundled with a Software Title(s) that has been previously certified and released by Microsoft for manufacturing; or (ii) FPU bundled with a peripheral product (e.g. game pads) that has been previously licensed as an "Xbox 360 Licensed Peripheral" by Microsoft, without obtaining the written permission of Microsoft. Publisher shall contact Microsoft in advance to confirm that the peripheral or Software Title to be bundled has previously been approved by Microsoft pursuant to a valid license.

**9.5 Software Title License.** Publisher grants Microsoft a fully-paid, royalty-free, worldwide, non-exclusive license (in each case subject to Publisher's prior written approval) (i) to publicly perform the Software Titles at conventions, events, trade shows, press briefings, public interactive displays and the like; (ii) to use the title of the Software Title, and screen shots from the Software Title, in advertising and promotional material relating to Xbox 360 and related Microsoft products and services, as Microsoft may reasonably deem appropriate; (iii) distribute Demo Versions with the *Official Xbox Magazine*, as a standalone product with other demo software; and (iv) distribute Software Title trailers via xbox.com. Publisher may also select Online Content for inclusion in public interactive displays and/or compilation demo discs published by Microsoft (subject to Publisher's prior written approval), in which case Publisher grants Microsoft a fully-paid, royalty-free, worldwide, transferable, sublicenseable license to broadcast, transmit, distribute, host, publicly display, reproduce and manufacture such selected Online Content as part of public interactive displays and compilation demo discs, and to distribute and permit end users to download and store (and, at Publisher's discretion, to make further copies) such Online Content via public interactive displays. The rights granted in the preceding sentence are in addition to any rights that Microsoft may have for uses of Publisher Software Titles under the applicable law, such as uses that are "referential," "fair use" or "reasonable use."

## **10. Grant of Distribution License, Limitations**

**10.1 Distribution License.** Upon Certification of the Software Title, approval of the Marketing Materials and the FPU test version of the Software Title by Microsoft, and subject to the terms and conditions contained within this Agreement, Microsoft grants Publisher a non-exclusive, non-transferable, license to market, sell and distribute FPUs containing Redistributable and Sample Code (as defined in the XDK License) and Security Technology (as defined above) within the Sales Territories approved in the Software Title's Concept in FPU form to third parties for distribution to end users and/or directly to end users. The license to distribute the FPUs is personal to Publisher and except for transfers of FPU through normal channels of distribution (e.g. wholesalers, retailers), absent the written approval of Microsoft, Publisher may not sublicense or assign its rights under this license to other parties. For the avoidance of doubt, without the written approval of Microsoft, Publisher may not sublicense, transfer or assign its right to distribute Software Titles or FPU to another entity that will brand, co-brand or otherwise assume control over such products as a "publisher" as that concept is typically understood in the console game industry. Publisher may only grant end users the right to make personal, non-commercial use of Software Titles and may not grant end users any of the other rights reserved to a copyright holder under US Copyright Law, Japanese Copyright Law, or its international equivalent. Publisher's license rights do not include any license, right, power or authority to subject Microsoft's software or derivative works thereof or intellectual property associated therewith in whole or in part to any of the terms of an Excluded License. "Excluded License" means any license that requires as a condition of use, modification and/or distribution of software subject to the Excluded License, that such software or other software combined and/or distributed with such software be (a) disclosed or distributed in source code form; (b) licensed for the purpose of making derivative works; or (c) redistributable at no charge.

**10.2 No Distribution Outside the Sales Territory.** Publisher shall distribute FPUs only in Sales Territories for which the Software Title has been approved by Microsoft. Publisher shall not directly or indirectly export any FPUs from an authorized Sales Territory to an unauthorized territory nor shall Publisher knowingly permit or assist any third party in doing so, nor shall Publisher distribute FPUs to any person or entity that it has reason to believe may re-distribute or sell such FPUs outside authorized Sales Territories.

**10.3 Online Features.** In consideration of the royalty payments as described in [Exhibit 1](#), Publisher grants to Microsoft (i) a worldwide, transferable, sublicenseable license to broadcast, transmit, distribute, host, publicly display, reproduce, and license Online Content for use on Xbox 360s, and (ii) a worldwide, transferable license solely to distribute to end users and permit end users to download and store Online Content (and, at Publisher's discretion, to make further copies). Publisher agrees that the license grants set forth in this section applicable to Online Content are exclusive, meaning that except as expressly permitted under this Agreement, the Xbox 360 Publisher Guide and/or as agreed by the Parties, Publisher shall not directly or indirectly permit or enable access to Online Content by any means, methods, platforms or services other than through Xbox Live, or as otherwise set forth in this Agreement. Notwithstanding the foregoing, this Section 10.3 does not prevent Publisher from making other platform versions of its Software Titles or Online Content available via other platform-specific online services. This Section 10.3 shall survive expiration or termination of this Agreement solely to the extent and for the duration necessary to effectuate Section 17.3 below.

**10.4 No Reverse Engineering.** Publisher may utilize and study the design, performance and operation of Xbox 360 or Xbox Live solely for the purposes of developing the Software Title or Online Content. Notwithstanding the foregoing, Publisher shall not, directly or indirectly, reverse engineer or aid or assist in the reverse engineering of all or any part of Xbox 360 or Xbox Live except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation. In the event applicable law grants Publisher the right to reverse engineer the Xbox 360 or Xbox Live notwithstanding this limitation, Publisher shall provide Microsoft with written notice prior to such reverse engineering activity, information regarding Publisher's intended method of reverse engineering, its purpose and the legal authority for such activity and shall afford Microsoft a reasonable period of time before initiating such activity in order to evaluate the activity and/or challenge the reverse engineering activity with the appropriate legal authorities. Publisher shall refrain from such reverse engineering activity until such time as any legal challenge is resolved in Publisher's favor. Reverse engineering includes, without limitation, decompiling, disassembly, sniffing, peeling semiconductor components, or otherwise deriving source code. In addition to any other rights and remedies that Microsoft may have under the circumstances, Publisher shall be required in all cases to pay royalties to Microsoft in accordance with and [Exhibit 1](#) with respect to any games or other products that are developed, marketed or distributed by Publisher, and derived in whole or in part from the reverse engineering of Xbox 360, Xbox Live or any Microsoft data, code or other material.

**10.5 Reservation of Rights.** Microsoft reserves all rights not explicitly granted herein.

**10.6 Ownership of the Software Titles.** Except for the intellectual property supplied by Microsoft to Publisher (including without limitation the Licensed Trademarks hereunder and the licenses in certain software and hardware granted by an XDK License), ownership of which is retained by Microsoft, insofar as Microsoft is concerned, Publisher will own all rights in and to the Software Titles and Online Content.

**10.7 Sub-Publishing.** Notwithstanding Section 10.1, Publisher may enter into independent agreements with other publishers to distribute Software Titles in multiple approved Sales Territories (a "Sub-Publishing Relationship"), so long as:

10.7.1 Publisher provides written notice to Microsoft, at least XXXX prior to authorizing a Sub-Publisher to manufacture any Software Title(s), of the Sub-Publishing relationship, along with (i) a summary of the scope and nature of the Sub-Publishing relationship including, without limitation, as between Publisher and Sub-Publisher, (ii) which party will be responsible for Certification of the Software Title(s) and/or any Online Content, (iii) a list of the Software Title(s) for which Sub-Publisher has acquired publishing rights, (iv) the geographic territory(ies) for which such rights were granted, and (v) the term of Publisher's agreement with Sub-Publisher; and

10.7.2 The Sub-Publisher has signed an Xbox 360 publisher license agreement ("Xbox 360 PLA") and both Publisher and Sub-Publisher are and remain at all times in good standing under each of their respective Xbox 360 PLAs. Publisher is responsible for making applicable royalty payments for the FPU's for which it places manufacturing orders, and Sub-Publisher is responsible for making royalty payments for the FPU's for which it places manufacturing orders.

**10.8 Authorized Affiliates.** If Publisher and an affiliate execute the "Publisher Affiliate Agreement" provided in [Exhibit 4](#), then Publisher's authorized affiliate may exercise the rights granted to Publisher under this Agreement. The foregoing shall not apply to any Publisher affiliate which pays or intends to pay royalties from a European billing address. Any such European affiliate shall instead execute an Xbox 360 Publisher Enrollment with MIOL, a copy of which is attached hereto as [Exhibit 3](#).

## **11. Usage Data**

Publisher acknowledges that the operation of the Xbox Live service requires that Microsoft collect and store Xbox Live User usage data, including, without limitation, Xbox Live User 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 reserves the right, in its discretion, to use such Xbox Live User Data for any purpose, including without limitation, posting the Xbox Live User Data on Xbox.com or other Microsoft Web sites. Microsoft agrees to use commercially reasonable efforts to periodically make certain Xbox Live User Data and Personal Data available to Publisher; provided that Publisher's use of such data is in accordance with the then-current Xbox Live Privacy Statement and such other reasonable restrictions as Microsoft may require. Without limiting the foregoing, Publisher agrees that any disclosure of Personal Data to Publisher is only used by Publisher and may not be shared with any other third parties, and any permitted email communications with Xbox Live Users includes instructions for opting out of receiving any further communications from Publisher.

## 12. Trademark Rights and Restrictions

12.1 **Licensed Trademarks License.** In each Software Title, FPU, Online Content and on all Marketing Materials, Publisher shall incorporate the Licensed Trademarks and include credit and acknowledgement to Microsoft as set forth in the Xbox 360 Publisher Guide in effect at the time of Certification of such Software Title, FPU or Online Content or approval of such Marketing Materials. Microsoft grants to Publisher a non-exclusive, non-transferable, personal license to use the Licensed Trademarks in connection with Software Titles, FPUs, Online Content and Marketing Materials according to the Xbox 360 Publisher Guide and other conditions herein, and solely in connection with marketing, sale, and distribution in the approved Sales Territories or via Xbox Live.

12.2 **Limitations.** Publisher is granted no right, and shall not purport, to permit any third party to use the Licensed Trademarks in any manner without Microsoft's prior written consent. Publisher's license to use Licensed Trademarks in connection with the Software Title, FPUs and/or Online Content does not extend to the merchandising or sale of related or promotional products.

12.3 **Branding Specifications.** Publisher's use of the Licensed Trademarks (including without limitation in FPUs, Online Content and Marketing Materials) must comply with the Branding Specifications set forth in the Xbox 360 Publisher Guide, subject to the provisions of Section 5 hereof. Publisher shall not use Licensed Trademarks in association with any third party trademarks in a manner that might suggest co-branding or otherwise create potential confusion as to source or sponsorship of the Software Title, Online Content or FPUs or ownership of the Licensed Trademarks, unless Microsoft has otherwise approved such use in writing. Upon notice or other discovery of any non-conformance with the requirements or prohibitions of this section, Publisher shall promptly remedy such non-conformance and notify Microsoft of the non-conformance and remedial steps taken.

12.4 **Protection of Licensed Trademarks.** Publisher shall assist Microsoft in protecting and maintaining Microsoft's rights in the Licensed Trademarks, including preparation and execution of documents necessary to register the Licensed Trademarks or record this Agreement, and giving immediate notice to Microsoft of potential infringement of the Licensed Trademarks. Microsoft shall have the sole right to and in its sole discretion may, commence, prosecute or defend, and control any action concerning the Licensed Trademarks, either in its own name or by joining Publisher as a party thereto. Publisher shall not during the term of this Agreement contest the validity of, by act or omission jeopardize, or take any action inconsistent with, Microsoft's rights or goodwill in the Licensed Trademarks in any country, including attempted registration of any Licensed Trademark, or use or attempted registration of any mark confusingly similar thereto.

12.5 **Ownership and Goodwill.** Publisher acknowledges Microsoft's ownership of all Licensed Trademarks, and all goodwill associated with the Licensed Trademarks. Use of the Licensed Trademarks shall not create any right, title or interest therein in Publisher's favor. Publisher's use of the Licensed Trademarks shall inure solely to the benefit of Microsoft.

## 13. Non-Disclosure; Announcements

13.1 **Non-Disclosure Agreement.** The information, materials and software exchanged by the parties hereunder or under an XDK License, including the terms and conditions hereof and of the XDK License, are subject to the Non-Disclosure Agreement between the parties attached hereto as Exhibit 5 (the "Non-Disclosure Agreement"), which is incorporated herein by reference; provided, however, that for purposes of the foregoing, Section 2(a)(i) of the Non-Disclosure Agreement shall hereinafter read, "The Receiving Party shall: (i) Refrain from disclosing Confidential Information of the Disclosing Party to any third parties for as long as such remains undisclosed under 1(b) above except as expressly provided in Sections 2(b) and 2(c) of this [Non-Disclosure] Agreement." In this way, all Confidential Information provided hereunder or by way of the XDK License in whatever form (e.g. information, materials, tools and/or software exchanged by the parties hereunder or under an XDK License), including the terms and conditions hereof and of the XDK License, unless otherwise specifically stated, will be protected from disclosure for as long as it remains Confidential.

13.2 **Public Announcements.** Neither party shall issue any such press release or make any such public announcement(s) related to the subject matter of this Agreement or any XDK License without the express prior consent of the other party, which consent will not be unreasonably withheld or delayed. Nothing contained in this Section 13.2 will relieve Publisher of any other obligations it may have under this Agreement, including without limitation its obligations to seek and obtain Microsoft approval of Marketing Materials.

13.3 **Required Public Filings.** Notwithstanding Sections 13.1 and 13.2, the parties acknowledge that this Agreement, or portions thereof, may be required under applicable law to be disclosed, as part of or an exhibit to a party's required public disclosure documents. If either party is advised by its legal counsel that such disclosure is required, it will notify the other in writing and the parties will jointly seek confidential treatment of this Agreement to the maximum extent reasonably possible, in documents approved by both parties and filed with the applicable governmental or regulatory authorities, and/or Microsoft will prepare a redacted version of this Agreement for filing.

#### 14. **Protection of Proprietary Rights**

14.1 **Microsoft Intellectual Property.** If Publisher learns of any infringement or imitation of the Licensed Trademarks, a Software Title, Online Content or FPU, or the proprietary rights in or related to any of them, it will promptly notify Microsoft thereof. Microsoft may take such action as it deems advisable for the protection of its rights in and to such proprietary rights, and Publisher shall, if requested by Microsoft, cooperate in all reasonable respects therein at Microsoft's expense. In no event, however, shall Microsoft be required to take any action if it deems it inadvisable to do so. Microsoft will have the right to retain all proceeds it may derive from any recovery in connection with such actions.

14.2 **Publisher Intellectual Property.** Publisher, without the express written permission of Microsoft, may bring any action or proceeding relating to infringement or potential infringement of a Software Title, Online Content or FPU, to the extent such infringement involves any proprietary rights of Publisher (provided that Publisher will not have the right to bring any such action or proceeding involving Microsoft's intellectual property). Publisher shall make reasonable efforts to inform Microsoft regarding such actions in a timely manner. Publisher will have the right to retain all proceeds it may derive from any recovery in connection with such actions. Publisher agrees to use all commercially reasonable efforts to protect and enforce its proprietary rights in the Software Title or Online Content.

14.3 **Joint Actions.** Publisher and Microsoft may agree to jointly pursue cases of infringement involving the Software Titles or Online Content (since such products will contain intellectual property owned by each of them). Unless the parties otherwise agree, or unless the recovery is expressly allocated between them by the court (in which case the terms of Sections 14.1 and 14.2 will apply), in the event Publisher and Microsoft jointly prosecute an infringement lawsuit under this provision, any recovery will be used first to reimburse Publisher and Microsoft for their respective reasonable attorneys' fees and expenses, *pro rata*, and any remaining recovery shall also be given to Publisher and Microsoft *pro rata* based upon the fees and expenses incurred in bringing such action.

#### 15. **Warranties**

15.1 **Publisher.** Publisher warrants and represents that:

15.1.1 It has the full power to enter into this Agreement;

15.1.2 It has obtained and will maintain all necessary rights and permissions for its and Microsoft's use of the Software Title, FPUs, Marketing Materials, Online Content, all information, data, logos, and software or other materials provided to Microsoft and/or made available to Xbox Live Users via Xbox Live (excluding those portions that consist of the Licensed Trademarks, Security Technology and redistributable components of the so-called "XDK" in the form as delivered to Publisher by Microsoft pursuant to an XDK License) (collectively, the "Publisher Content"), and that all Publisher Content complies with all laws and regulations, and does not and will not infringe upon or misappropriate any third party trade secrets, copyrights, trademarks, patents, publicity, privacy or other proprietary rights.

15.1.3 It shall comply with all laws, regulations, industry content rating requirements and administrative orders and requirements within any applicable Sales Territory relating to the distribution, sale and marketing of the Software Title, and shall keep in force all required and necessary licenses, permits, registrations, approvals and/or exemptions throughout the term of this Agreement and for so long as it is distributing, selling or marketing the Software Title in any applicable Sales Territory.

15.1.4 The Software Title, Online Content and/or information, data, logos and software or other materials provided to Microsoft and /or made available to Xbox Live Users via Xbox Live, do not and shall not contain any messages, data, images or programs that are, by law, defamatory, obscene or pornographic, or in any way violate any applicable laws or industry content rating requirements (including without limitation laws of privacy) of the applicable Sales Territory(ies) where the Software Title is marketed and/or distributed.

15.1.5 The Online Content shall not harvest or otherwise collect information about Xbox Live Users, including e-mail addresses, without the Xbox Live Users' express consent; and the Online Content shall not link to any unsolicited communication sent to any third party.

15.2 **Microsoft.** Microsoft warrants and represents that it has the full power to enter into this Agreement and it has not previously and will not grant any rights to any third party that are inconsistent with the rights granted to Publisher herein.

**15.3 DISCLAIMER. EXCEPT AS EXPRESSLY STATED IN THIS SECTION 15, MICROSOFT PROVIDES ALL MATERIALS (INCLUDING WITHOUT LIMITATION THE SECURITY TECHNOLOGY) AND SERVICES HEREUNDER ON AN "AS IS" BASIS, AND MICROSOFT DISCLAIMS ALL OTHER WARRANTIES UNDER THE APPLICABLE LAWS OF ANY COUNTRY, EXPRESS OR IMPLIED, REGARDING THE MATERIALS AND SERVICES IT PROVIDES HEREUNDER, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTY OF FREEDOM FROM COMPUTER VIRUSES. WITHOUT LIMITATION, MICROSOFT PROVIDES NO WARRANTY OF NON-INFRINGEMENT.**

**15.4 EXCLUSION OF INCIDENTAL, CONSEQUENTIAL AND CERTAIN OTHER DAMAGES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL MICROSOFT, ITSAFFILIATES, LICENSORS OR ITSSUPPLIERS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND OR NATURE WHATSOEVER, RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY, INCLUDING WITHOUT LIMITATION, 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 SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE OR IF SUCH DAMAGE COULD HAVE BEEN REASONABLY FORESEEN.**

**15.5 LIMITATION OF LIABILITY. THE MAXIMUM LIABILITY OF MICROSOFT TO PUBLISHER OR TO ANY THIRD PARTY ARISING OUT OF THIS AGREEMENT WILL BE XXXX. FURTHERMORE, UNDER NO CIRCUMSTANCES SHALL MICROSOFT BE LIABLE TO PUBLISHER FOR ANY DAMAGES WHATSOEVER WITH RESPECT TO ANY CLAIMS RELATING TO THE SECURITY TECHNOLOGY AND/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 ONLINE FEATURES.**

16. **Indemnity; Insurance.** A claim for which indemnity may be sought hereunder is referred to as a "Claim."

16.1 **Mutual Indemnification.** Each party hereby agrees to indemnify, defend, and hold the other party harmless from any and all third party claims, demands, costs, liabilities, losses, expenses and damages (including reasonable attorneys' fees, costs, and expert witnesses' fees) arising out of or in connection with any claim that, taking the claimant's allegations to be true, would result in a breach by the indemnifying party of any of its representations, warranties or covenants set forth in Section 15.

16.2 **Additional Publisher Indemnification Obligation.** Publisher further agrees to indemnify, defend, and hold Microsoft harmless from any and all third party claims, demands, costs, liabilities, losses, expenses and damages (including reasonable attorneys' fees, costs, and expert witnesses' fees) arising out of or in connection with any claim regarding any Software Title or FPU including without limitation any claim relating to quality, performance, safety thereof, or arising out of Publisher's use of the Licensed Trademarks in breach of this Agreement.

16.3 **Notice and Assistance.** The indemnified party shall: (i) provide the indemnifying party reasonably prompt notice in writing of any Claim and permit the indemnifying party to answer and defend such Claim through counsel chosen and paid by the indemnifying party; and (ii) provide information, assistance and authority to help the indemnifying party defend such Claim. The indemnified party may participate in the defense of any Claim at its own expense. The indemnifying party will not be responsible for any settlement made by the indemnified party without the indemnifying party's written permission, which will not be unreasonably withheld or delayed. In the event the indemnifying party and the indemnified party agree to settle a Claim, the indemnified party agrees not to publicize the settlement without first obtaining the indemnifying party's written permission.

16.4 **Insurance.** 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 XXXX on a per occurrence or per incident basis. Coverage provided to Microsoft under the policy shall be primary to and not contributory with any insurance maintained by Microsoft. Upon request, Publisher agrees to furnish copies of the additional insured endorsement and/or a certificate of insurance evidencing compliance with this requirement.

## 17. Term and Termination

17.1 **Term.** The term of this Agreement shall commence on the Effective Date and shall continue until three (3) years after such date that the Xbox 360 is first commercially released by Microsoft in the United States. Unless one party gives the other notice of non-renewal within XXXX of the end of the then-current term, this Agreement shall automatically renew for successive one-year terms.

17.2 **Termination for Breach.** If either party materially fails to perform or comply with this Agreement or any provision thereof, and fails to remedy the default within XXXX after the receipt of notice to that effect, then the other party has the right, at its sole option and upon written notice to the defaulting party, to terminate this Agreement upon written notice; provided that if Publisher is the party that has materially failed to perform or comply with this Agreement, then Microsoft has the right, but not the obligation, to suspend availability of the Online Content during such XXXX period. Any notice of default hereunder must be prominently labeled "NOTICE OF DEFAULT"; provided, however, that if the default is of Sections 10, 12 or Sections 1 or 2 of Exhibit 1, the Non-Disclosure Agreement, or an XDK License, then the non-defaulting party may terminate this Agreement immediately upon written notice, without being obligated to provide a XXXX cure period. The rights and remedies provided in this section are not exclusive and are in addition to any other rights and remedies provided by law or this Agreement. If the uncured default is related to a particular Software Title or particular Online Content, then the party not in default has the right, in its discretion, to terminate this Agreement its entirety or with respect to the applicable Software Title or the particular Online Content. If Microsoft reasonably determines, at any time prior to the Commercial Release of a Software Title or Online Content, that such Software Title or Online Content does not materially comply with the requirements set forth in the applicable Xbox 360 Publisher Guide then in effect or to any applicable laws, then Microsoft has the right, in Microsoft's sole discretion and notwithstanding any prior approvals given by Microsoft, to terminate this Agreement without cost or penalty, as a whole or on a Software Title by Software Title, or Sales Territory by Sales Territory basis upon written notice to Publisher with respect to such Software Title or Sales Territory.

17.3 **Effect of Termination; Sell-off Rights.** Upon termination or expiration of this Agreement, Publisher has no further right to exercise the rights licensed hereunder or within the XDK License and shall promptly cease all manufacturing of FPU through its Authorized Replicators and, other than as provided below, cease use of the Licensed Trademarks. Publisher shall have a period of XXXX, to sell-off its inventory of FPUs existing as of the date of termination or expiration, after which sell-off period Publisher shall immediately return all FPUs to an Authorized Replicator for destruction. Publisher shall cause the Authorized Replicator to destroy all FPUs and issue to Microsoft written certification by an authorized representative of the Authorized Replicator confirming the destruction of FPUs required hereunder. All of Publisher's obligations under this Agreement shall continue to apply during such XXXX sell-off period. If this Agreement is terminated due to Publisher's breach, at Microsoft's option, Microsoft may require Publisher to immediately destroy all 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. Upon termination or expiration of this Agreement, Publisher shall continue to support existing Online Game Features for FPUs that have already been sold until the end of the Minimum Commitment term.

17.4 **Cross-Default.** If Microsoft has the right to terminate this Agreement, then Microsoft may, at its sole discretion also terminate the XDK License. If Microsoft terminates the XDK License due to a breach by Publisher, then Microsoft may, at its sole discretion also terminate this Agreement.

17.5 **Survival.** The following provisions shall survive expiration or termination of this Agreement: Sections 2, 6.2.2 (as to the Minimum Commitment), 6.2.3, 8 and Sections 1, 2 and 5 of Exhibit 1, 9.1, 9.2, 9.3, 10.3, 10.4, 11, 13.1, 14, 15, 16, 17.3, 17.5 and 18.

## 18. General

18.1 **Governing Law; Venue; Attorneys Fees.** This Agreement is to be construed and controlled by the laws of the State of Washington, U.S.A., and Publisher consents to exclusive jurisdiction and venue in the federal courts sitting in King County, Washington, U.S.A., unless no federal jurisdiction exists, in which case Publisher consents to exclusive jurisdiction and venue in the Superior Court of King County, Washington, U.S.A. Publisher waives all defenses of lack of personal jurisdiction and forum non conveniens. Process may be served on either party in the manner authorized by applicable law or court rule. The English version of this Agreement is determinative over any translations thereof. If either party employs attorneys to enforce any rights arising out of or relating to this Agreement, the prevailing party is entitled to recover its reasonable attorneys' fees, costs and other expenses. This choice of jurisdiction provision does not prevent Microsoft from seeking injunctive relief with respect to a violation of intellectual property rights or confidentiality obligations in any appropriate jurisdiction.

18.2 **Notices; Requests.** All notices and requests in connection with this Agreement are deemed given on the XXXX after they are deposited in the applicable country's mail system XXXX, postage prepaid, certified or registered, return receipt requested; or XXXX sent by overnight courier, charges prepaid, with a confirming fax; and addressed as follows:

Publisher:  
Take-Two Interactive Software, Inc.  
622 Broadway, 6<sup>th</sup> Floor  
New York, NY 10012

Microsoft:  
MICROSOFT LICENSING,GP  
6100 Neil Road, Suite 100  
Reno, NV 89511-1137

Attention: Paul Eibeler, President and CEO  
Fax: (646) 536-2928  
Phone: (646) 536 3010  
Email: paul.eibeler@take2games.com

Attention: Xbox Accounting Services, with a cc to:  
MICROSOFT CORPORATION  
One Microsoft Way  
Redmond, WA 98052-6399  
Attention: Law & Corporate Affairs Department  
Assoc. General Counsel, Consumer Legal Group (H&ED)  
Fax: (425) 936-7329

or to such other address as the party to receive the notice or request so designates by written notice to the other.

18.3 **No Delay or Waiver.** No delay or failure of either party at any time to exercise or enforce any right or remedy available to it under this Agreement, and no course of dealing or performance with respect thereto, will constitute a waiver of any such right or remedy with respect to any other breach or failure by the other party. The express waiver by a party of any right or remedy in a particular instance will not constitute a waiver of any such right or remedy in any other instance. All rights and remedies will be cumulative and not exclusive of any other rights or remedies.

18.4 **Assignment.** Publisher may not assign this Agreement or any portion thereof, to any third party unless Microsoft expressly consents to such assignment in writing. Microsoft will have the right to assign this Agreement and/or any portion thereof as Microsoft may deem appropriate and/or authorize its affiliates or partners to perform this Agreement in whole or part on its behalf. For the purposes of this Agreement, 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 to be deemed to be an assignment. This Agreement will inure to the benefit of and be binding upon the parties, their successors, administrators, heirs, and permitted assigns.



18.5 **No Partnership.** Microsoft and Publisher are entering into a license pursuant to this Agreement and nothing in this Agreement is to be construed as creating an employer-employee relationship, a partnership, a franchise, or a joint venture between the parties.

18.6 **Severability.** If any provision of this Agreement is found invalid or unenforceable pursuant to judicial decree or decision, the remainder of this Agreement shall remain valid and enforceable according to its terms. The parties intend that the provisions of this Agreement be enforced to the fullest extent permitted by applicable law. Accordingly, the parties agree that if any provisions are deemed not enforceable, they are to be deemed modified to the extent necessary to make them enforceable.

18.7 **Injunctive Relief.** The parties agree that Publisher's threatened or actual unauthorized use of the Licensed Trademarks or other Microsoft proprietary rights whether in whole or in part, may result in immediate and irreparable damage to Microsoft for which there is no adequate remedy at law. Either party's threatened or actual breach of the confidentiality provisions may cause damage to the non-breaching party, and in such event the non-breaching party is entitled to appropriate injunctive relief from any court of competent jurisdiction without the necessity of posting bond or other security.

18.8 **Entire Agreement; Modification; No Offer.** This Agreement (including the Concept, the Non-Disclosure Agreement, the Xbox 360 Publisher Guide, written amendments thereto, and other incorporated documents) and the XDK License constitute the entire agreement between the parties with respect to the subject matter hereof and merges all prior and contemporaneous communications. This Agreement shall not be modified except by a written agreement dated subsequent hereto signed on behalf of Publisher and Microsoft by their duly authorized representatives. Neither this Agreement nor any written or oral statements related hereto constitute an offer, and this Agreement is not legally binding until executed by both parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the Effective Date on the dates indicated below.

**MICROSOFT LICENSING, GP**

/s/ Roxanne V. Spring

By (sign)

Roxanne V. Spring

Name (Print)

SPM

Title

November 17, 2005

Date

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

/s/ Paul Eibeler

By (sign)

Paul Eibeler

Name (Print)

President and CEO

Title

November 11, 2005

Date

## EXHIBIT 1

### PAYMENTS

#### 1. Platform Royalty

a. For each FPU manufactured during the term of this Agreement, Publisher shall pay Microsoft nonrefundable royalties in accordance with the royalty tables set forth below (Tables 1 and 2) and the “Unit Discount” table set forth in Section 1.d of this Exhibit 1 (Table 3).

b. The royalty fee is determined by the “Threshold Price” (which is the Wholesale Price (WSP) or Suggested Retail Price (SRP) at which Publisher intends to sell the Software Title in the applicable Sales Territory). To determine the applicable royalty rate for a particular Software Title in a particular Sales Territory, the applicable Threshold Price from Table 1 below will determine the correct royalty “Tier.” The royalty fee is then as set forth in Table 2 based on the Manufacturing Region in which the FPU will be manufactured. For example, assume the Wholesale Price of a Software Title to be sold in the European Sales Territory is XXXX. According to Table 1, XXXX royalty rates will apply to that Software Title and the royalty rate is determined in Table 2 by the Manufacturing Region. If the Software Title were manufactured in the European Manufacturing Region, the royalty fee would be XXXX per FPU. If the Software Title were manufactured in Asian Manufacturing Region, the royalty fee would be XXXX per FPU.

XXXX

c. Setting the Royalty. Publisher shall submit to Microsoft, at least XXXX for a Software Title, a completed and signed “Royalty Tier Selection Form” in the form attached to this Agreement as Exhibit 2 for each Sales Territory. The selection indicated in the Royalty Tier Selection Form will only be effective once the Royalty Tier Selection Form has been accepted by Microsoft. If Publisher does not submit a Royalty Tier Selection Form as required hereunder, the royalty fee for such Software Title will default to XXXX, regardless of the actual Threshold Price. The selection of a royalty tier for a Software Title in a Sales Territory is binding for the life of that Software Title even if the Threshold Price is reduced following the Software Title’s Commercial Release.

d. Unit Discounts. Publisher is eligible for a discount to FPU’s manufactured for a particular Sales Territory (a “Unit Discount”) based on the number of FPU’s that have been manufactured for sale in that Sales Territory as described in Table 3 below. Except as provided in Section 4 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.

XXXX

- i. For North American Sales Territory:

XXXX

- ii. For Japan Sales Territory:

XXXX

#### 2. Payment Process

a. XXXX. Publisher shall not authorize its Authorized Replicators to begin production until such time as XXXX. Depending upon Publisher’s credit worthiness, Microsoft may, but is not obligated to, offer Publisher credit terms for the payment of royalties due under this Agreement within XXXX of receipt of invoice. All payments will be made by wire transfer only, in accordance with the payment instructions set forth in the Xbox 360 Publisher Guide.

b. Publisher will pay royalties for FPU's manufactured in the North American Manufacturing Region in US Dollars, for FPU's manufactured in the Asian Manufacturing Region in Japanese Yen and for FPU's manufactured in the European Manufacturing Region in Euros.

**3. Billing Address**

a. Publisher may have only two "bill to" addresses for the payment of royalties under this Agreement, one for the North American Manufacturing Region and one for the Asian Manufacturing Region. If Publisher desires to have a "bill-to" address in a European country, Publisher (or a Publisher Affiliate) must execute an MIOL Enrollment Form in the form attached to this Agreement as Exhibit 3.

Publisher's billing address(es) is as follows:

North America Manufacturing Region:

Name: Take-Two Interactive Software, Inc.  
Address: 622 Broadway  
New York, NY 10012

Asian Manufacturing Region (if different):

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

Attention:  
Email address:  
Fax:  
Phone:

Attention: \_\_\_\_\_  
Email address: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Phone: \_\_\_\_\_

**4. Asia Simship Program**

The purpose of this program is to encourage Publisher to release Japanese FPU's or North American FPU's, that have been multi-region signed to run on NTSC-J boxes (hereinafter collectively referred to as "Simship Titles"), in Hong Kong, Singapore and Taiwan (referred to as "Simship Territory") at the same time as Publisher releases the Software Title in the Japan and/or North American Sales Territories. In order for a Software Title to qualify as a Simship Title, Publisher must release the Software Title in the Simship Territory on the same date as the Commercial Release date of such Software Title in the Japan and/or North American Sales Territories, wherever the Software Title was first Commercially Released (referred to as "Original Territory"). To the extent that a Software Title qualifies as a Simship Title, the applicable royalty tier (under Section 1.b of this Exhibit 1 above) and Unit Discount (under Section 1.d of this Exhibit 1 above) is determined as if all FPU's of such Software Title manufactured for distribution in both the Original Territory and the Simship Territory were manufactured for distribution in the Original Territory. For example, if a Publisher initially manufactures XXXX FPU's of a Software Title for the Japan Sales Territory and simships XXXX of those units to the Simship Territory, the royalty fee for all of the FPU's is determined by XXXX. In this example, Publisher would also receive a XXXX Unit Discount on XXXX units for having exceeded the Unit Discount level specified in Section 1. d of this Exhibit 1 above applicable to the Japan Sales Territory. Publisher must provide Microsoft with written notice of its intention to participate in the Asian Simship Program with respect to a particular Software Title at least XXXX prior to manufacturing any FPU's it intends to qualify for the program. In its notice, Publisher shall provide all relevant information, including total number of FPU's to be manufactured, number of FPU's to be simshipped into the Simship Territory, date of simship, etc. Publisher remains responsible for complying with all relevant import, distribution and packaging requirements as well as any other applicable requirements set forth in the Xbox 360 Publisher Guide, subject to Section 5 of the Agreement.

XXXX

**5. Online Content**

- a. For the purpose of this Section 5, the following capitalized terms have the following meanings: XXXX
- b. Publisher may, from time to time, submit Online Content to Microsoft for Microsoft to distribute via Xbox Live. XXXX.
- c. XXXX
- d. XXXX

e. Within XXXX after the end of XXXX with respect to which Microsoft owes Publisher any Royalty Fees, Microsoft shall furnish Publisher with a statement, together with payment for any amount shown thereby to be due to Publisher. The statement will contain information sufficient to discern how the Royalty Fees were computed.

## 6. Xbox Live Billing and Collection

Microsoft is responsible for billing and collecting all fees associated with Xbox Live, including fees for subscriptions and/or any Online Content for which a Xbox Live User may be charged. XXXX

## 7. Taxes

a. The amounts to be paid by either party to the other do not include any foreign, U.S. federal, state, local, municipal or other governmental taxes, duties, levies, fees, excises or tariffs, arising as a result of or in connection with the transactions contemplated under this Agreement including, without limitation, (i) any state or local sales or use taxes or any value added tax or business transfer tax now or hereafter imposed on the provision of any services to the other party under this Agreement, (ii) taxes imposed or based on or with respect to or measured by any net or gross income or receipts of either party, (iii) any franchise taxes, taxes on doing business, gross receipts taxes or capital stock taxes (including any minimum taxes and taxes measured by any item of tax preference), (iv) any taxes imposed or assessed after the date upon which this Agreement is terminated, (v) taxes based upon or imposed with reference to either parties' real and/or personal property ownership and (vi) any taxes similar to or in the nature of those taxes described in (i), (ii), (iii), (iv) or (v) above, now or hereafter imposed on either party (or any third parties with which either party is permitted to enter into agreements relating to its undertakings hereunder) (all such amounts, together with any penalties, interest or any additions thereto, collectively "Taxes"). Neither party is liable for any of the other party's Taxes incurred in connection with or related to the sale of goods and services under this Agreement, and all such Taxes are the financial responsibility of the party obligated to pay such taxes as determined by the applicable law, provided that both parties shall pay to the other the appropriate Collected Taxes in accordance with subsection 7.b below. Each party agrees to indemnify, defend and hold the other party harmless from any Taxes (other than Collected Taxes, defined below) or claims, causes of action, costs (including, without limitation, reasonable attorneys' fees) and any other liabilities of any nature whatsoever related to such Taxes to the extent such Taxes relate to amounts paid under this Amendment.

b. Any sales or use taxes described in 7.a above that (i) are owed by either party solely as a result of entering into this Agreement and the payment of the fees hereunder, (ii) are required to be collected from that party under applicable law, and (iii) are based solely upon the amounts payable under this Agreement (such taxes the "Collected Taxes"), will be stated separately as applicable on payee's invoices and will be remitted by the other party to the payee, upon request payee shall remit to the other party official tax receipts indicating that such Collected Taxes have been collected and paid by the payee. Either party may provide the other party an exemption certificate acceptable to the relevant taxing authority (including without limitation a resale certificate) in which case payee shall not collect the taxes covered by such certificate. Each party agrees to take such commercially reasonable steps as are requested by the other party to minimize such Collected Taxes in accordance with all relevant laws and to cooperate with and assist the other party, in challenging the validity of any Collected Taxes or taxes otherwise paid by the payor party. Each party shall indemnify and hold the other party harmless from any Collected Taxes, penalties, interest, or additions to tax arising from amounts paid by one party to the other under this Agreement, that are asserted or assessed against one party to the extent such amounts relate to amounts that are paid to or collected by one party from the other under this section. If any taxing authority refunds any tax to a party that the other party originally paid, or a party otherwise becomes aware that any tax was incorrectly and/or erroneously collected from the other party, then that party shall promptly remit to the other party an amount equal to such refund, or incorrect collection as the case may be plus any interest thereon.

c. If taxes are required to be withheld on any amounts otherwise to be paid by one party to the other, the paying party shall deduct such taxes from the amount otherwise owed and pay them to the appropriate taxing authority. At a party's written request and expense, the parties shall use reasonable efforts to cooperate with and assist each other in obtaining tax certificates or other appropriate documentation evidencing such payment, provided, however, that the responsibility for such documentation shall remain with the payee party. If Publisher is required by any non-U.S.A. government to withhold income taxes on payments to Microsoft, then Publisher may deduct such taxes from the amount owed Microsoft and shall pay them to the appropriate tax authority, provided that XXXX of such payment, Publisher delivers to Microsoft an official receipt for any such taxes withheld or other documents necessary to enable Microsoft to claim a U.S.A. Foreign Tax Credit.

d. This Section 7 shall govern the treatment of all taxes arising as a result of or in connection with this Agreement notwithstanding any other section of this Agreement.

## 8. Audit

During the term of this Agreement and for XXXX thereafter each party shall keep all usual and proper records related to its performance under this Agreement, including but not limited to audited financial statements and support for all transactions related to the ordering, production, inventory, distribution and billing/invoicing information. Such records, books of account, and entries will be kept in accordance with generally accepted accounting principles. Either party (the "Auditing Party") may audit and/or inspect the other party's (the "Audited Party") records no more than XXXX in any XXXX period in order to verify compliance with the terms of this Agreement. The Auditing Party may, upon reasonable advance notice, audit the Audited Party's records and consult with the Audited Party's accountants for the purpose of verifying the Audited Party's compliance with the terms of this Agreement and for a period of XXXX. Any such audit will be conducted during regular business hours at the Audited Party's offices. Any such audit will be paid for by Auditing Party unless Material discrepancies are disclosed. As used in this section, "Material" means XXXX. If Material discrepancies are disclosed, the Audited Party agrees to pay the Auditing Party XXXX.

EXHIBIT 2

XBOX 360 ROYALTY TIER SELECTION FORM

PLEASE COMPLETE THE BELOW INFORMATION, SIGN THE FORM, AND FAX IT TO MICROSOFT AT +1 (425) 708-2300 TO THE ATTENTION OF MICROSOFT LICENSING, GP (MSL) AND YOUR ACCOUNT MANAGER.

NOTES:

1. **THIS FORM MUST BE SUBMITTED AT LEAST XXXX. IF THIS FORM IS NOT SUBMITTED ON TIME, THE ROYALTY RATE WILL DEFAULT TO XXXX FOR THE APPLICABLE SALES TERRITORY.**

2. **A SEPARATE FORM MUST BE SUBMITTED FOR EACH SALES TERRITORY.**

1. Publisher Name: \_\_\_\_\_

2. Xbox 360 Software Title Name: \_\_\_\_\_

3. XeMID Number:  
\_\_\_\_\_

4. Manufacturing Region (check one):  
\_\_\_\_ North American  
\_\_\_\_ European  
\_\_\_\_ Asian

5. Sales Territory (check one):  
\_\_\_\_ North American Sales Territory  
\_\_\_\_ Japan Sales Territory  
\_\_\_\_ European Sales Territory  
\_\_\_\_ Asian Sales Territory

6. Final Certification Date: \_\_\_\_\_

7. Select Royalty Tier: (check one): XXXX

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.

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

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

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

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

EXHIBIT 3

XBOX 360 PUBLISHER ENROLLMENT FORM

PLEASE COMPLETE THIS FORM, SIGN IT, AND FAX IT TO MICROSOFT AT  
+1 (425) 708-2300 TO THE ATTENTION OF YOUR ACCOUNT MANAGER.

NOTE: PUBLISHER MUST COMPLETE, SIGN AND SUBMIT THIS ENROLLMENT FORM XXXX

This Xbox 360 Publisher License Enrollment (“Enrollment”) is entered into between Microsoft Ireland Operations Ltd. (“MIOL”) and Take-Two Interactive Software Europe Ltd. (“Publisher”), and is effective as of the latter of the two signatures identified below. The terms of that certain Xbox 360 Publisher License Agreement signed by Microsoft Licensing GP and Take-Two Interactive Software, Inc. dated on or about (the “Xbox 360 PLA”) are incorporated herein by reference.

1. Term. This Enrollment will expire on the date on which the Xbox 360 PLA expires, unless it is terminated earlier as provided for in that agreement.

2. 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 understood the Xbox 360 PLA, including any amendments thereto, and agree to be bound by those; (ii) it is either the entity that signed the Xbox 360 PLA or its affiliate; and (iii) the information that provided herein is accurate.

3. Notices; Requests. All notices and requests in connection with this Enrollment are deemed given on (i) the XXXX after they are deposited in the applicable country’s mail system XXXX if sent internationally), postage prepaid, certified or registered, return receipt requested; or (ii) XXXX after they are sent by overnight courier, charges prepaid, with a confirming fax; and addressed as follows:

Publisher: Take-Two Interactive Software Europe Ltd.  
Address: Saxon House, 2-4 Victoria Street  
Windsor, Berkshire, SI4 1EN, UK

Attention: Simon Little  
Fax: +44 1753 496669  
Phone: +44 1753 496600

Email: slittle@take2europe.com

Microsoft: MICROSOFT IRELAND OPERATIONS LTD.  
Microsoft European Operations Centre,  
Atrium Building Block B,  
Carmenhall Road,  
Sandyford Industrial Estate  
Dublin 18  
Ireland

Fax: 353 1 706 4110

Attention: MIOL Xbox Accounting Services

with a cc to: MICROSOFT CORPORATION  
One Microsoft Way  
Redmond, WA 98052-6399

Attention: Law & Corporate Affairs Department Consumer  
Legal Group, H&ED (Xbox)  
Fax: +1 (425) 706-7329

or to such other address as the party to receive the notice or request so designates by written notice to the other.

[remainder of page intentionally left blank]

4. Billing Address. For purposes of the Xbox 360 PLA, Exhibit 1, Section 3, Publisher's billing address for the European Manufacturing Region is as follows:

Name: Take-Two Interactive Software Europe Ltd  
Address: Saxon House, 2-4 Victoria Street  
Windsor, Berkshire, SL4 1EN, UK  
  
VAT number: GB578 51 51 11  
Attention: Simon Little  
Email address: slittle@take2europe.com  
Fax: +44 1753 496669  
Phone: +44 1753 496600

**MICROSOFT IRELAND OPERATIONS LTD.**

**PUBLISHER: Take-Two Interactive Software Europe Ltd.**

---

By (sign)

---

By (sign)

---

Name (Print)

---

Name (Print)

---

Title

---

Title

---

Date (Print mm/dd/yy)

---

Date (Print mm/dd/yy)



**EXHIBIT 4**

**AUTHORIZED AFFILIATES**

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

I.	Name:	_____	II.	Name:	_____
	Address:	_____		Address:	_____
		_____			_____
		_____			_____
	Telephone:	_____		Telephone:	_____
	Fax:	_____		Fax:	_____

Publisher will provide Microsoft at least XXXX 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 of \_\_\_\_\_ (“Publisher Affiliate”) hereby covenants and agrees with Microsoft Licensing, GP, a Nevada general partnership that Publisher Affiliate will comply with all obligations of \_\_\_\_\_ (“Publisher”) pursuant to that certain Xbox 360 Publisher License Agreement between Microsoft and Publisher dated \_\_\_\_\_, 200\_\_ (the “Xbox 360 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 360 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 360 PLA. This Publisher Affiliate Agreement may be terminated in the manner set forth in the Xbox 360 PLA. Termination of this Publisher Affiliate Agreement does not terminate the Xbox 360 PLA with respect to Publisher or any other Publisher Affiliates.

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

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

\_\_\_\_\_  
Date

## EXHIBIT 5

### MICROSOFT CORPORATION NON-DISCLOSURE AGREEMENT (STANDARD RECIPROCAL)

This Non-Disclosure Agreement (the "Agreement") is made and entered into as of the later of the two signature dates below by and between MICROSOFT CORPORATION, a Washington corporation ("Microsoft"), and Take Two, a New York corporation ("Company").

IN CONSIDERATION OF THE MUTUAL PROMISES AND COVENANTS CONTAINED IN THIS AGREEMENT AND THE MUTUAL DISCLOSURE OF CONFIDENTIAL INFORMATION, THE PARTIES HERETO AGREE AS FOLLOWS:

#### 1. Definition of Confidential Information and Exclusions.

(a) "Confidential Information" means nonpublic information that a party to this Agreement ("Disclosing Party") designates as being confidential to the party that receives such information ("Receiving Party") or which, under the circumstances surrounding disclosure ought to be treated as confidential by the Receiving Party. "Confidential Information" includes, without limitation, information in tangible or intangible form relating to and/or including released or unreleased Disclosing Party software or hardware products, the marketing or promotion of any Disclosing Party product, Disclosing Party's business policies or practices, and information received from others that Disclosing Party is obligated to treat as confidential. Except as otherwise indicated in this Agreement, the term "Disclosing Party" also includes all Affiliates of the Disclosing Party and, except as otherwise indicated, the term "Receiving Party" also includes all Affiliates of the Receiving Party. An "Affiliate" means any person, partnership, joint venture, corporation or other form of enterprise, domestic or foreign, including but not limited to subsidiaries, that directly or indirectly, control, are controlled by, or are under common control with a party. Prior to the time that any Confidential Information is shared with an Affiliate who has not signed this Agreement, the Receiving Party that executed this Agreement below (the "Undersigned Receiving Party") shall have entered into an appropriate written agreement with that Affiliate sufficient to enable the Disclosing Party and/or the Undersigned Receiving Party to enforce all of the provisions of this Agreement against such Affiliate.

(b) Confidential Information shall not include any information, however designated, that: (i) is or subsequently becomes publicly available without Receiving Party's breach of any obligation owed Disclosing Party; (ii) became known to Receiving Party prior to Disclosing Party's disclosure of such information to Receiving Party pursuant to the terms of this Agreement; (iii) became known to Receiving Party from a source other than Disclosing Party other than by the breach of an obligation of confidentiality owed to Disclosing Party; (iv) is independently developed by Receiving Party; or (v) constitutes Feedback (as defined in Section 5 of this Agreement).

#### 2. Obligations Regarding Confidential Information

(a) Receiving Party shall:

- (i) Refrain from disclosing any Confidential Information of the Disclosing Party to third parties for five (5) years following the date that Disclosing Party first discloses such Confidential Information to Receiving Party, except as expressly provided in Sections 2(b) and 2(c) of this Agreement.
- (ii) Take reasonable security precautions, at least as great as the precautions it takes to protect its own confidential information, but no less than reasonable care, to keep confidential the Confidential Information of the Disclosing Party;
- (iii) Refrain from disclosing, reproducing, summarizing and/or distributing Confidential Information of the Disclosing Party except in pursuance of Receiving Party's business relationship with Disclosing Party, and only as otherwise provided hereunder; and
- (iv) Refrain from reverse engineering, decompiling or disassembling any software code and/or pre-release hardware devices disclosed by Disclosing Party to Receiving Party under the terms of this Agreement, except as expressly permitted by applicable law.

(b) Receiving Party may disclose Confidential Information of Disclosing Party in accordance with a judicial or other governmental order, provided that Receiving Party either (i) gives the undersigned Disclosing Party reasonable notice prior to such disclosure to allow Disclosing Party a reasonable opportunity to seek a protective order or equivalent, or (ii) obtains written assurance from the applicable judicial or governmental entity that it will afford the Confidential Information the highest level of protection afforded under applicable law or regulation. Notwithstanding the foregoing, the Receiving Party shall not disclose any computer source code that contains Confidential Information of the Disclosing Party in accordance with a judicial or other governmental order unless it complies with the requirement set forth in sub-section (i) of this Section 2(b).

(c) The undersigned Receiving Party may disclose Confidential Information only to Receiving Party's employees and consultants on a need-to-know basis. The undersigned Receiving Party will have executed or shall execute appropriate written agreements with its employees and consultants sufficient to enable Receiving Party to enforce all the provisions of this Agreement.

(d) Receiving Party shall notify the undersigned Disclosing Party immediately upon discovery of any unauthorized use or disclosure of Confidential Information or any other breach of this Agreement by Receiving Party and its employees and consultants, and will cooperate with Disclosing Party in every reasonable way to help Disclosing Party regain possession of the Confidential Information and prevent its further unauthorized use or disclosure.

(e) Receiving Party shall, at Disclosing Party's request, return all originals, copies, reproductions and summaries of Confidential Information and all other tangible materials and devices provided to the Receiving Party as Confidential Information, or at Disclosing Party's option, certify destruction of the same.

### 3. Remedies

The parties acknowledge that monetary damages may not be a sufficient remedy for unauthorized disclosure of Confidential Information and that Disclosing Party shall be entitled, without waiving any other rights or remedies, to such injunctive or equitable relief as may be deemed proper by a court of competent jurisdiction.

### 4. Miscellaneous

(a) All Confidential Information is and shall remain the property of Disclosing Party. By disclosing Confidential Information to Receiving Party, Disclosing Party does not grant any express or implied right to Receiving Party to or under any patents, copyrights, trademarks, or trade secret information except as otherwise provided herein. Disclosing Party reserves without prejudice the ability to protect its rights under any such patents, copyrights, trademarks, or trade secrets except as otherwise provided herein.

(b) In the event that the Disclosing Party provides any computer software and/or hardware to the Receiving Party as Confidential Information under the terms of this Agreement, such computer software and/or hardware may only be used by the Receiving Party for evaluation and providing Feedback (as defined in Section 5 of this Agreement) to the Disclosing Party. Unless otherwise agreed by the Disclosing Party and the Receiving Party, all such computer software and/or hardware is provided "AS IS" without warranty of any kind, and Receiving Party agrees that neither Disclosing Party nor its suppliers shall be liable for any damages whatsoever arising from or relating to Receiving Party's use of or inability to use such software and/or hardware.

(c) The parties agree to comply with all applicable international and national laws that apply to (i) any Confidential Information, or (ii) any product (or any part thereof), process or service that is the direct product of the Confidential Information, including the U.S. Export Administration Regulations, as well as end-user, end-use and destination restrictions issued by U.S. and other governments. For additional information on exporting Microsoft products, see <http://www.microsoft.com/exporting/>.

(d) The terms of confidentiality under this Agreement shall not be construed to limit either the Disclosing Party or the Receiving Party's right to independently develop or acquire products without use of the other party's Confidential Information. Further, the Receiving Party shall be free to use for any purpose the residuals resulting from access to or work with the Confidential Information of the Disclosing Party, provided that the Receiving Party shall not disclose the Confidential Information except as expressly permitted pursuant to the terms of this Agreement. The term "residuals" means information in intangible form, which is retained in memory by persons who have had access to the Confidential Information, including ideas, concepts, know-how or techniques contained therein. The Receiving Party shall not have any obligation to limit or restrict the assignment of such persons or to pay royalties for any work resulting from the use of residuals. However, this sub-paragraph shall not be deemed to grant to the Receiving Party a license under the Disclosing Party's copyrights or patents.

(e) This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof. It shall not be modified except by a written agreement dated subsequent to the date of this Agreement and signed by both parties. None of the provisions of this Agreement shall be deemed to have been waived by any act or acquiescence on the part of Disclosing Party, the Receiving Party, their agents, or employees, but only by an instrument in writing signed by an authorized employee of Disclosing Party and the Receiving Party. No waiver of any provision of this Agreement shall constitute a waiver of any other provision(s) or of the same provision on another occasion.

(f) If either Disclosing Party or the Receiving Party employs attorneys to enforce any rights arising out of or relating to this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs. This Agreement shall be construed and controlled by the laws of the State of Washington, and the parties further consent to exclusive jurisdiction and venue in the federal courts sitting in King County, Washington, unless no federal subject matter jurisdiction exists, in which case the parties consent to the exclusive jurisdiction and venue in the Superior Court of King County, Washington. Company waives all defenses of lack of personal jurisdiction and forum non conveniens. Process may be served on either party in the manner authorized by applicable law or court rule.

(g) This Agreement shall be binding upon and inure to the benefit of each party's respective successors and lawful assigns; provided, however, that neither party may assign this Agreement (whether by operation of law, sale of securities or assets, merger or otherwise), in whole or in part, without the prior written approval of the other party. Any attempted assignment in violation of this Section shall be void.

(h) If any provision of this Agreement shall be held by a court of competent jurisdiction to be illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect.

(i) Either party may terminate this Agreement with or without cause upon ninety (90) days prior written notice to the other party. All sections of this Agreement relating to the rights and obligations of the parties concerning Confidential Information disclosed during the term of the Agreement shall survive any such termination.

## 5. Suggestions and Feedback

The Receiving Party may from time to time provide suggestions, comments or other feedback ("Feedback") to the Disclosing Party with respect to Confidential Information provided originally by the Disclosing Party. Both parties agree that all Feedback is and shall be given entirely voluntarily. Feedback, even if designated as confidential by the party offering the Feedback, shall not, absent a separate written agreement, create any confidentiality obligation for the receiver of the Feedback. Receiving Party will not give Feedback that is subject to license terms that seek to require any Disclosing Party product, technology, service or documentation incorporating or derived from such Feedback, or any Disclosing Party intellectual property, to be licensed or otherwise shared with any third party. Furthermore, except as otherwise provided herein or in a separate subsequent written agreement between the parties, the receiver of the Feedback shall be free to use, disclose, reproduce, license or otherwise distribute, and exploit the Feedback provided to it as it sees fit, entirely without obligation or restriction of any kind on account of intellectual property rights or otherwise.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

COMPANY: TAKE-TWO INTERACTIVE SOFTWARE, INC.  
Address: 622 Broadway  
New York, NY 10012

By: /s/ Ken Selterman  
Name: Ken Selterman  
Title: General Counsel

Date: 06/19/03

MICROSOFT CORPORATION  
One Microsoft Way  
Redmond, WA 98052-6399

By: /s/ Dean Lester  
Name: Dean Lester  
Title: General Manager  
Windows Graphics/Gaming/Workstation  
Date: 06/24/03

## EXHIBIT 6

### JAPAN AND ASIA ROYALTY INCENTIVE PROGRAM

#### 1. Overview

To encourage Publisher to release localized Software Titles in the Japan and Asian Sales Territories during XXXX, Publisher may qualify for a special incentive payment equal to XXXX according to the terms of this Exhibit 6 (the "Royalty Incentive Program").

#### 2. Qualified FPU's

In order to qualify for the Royalty Incentive Program, the following requirements must be met.

a. Approved Concept Submission Form. Publisher must send Microsoft a completed Concept submission form (in a format to be provided by Microsoft) for any Software Titles Publisher intends to qualify for the Royalty Incentive Program no later than XXXX. In order for FPU's to qualify for the Royalty Incentive Program, Publisher's Concept for the Software Title must be received on time and approved by Microsoft.

b. J-signed. Only FPU's that are "J-signed" (as defined in the Xbox 360 Publisher Guide) to technically restrict their operation to Xbox consoles made for the Japan and Asian Sales Territories will qualify for the Royalty Incentive Program.

c. XXXX

d. XXXX

e. Public Relations. In order to qualify for the Royalty Incentive Program, Publisher must allow Microsoft to publicly disclose that the Software Title will be released on Xbox 360 in the Japan or Asian Sales Territories.

f. Timely Payment. Publisher must pay royalty fees on time in accordance with this Agreement or its credit arrangement with Microsoft in order to qualify for the Royalty Incentive Program.

#### 3. Payment

a. Manufacturing Periods. The Royalty Incentive Program will only apply to qualified FPU's manufactured XXXX (as applicable for the FPU).

b. Incentive Payments. Microsoft will make royalty incentive payments within XXXX in which qualified FPU's were manufactured.

c. Limit. Subject to the terms of this Exhibit 6, Publisher's royalty incentive payment will XXXX. Publisher acknowledges that the Royalty Incentive Payment will only apply to XXXX.

## EXHIBIT 7

### XBOX 360 LIVE INCENTIVE PROGRAM

#### 1. Xbox 360 Live Incentive Program

To encourage Publisher to support functionality for Xbox Live in its Xbox 360 Software Titles and to drive increased usage of Xbox Live via Xbox 360, Publisher may qualify for certain payments based on the amount of Xbox Live Market Share (defined in Section 2.a. of this Exhibit 7 below) created by Publisher's Multiplayer Software Titles (defined in Section 2.c. of this Exhibit 7 below). Each Accounting Period (defined in Section 3.c. of this exhibit below), Microsoft will calculate Publisher's Xbox Live Market Share. If it is above XXXX, then Microsoft will pay Publisher an amount XXXX. The basic equation for calculating the Publisher's payment under this program is:

XXXX

The following sections define the elements of this basic equation.

Notwithstanding anything herein to the contrary, use of or revenue derived from online games for which an end user pays a subscription separate from any account established for basic use of Xbox Live, are excluded from this Xbox 360 Live Incentive Program.

#### 2. Xbox Live Market Share

a. "Xbox Live Market Share" = XXXX

b. "XXXX Unique User Market Share" means XXXX

c. "Multiplayer Software Titles" means a Software Title for Xbox 360 that supports real-time multiplayer game play.

d. "XXXX Unique Users" means XXXX

e. "Paying Subscriber" means XXXX

f. "XXXX Unique User Market Share" means XXXX

g. "XXXX Unique Users" means the XXXX

h. "New Subscriber Market Share" means XXXX

i. "New Subscriber" means a Paying Subscriber who pays for an Xbox Live account for the first time. A New Subscriber is attributed to the first Multiplayer Software Title he or she plays, even if such play was during a free-trial period which was later converted into a paying subscription. Each Paying Subscriber can only be counted as a New Subscriber once.

#### 3. Participation Pool

a. "Participation Pool" means XXXX

b. "Subscription Revenue" means XXXX

c. "Accounting Period" means a XXXX, within the Term (defined below); provided that if the Effective Date of this Agreement or the expiration date of this program falls within such XXXX, then the applicable payment calculation set forth below shall be made for a partial Accounting Period, as appropriate.

#### 4. Example

XXXX

**5. Term**

This Xbox 360 Live Incentive Program will be available for XXXX . Microsoft reserves the right to change the weights for averaging set forth in Section 2.a. of this exhibit upon written notice to Publisher, but no more frequently than XXXX .

**6. Payments**

In the event Publisher qualifies for a payment under this program during an Accounting Period, Microsoft shall furnish Publisher with a statement, together with payment for any amount shown thereby to be due to Publisher within XXXX.



# Corporate

## Lloyds TSB Corporate

Lloyds TSB Bank plc  
140 Wharfedale Road  
Winnersh Triangle

Reading  
Berkshire RG41 5RB

Telephone: 01189 219218  
Facsimile: 01189 219182

Reference:

8th May 2006

The Directors  
Take Two Interactive Software Europe Limited  
Saxon House  
2-4 Victoria Street  
Windsor  
Berkshire  
SL4 1EN

Dear Sirs

### OVERDRAFT AND OTHER FACILITIES

We Lloyds TSB Bank plc (the "Bank") are pleased to continue to offer to Take Two Interactive Software Europe Limited (the "Company") and to each of Joytech Europe Limited and Venom Games Limited an overdraft facility in sterling and/or in US dollars, Australian dollars and euros on the following terms and conditions.

#### Amount

The Gross Borrowing shall not at any time exceed £19,100,000 and the Net Borrowing shall not at any time exceed £13,100,000. For the purposes of this letter "Gross Borrowing" means the aggregate of all amounts outstanding under the facility (calculated on the basis of cleared available funds) and "Net Borrowing" means Gross Borrowing less the aggregate of all cleared credit balances that may in the Bank's opinion be legally set off against the Gross Borrowing (such credit balances being referred to below as the "credit balances").

For the purpose of determining whether the total amount owing is at any particular time within or in excess of the agreed limits, credit balances in a currency other than sterling shall be notionally converted into sterling on the basis of the rate at which the Bank would sell sterling for that currency at that time and amounts owing in a currency other than sterling shall be notionally converted into sterling on the basis of the rate at which the Bank would sell that currency for sterling at that time.

You should note that the above Net Borrowing limit applies collectively to the overdraft facility and to the indemnity line, and the documentary credit facility included in the other facilities referred to below. Because of this, utilisations of each such facility will be taken into account to determine the amount available for utilisation by the other facilities.

Utilisations of the indemnity line, and the documentary credit facility are also subject to the lower limit set out in the Schedule of Other Facilities.

#### Availability

The Bank's present intention is to make the facility available until 31st March 2007 and all moneys from time to time owing to the Bank under the facility shall be repaid no later than this date or such later date as may from time to time be advised in writing by the Bank. The Bank may, nevertheless, terminate the facility at any time and may, at such time or at any time thereafter, demand immediate payment of all amounts owing under or in connection with the facility. The amounts owing at any time may include interest, costs or charges which have been debited to one or more of the accounts in accordance with the terms of this letter or in accordance with any other terms relevant to the accounts.

Lloyds TSB Bank plc. Registered Office: 25 Gresham Street, London EC2V 7HN. Registered in England and Wales no. 2065. Telephone: 020 7626 1500. Authorised and regulated by the Financial Services Authority and a signatory to the Banking Codes.  
Lloyds TSB Bank plc represents only the Scottish Widows and the Lloyds TSB Marketing Group for life assurance, pensions and investment business.



The Bank shall have the right at the time of making demand or at any time thereafter to convert all amounts then due and payable in a currency other than sterling into sterling at the Bank's exchange rate for selling that currency against sterling at that time. The Bank shall as soon as possible after such conversion advise you of the sterling amount then owing.

### Interest

Interest shall be calculated on a daily basis and will be payable on amounts owing as follows:

- (a) if the sterling credit balances are equivalent to or greater than the total amount owing under the facility in that currency (being the aggregate cleared daily overdrawn balance of the relevant sterling account or accounts), at 1% per annum on the total amount owing in that currency, or
- (b) if the sterling credit balances are less than the total amount owing under the facility in that currency, at (i) 1.25% per annum over the Bank's Base Rate from time to time (currently 5.75% per annum in total) on the net overdraft, and (ii) 1% per annum on an amount equivalent to the credit balances in that currency,

and, in each case, at 1.25% per annum over the Bank's relevant short term offered rate from time to time in the case of amounts owing in any other currency on the total amount owing in that currency.

For the purposes of the above, the net overdraft on any day is the total amount owing under the facility in sterling less the credit balances in that currency and the "credit balances" are the aggregate of all non-interest bearing cleared credit balances in the same currency that may in the Bank's opinion be legally set off against amounts owing under the facility.

The Bank's Base Rate may be varied (either up or down) by the Bank at any time. Notice of changes will be displayed in UK branches of the Bank, on the Bank's website ([www.lloydstsb.com/corporate](http://www.lloydstsb.com/corporate)) and in a number of daily newspapers. You can contact your relationship manager to check the Bank's Base Rate at any time.

The Bank's short term offered rate for each currency may vary from day to day and upon request the Bank will advise you of the rates then applicable.

Interest will be payable monthly in arrears (normally on the 10th of each month or on the next working day) in the case of sterling and quarterly in arrears (normally on the 24th of each of February, May, August and November or on the next working day) in the case of any other currency. Interest may also be payable on the date upon which the facility ceases to be available. Unless the Bank advises the Company otherwise or the Company requests otherwise, the Company will be notified of any interest payable in sterling. Interest will be debited (a) at the end of each charging period to the relevant account if the interest is payable in a currency other than sterling and (b) not earlier than the date which is 14 days after the date of the Bank's notice of interest payable to account number 00208105 of the Company if the interest is payable in sterling.

Interest will be calculated on the basis of the actual number of days elapsed and a 360 day year or a 365 day year as is in the Bank's reasonable opinion usual market practice for the relevant currency.

### Costs and Charges

All costs and expenses incurred by the Bank in preserving or enforcing the security referred to below shall be debited to account number 00208125 of the Company under advice.

The Bank may also debit your accounts with other charges to cover any additional work involved in monitoring your accounts. The Bank will advise you of these charges before they become payable.

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Security

It is a condition of the facility and of the other facilities referred to below that amounts owing shall be secured by the following.

- (a) an omnibus guarantee and set off agreement dated 7th February 2001 among the Bank, Take Two Interactive Software Europe Limited, Take Two Interactive France SA, Take Two Interactive Germany GmbH, Joytech Europe Limited and Venom Games Limited,
- (b) an unlimited debenture dated 24th January 2001 from Take Two Interactive Software Europe Limited,
- (c) an unlimited debenture dated 24th January 2001 from Joytech Europe Limited,
- (d) an all moneys guarantee dated 5th January 2001 from Take Two Interactive Software Inc., for a principal amount of £15,788,000 plus interest and other costs as detailed in the guarantee and in respect of the debts and liabilities to the Bank of Take Two Interactive Software Europe Limited together with such other security as the Bank may from time to time hold for the debts and liabilities of the guarantor to the Bank,
- (e) an assignment of the proceeds of COface debtor insurance policy numbers 66925/00GBI, 68923/00GBI, 68899/00 and 7338/02 taken out in respect of Take Two Interactive Software Europe Limited, Joytech Europe Limited, Take Two Interactive France SA and Take Two Interactive Germany GmbH,
- (f) an assignment of the book debts of Take Two Interactive Germany GmbH, and
- (g) an assignment of the receivables of Take Two Interactive France SA.

Financial Information

Whilst the facility and/or any of the other facilities referred to below remain available the Company should provide to the Bank as soon as possible after the end of the period to which they relate copies of any financial information that the Bank may from time to time reasonably request, including:

- (a) its audited annual accounts within 180 days of the end of its financial year,
- (b) its quarterly management accounts within 45 days of the end of each quarter,
- (c) the audited annual accounts of Take Two Interactive Inc. within 120 days of the end of its financial year, and
- (d) the quarterly accounts of Take Two Interactive Inc. within 60 days of the end of each quarter.

The figures so provided should demonstrate that the group's good book debts (over which a charge or security interest has been given to the Bank and after taking into account any amounts owing ranking in priority to amounts owing to the Bank) are not less than 170% of the group's utilisation of all overdraft, documentary credit and indemnity facilities provided by the Bank.

Other Facilities

In addition to the overdraft facility we are pleased to offer the facilities detailed in the Schedule of Other Facilities. Except when reference is made to another agreement, each additional facility will be available upon such terms and conditions as shall from time to time be specified by the Bank. The facilities may be cancelled by the Bank at any time, but it is the Bank's present intention to keep the facilities in place for the period of availability of the overdraft facility and the liability in respect of any utilisation may extend beyond such period of availability.

Amounts outstanding in connection with the foreign exchange facility, the indemnity line, the documentary credit facility, the negotiations facility, and the Travellink facility may be in sterling and/or any other currency. For the purpose of determining whether there is sufficient availability within the specified limit for any particular utilisation, amounts outstanding in a currency other than sterling shall be notionally converted into sterling on the date of the proposed utilisation on the basis of the rate at which the Bank would sell the relevant currency for sterling at that time.

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If upon termination of the overdraft facility (or earlier cancellation of any of these additional facilities) there are any foreign exchange contracts outstanding or any contingent liabilities existing under these additional facilities (or any of them) the Bank shall have the right at any time to close out any such foreign exchange contracts and upon any request from the Bank:

- (a) an amount sufficient to indemnify the Bank for all costs and losses incurred by the Bank in or in connection with closing out such foreign exchange contracts shall be paid to the Bank, and
- (b) an amount equal to the value of any such contingent liabilities existing at such time shall be deposited with the Bank with the intent that such deposit shall be held by the Bank as security for those liabilities and that such documentation and other things (including the payment of any associated costs) as the Bank may require in order to perfect such security shall be completed.

For the purposes of the above, the Bank shall have the right at the time of making demand or at any time thereafter to convert all amounts then due and payable in connection with any of these additional facilities in a currency other than sterling into sterling at the Bank's exchange rate for selling that currency against sterling at that time. The Bank shall as soon as possible after such conversion advise the sterling amount then owing.

The Bank may debit any amount owing in connection with these additional facilities to the account of the relevant company with the Bank whether or not that would cause the account to become overdrawn or the agreed overdraft limit on the account to be breached.

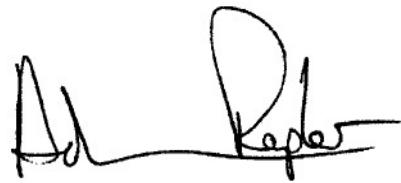
#### Other Terms of Offer

This letter is for the benefit of the contracting parties only and shall not confer any benefit on or be enforceable by a third party.

This letter shall be governed by and construed in accordance with English law and you agree to submit to the non-exclusive jurisdiction of the English Courts.

Please confirm your acceptance of the facilities offered by returning the attached duplicate of this letter with the acknowledgement signed in accordance with the bank mandate currently held by the Bank or a specific resolution acceptable to the Bank. If such confirmation is not received by the Bank (at the address given at the heading of this letter) by 8th June 2006 the offer will lapse.

Yours faithfully  
For and on behalf of Lloyds TSB Bank plc



Sharon Geoghegan  
Senior Relationship Manager  
Lloyds TSB Corporate

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We hereby acknowledge and accept the terms of your offer dated 8th May 2006 of which this is a duplicate and agree all the terms and conditions therein contained.

For and on behalf of Take Two Interactive Software Europe Limited (company registered number 2739756)

Signed by James Ellingford (name)

Ashish Solanki (name)



(signature)

(signature)

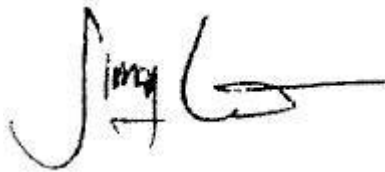
26/5/2006 (date)

25/5/2006 (date)

For and on behalf of Joytech Europe Limited (company registered number 2981108)

Signed by James Ellingford (name)

Simon Little (name)



(signature)

(signature)

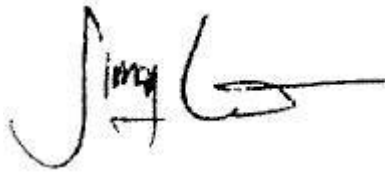
26/5/2006 (date)

26/5/2006 (date)

For and on behalf of Venom Games Limited (company registered number 4644542)

Signed by James Ellingford (name)

Simon Little (name)



(signature)

(signature)

26/5/2006 (date)

26/5/2006 (date)

**This letter creates legal obligations. Before signing you may wish to take independent advice.**

[www.lloydstsb.com/corporate](http://www.lloydstsb.com/corporate)

Please contact your relationship manager if you would like this agreement in Braille, large print or on audio tape.

The Bank accepts calls made though RNID Tynetalk.

Calls may be monitored or recorded in case the Bank needs to check it has carried out your instructions correctly and to help improve its quality of service.

Version: 300905

SCHEDULE OF OTHER FACILITIES

The following additional facilities are available:

- 1 a foreign exchange facility of £2,500,000 for spot and forward exchange contracts of up to 12 months is available to all of you. Foreign exchange contracts may be entered into with the Bank provided that the aggregate of 10% of the value of contracts with a maturity date of 6 months or less from the contract date and 15% of the value of contracts with a maturity date of 12 months or less (but of more than 6 months) from the contract date outstanding at any time does not exceed the limit detailed above.

The maximum total value of all contracts that may be outstanding for maturity on any day is £10,000,000.

The facility may be used by any of you.

- 2 an indemnity line of £1,000,000 to cover bonds, indemnities and guarantees ("BIGs") issued by the Bank or its correspondents. The total value of all BIGs that may be outstanding at any one time may not exceed the limit detailed above.

Please note that the total liability of the Bank under certain customs and excise guarantees is twice the amount quoted on the guarantee.

The Bank shall be under no obligation to issue any BIG unless the terms of the BIG and the expiry date of the BIG (or means by which the Bank can terminate its liability) are acceptable to the Bank. The Bank is to be indemnified to its complete satisfaction in connection with each BIG issued.

The facility may be used by any of you.

- 3 a documentary credit facility of £3,000,000 to cover documentary letters of credit opened by the Bank. The limit detailed above is the maximum total liability of the Bank that may be outstanding under all such letters of credit at any one time.

The Bank shall be under no obligation to open any letter of credit unless the terms of the letter of credit are acceptable to the Bank. The Bank is to be indemnified to its complete satisfaction in connection with each letter of credit opened.

The facility may be used by any of you.

- 4 a negotiations facility of £150,000 to cover the negotiation by the Bank of cheques and bills of exchange payable abroad with recourse. The limit detailed above is the maximum total amount of proceeds paid by the Bank in respect of cheques and bills of exchange which the Bank anticipates at any point in time may be unpaid by the drawer thereof. For this purpose the Bank will assume payment after 30 days if not actually advised of payment or non-payment, but this shall not prejudice the Bank's right of recourse (and the right of the Bank to debit any unpaid amount to your account with the Bank and to re-calculate any interest on the account as if such amount had never been credited to the account) if advice of non-payment is received at any time thereafter.

The facility may be used only by Joytech Europe Limited.

- 5 an open credit facility of £7,000 to cover arrangements to cash cheques at other banks or at branches of the Bank other than the account holding branch. The limit detailed above is the maximum value of cheques that may be cashed during such periods as may from time to time be advised by the Bank.

The facility may be used only by the following companies:  
The Company.  
Venom Games Limited.

- 6 a BACS facility of £900,000 to cover computerised sterling payment instructions that may be delivered direct or through an agreed intermediary to BACS Limited. The limit detailed above is the maximum total value of such instructions for payment during any one month.

The facility may be used by any of you, although the following companies may use the facility only up to the amount stated below:  
The Company - up to a maximum amount of £750,000.  
Joytech Europe Limited - up to a maximum amount of £150,000.

- 7 a Businesscharge card facility of £174,350 under the terms of an agreement dated 31st January 2001. The above limit is the "Business Limit" specified in the terms and conditions of your Businesscharge card application.

The facility may be used only by the following companies:  
The Company.  
Joytech Europe Limited.  
Venom Games Limited.

- 8 a LloydsLink payments facility under and subject to the terms and conditions set out in an agreement dated 17th January 2001 to cover the transfer of funds from agreed accounts by automated means initiated by the Company. The following limits apply to the facility:

£5,000,000; the maximum amount by which the limit on the overdraft facility may be exceeded during the course of any one day as a result of LloydsLink transactions which the Bank in its sole discretion may agree to permit through the CHAPS Payments module in anticipation of payments expected to be received on that day ("daylight risk").

£50,000; the maximum total value of LloydsLink transactions that have been initiated through the PC Pay module, but have not been debited to the agreed accounts ("three day value payments").

- 9 a Travellink facility of £2,000 under and subject to the terms and conditions set out in an agreement to cover foreign currency and travellers cheques ordered from the Bank by automated means initiated by the Company. The above limit is the maximum aggregate value of such orders that may be made on any two consecutive business days.
-

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

I, Paul Eibeler, Chief Executive Officer and President of Take-Two Interactive Software, Inc, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q for the quarterly period ended April 30, 2006 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 statement 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.

June 8, 2006

/s/ Paul Eibeler

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Paul Eibeler  
Chief Executive Officer and President

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

I, Karl H. Winters, Chief Financial Officer of Take-Two Interactive Software, Inc, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q for the quarterly period ended April 30, 2006 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 statement 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.

June 8, 2006

/s/ Karl H. Winters

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Karl H. Winters  
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**

In connection with the Quarterly Report of Take-Two Interactive Software, Inc. (the "Company") on Form 10-Q for the period ended April 30, 2006 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Paul Eibeler, as Chief Executive Officer and President of the Company, certify, pursuant to 18 U.S.C. SS 1350, as adopted pursuant to SS. 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.

June 8, 2006

/s/ Paul Eibeler

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Paul Eibeler  
Chief Executive Officer and President

**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 April 30, 2006 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Karl H. Winters, as Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. SS 1350, as adopted pursuant to SS. 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.

June 8, 2006

/s/ Karl H. Winters

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Karl H. Winters  
Chief Financial Officer

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