COMMERCIAL EXPLOITATION LICENSE AGREEMENT FOR *QUAKE II*

This Commercial Exploitation License Agreement for *QUAKE II* (the "Agreement") is between Id Software, Inc., a Texas corporation, (hereinafter "Id Software") and Licensee (as identified on the signature page hereof) and is made effective beginning on the date of last signature hereto (the "Effective Date").

R E C I T A L S

WHEREAS, Id Software is the owner and developer of the computer software game entitled *QUAKE II* (the "Game");

WHEREAS, Id Software desires to license certain limited non-exclusive rights regarding the Game to Licensee; and

WHEREAS, Licensee desires to receive a limited license for such rights.

T E R M S   A N D   C O N D I T I O N S

NOW, THEREFORE, for and in consideration of the mutual premises contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned parties do hereby agree as follows:

1.   Definitions.   As used in this Agreement, the parties hereto agree the words set forth below shall have the specified meanings:

a.   "Authorized Copy" shall mean one (1) copy of the Subject Game, operable only on a personal computer, actually purchased from an Id Software approved retailer; and

b.   "Subject Game" shall mean the full registered version of the Game on a CD-ROM and shall not mean the shareware or any other version; and

c.   "Trademarks" shall mean, collectively, *QUAKE II ™*, the id™ logo and the Id Software name.

2.   Grant of Rights.   Subject to the terms and provisions of this Agreement, Id Software hereby grants to Licensee and Licensee hereby accepts, a limited, world-wide (except as otherwise provided herein), non-exclusive, non-transferable, and non-assignable license to offer, on either a "pay per play" or a "no charge" basis, the Authorized Copy as installed in a network server and/or a personal computer at only those sites owned and/or operated by Licensee. Licensee may not install an Authorized Copy on more

than one (1) personal computer or network server. Licensee must actually purchase an Authorized Copy for each installation an a network server and personal computer.

3.   **Reservation of Rights and Prohibitions**.   Id Software expressly reserves all rights not granted herein. Any use by Licensee of the Authorized Copy not expressly permitted in paragraph 2. above is expressly prohibited and any such unauthorized use shall constitute a material breach of this Agreement by Licensee. Under no circumstances shall Licensee copy, reproduce, manufacture or distribute (free of charge or otherwise) the Authorized Copy or the Subject Game. Licensee shall not reverse engineer, decompile, disassemble, modify or alter the Authorized Copy. Licensee is not receiving any rights hereunder regarding the Trademarks or any artwork, sound, music or other element of the Subject Game.

4.   **Additional Obligations**.   In addition to the obligations of Licensee otherwise set forth in this Agreement, during the Term, and thereafter where specified, Licensee agrees that:

a.   Licensee will not attack or challenge the title of Id Software to the Subject Game or the Trademarks or any copyright, patent or trademark or other intellectual property right related thereto and Licensee will not attack or challenge the validity of the license granted hereunder during the Term or thereafter; and

b.   Licensee will promptly inform Id Software of any unauthorized use of the Authorized Copy, the Subject Game or the Trademarks, or any portions thereof, and will reasonably assist Id Software in the enforcement of all rights Id Software may have against such unauthorized users.

5.   **Financial Obligations.**

a.   **Initial Fee.** Licensee, upon Licensee's delivery to Id Software of Licensee's request for Id Software to enter into this Agreement, shall pay Id Software the sum of U.S. Five Hundred and No/100 Dollars ($500.00) (the "Initial Fee") as an administrative processing fee. Upon Id Software's execution of this Agreement, the Initial Fee shall become non-refundable. The Initial Fee shall not be recoupable as a credit against Royalties.

b.   **Royalties.**   Licensee agrees to pay Id Software a royalty ("Royalty") at the rate of twelve and one-half (12.5%) of Net Income. The term "Net Income" shall mean all revenue received by Licensee from the commercial use of the Authorized Copy, less only Licensee's actual, reasonable, necessary and documented costs relating directly to such use. A Royalty shall

only be due for those months in which Licensee's gross revenue from the commercial use of the Authorized Copy exceeds U.S. Five Thousand Dollars ($5,000.00) and in such months Licensee shall pay a full Royalty on one hundred percent (100%) of the gross revenue received. For those months where gross revenue is Five Thousand and No/100 Dollars ($5,000.00) or less, Licensee shall not be obligated to pay a Royalty.

c.   **Rendition of Statements.**   Licensee shall account to Id Software with regard to transactions hereunder within forty-five (45) days following the conclusion of each calendar quarter. Licensee shall deliver a Royalty statement to Id Software even though no Royalty may be due for the period covered by such Royalty statement.   The Royalty statements shall show in summary form the appropriate calculations relating to the computation of Royalties, if any. The Royalty statements shall also show the Gross Revenue received by Licensee per month. The Royalties payable to Id Software hereunder shall be remitted with the particular Royalty statement indicating such amount to be due.

d.   **Books of Account and Audits.** Licensee shall keep books of account (the "Books of Account") relating to Licensee's commercial use of the Authorized Copy on the basis of generally accepted accounting principles. Licensee shall maintain such Books of Account for a period of at least two (2) years after the expiration or earlier termination of this Agreement; provided, however, that Licensee shall not be required to keep such Books of Account longer than seven (7) years from their date of origination. Id Software may, upon reasonable notice and at its own expense, audit the applicable Books of Account at Licensee's office, in order to verify the accuracy of Royalty statements rendered hereunder. Any such audit shall take place during reasonable business hours and in such manner so as not to unreasonably interfere with Licensee's normal business activities.   If in an audit of Licensee's Books of Account it is determined that there is a short fall of ten percent (10%) or more in Royalties reported for any calendar month, in addition to payment of such short fall and interest as may be due, as provided herein, Licensee shall reimburse Id Software for the full out-of-pocket costs of the audit including reasonable travel costs and expenses; provided, however, that the amount of reimbursement paid by Licensee shall not exceed U.S. Fifteen Thousand Dollars ($15,000.00) for any audit.

e.   **Payment of the Royalty.**   Licensee assumes all risks

associated with fluctuations in foreign currency exchange rates. Licensee shall pay and agrees to pay all sums due Id Software in United States Dollars. With respect to Royalties used for commercial use outside the United States, other currencies shall be exchanged at the Expense of Licensee into United States Dollars using the bid price quoted at the Citibank, N.A. of New York, New York, for the purchase of United States Dollars at the close of business on the last day of the calendar quarter during which any amounts accrue. Payment of the Royalties shall be made in Dallas County, Texas.

f. **Interest.** If Id Software does not receive the applicable Royalty payment on or before the due date of such payment, Licensee agrees to pay and shall pay interest on past due Royalties owed to Id Software from such date as specified in the following sentence at a rate equal to the lesser of (i) eighteen percent (18%) per annum and (ii) the maximum interest rate per annum allowed by applicable law. For purposes of clarification, the interest referenced in the immediately preceding sentence will only begin to accrue on the first (1st) day following the due date of the due and owing, but unpaid, Royalty payment.

NOTHING HEREIN SHALL BE CONSTRUED AS A REQUEST OR DEMAND BY ID SOFTWARE FOR INTEREST AT A RATE HIGHER THAN ALLOWED BY APPLICABLE LAW. IT IS THE INTENT OF THE PARTIES HERETO THAT NO INTEREST BE CHARGED HEREUNDER WHICH EXCEEDS THE MAXIMUM RATE ALLOWED BY APPLICABLE LAW. THE INTEREST RATE APPLICABLE TO PAST DUE ROYALTY PAYMENTS SHALL NEVER EXCEED THE MAXIMUM RATE ALLOWED BY APPLICABLE LAW, UNDER ANY CIRCUMSTANCES.

6. Ownership. Title to and all ownership rights in and to the Subject Game and the Trademarks and the copyrights, trade secrets, trademarks, patents and all other intellectual property rights related thereto shall remain with Id Software which shall have the exclusive right to protect the same by copyright or otherwise. Licensee shall have no ownership rights in or to the Subject Game or the Trademarks and Licensee shall not own any intellectual property rights regarding the Authorized Copy, including, without limitation, the copyright in and to the Authorized Copy. Licensee acknowledges that Licensee, by this Agreement, is only receiving a limited license to use the Authorized Copy, as specified in that certain the Limited Use Software License Agreement contained within a file on the Authorized Copy and the manual accompanying the Authorized Copy and as specified in this Agreement.

7. Compliance with Applicable Laws. In exercising Licensee's limited rights hereunder, Licensee shall comply with all applicable laws, [including, without limitation, 22 U.S.C., §2778 and 22 U.S.C. C.F.R. Parts

120-130 (1995)] regulations, ordinances and statutes, including, but not limited to, the import/export laws and regulations of the United States and its governmental and regulatory agencies (including, without limitation, the Bureau of Export Administration and the U.S. Department of Commerce) and all applicable international treaties and laws.

8. **Term and Termination**.

a. The term of this Agreement and the license granted herein begins on the Effective Date and shall expire, without notice, on a date one (1) calendar year from the Effective Date (the "Term").

b. Either party may terminate this Agreement, for any reason or no reason, on thirty (30) days written notice to the other party. Termination will be effective on the thirtieth (30th) day following delivery of the notice of termination. Notwithstanding anything to the contrary herein, this Agreement shall immediately terminate, without the requirement of any notice from Id Software to Licensee, upon the occurrence of any of the following "Terminating Events": (i) if Licensee files a petition in bankruptcy; (ii) if Licensee makes an assignment for the benefit of creditors; (iii) if any bankruptcy proceeding or assignment for benefit of creditors is commenced against Licensee and not dismissed within sixty (60) days after the date of its commencement; (iv) the insolvency of Licensee; or (v) the cessation by Licensee of its business. Upon the occurrence of a Terminating Event, this Agreement and any and all rights hereunder shall terminate without prejudice to any rights or claims Id Software may have, and all rights granted hereunder shall revert, without notice, to and be vested in Id Software.

c. Termination or expiration of this Agreement shall not create any liability against Id Software and shall not relieve Licensee from any liability which arises prior to termination or expiration. Upon expiration or earlier termination of this Agreement, Licensee shall have no further right to exercise the rights licensed hereunder or otherwise acquired in relation to this Agreement.

9. **Licensee's Warranties**. Licensee warrants and represents that (i) Licensee has full legal rights to enter into and become bound by the terms of this Agreement, to perform Licensee's obligations hereunder; (ii) Licensee will comply, at all times during the Term, with all applicable laws, as set forth hereinabove; (iii) all Royalty statements shall be true, accurate and correct and (iv) all Books and Accounts shall be true, accurate and

correct.

10. Indemnification. Licensee hereby agrees to indemnify, hold harmless and defend Id Software and Id Software's predecessors, successors, assigns, officers, directors, shareholders, employees, agents, representatives, licensees (but not including Licensee), sublicensees, distributors, attorneys and accountants (collectively, the "Id Related Parties") from and against any and all "Claims", which shall mean all damages, claims, losses, causes of action, liabilities, lawsuits, judgments and expenses (including, without limitation, reasonable attorneys' fees and expenses) arising from, relating to or in connection with (i) a breach of this Agreement by Licensee and/or (ii) Licensee's use or non-use of the Authorized Copy. Id Software agrees to notify Licensee of any such Claims within a reasonable time after Id Software learns of same. Licensee, at its own expense, shall defend Id Software and the Id Related Parties from and against any and all Claims. Id Software and the Id Related Parties reserve the right to participate in any defense of the Claims with counsel of their choice, and at their own expense. In the event Licensee fails to provide a defense, then Licensee shall be responsible for paying the attorneys' fees and expenses incurred by Id Software and the Id Related Parties regarding the defense of the Claims. Id Software and the Id Related Parties, as applicable, agree to reasonably assist in the defense of the Claims. No settlement by Licensee of any Claims shall be valid unless Licensee receives the prior written consent of Id Software and the Id Related Parties, as applicable, to any such settlement.

11. Limitation of Liability. UNDER NO CIRCUMSTANCES SHALL ID SOFTWARE BE LIABLE TO LICENSEE FOR ACTUAL, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OR ANY OTHER DAMAGES, WHETHER OR NOT ID SOFTWARE RECEIVES NOTICE OF ANY SUCH DAMAGES.

12. Disclaimer of Warranties. ID SOFTWARE EXPRESSLY DISCLAIMS ALL WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WITH REGARD TO THE AUTHORIZED COPY AND OTHERWISE.

13. Goodwill. Licensee recognizes the great value of the goodwill associated with the Subject Game and the Trademarks, and acknowledges that such goodwill, now existing and hereafter created, exclusively belongs to Id Software and that the Trademarks have acquired a secondary meaning in the mind of the public.

14. Remedies. In the event of a breach of this Agreement by Id Software, Licensee's sole remedy shall be to terminate this Agreement by delivering written notice of termination to Id Software. In the event of a breach by Licensee of this Agreement, Id Software may pursue the remedies

to which it is entitled under applicable law, including, but not limited to, termination of this Agreement by delivering written notice to Licensee. Licensee agrees that its failure to comply with the terms of this Agreement upon expiration or earlier termination hereof or Licensee's unauthorized use of the Authorized Copy may result in immediate and irreparable damage to Id Software for which there is no adequate remedy at law, and in the event of such failure or unauthorized use by Licensee, Id Software shall be entitled to injunctive relief without the necessity of posting bond or other security. Pursuit of any remedy by Id Software shall not constitute a waiver of any other right or remedy of Id Software under this Agreement or under applicable law. Termination of this Agreement shall not be a pre-condition to Id Software pursuing its other remedies for breach.

15. Choice of Law, Venue and Service of Process. This Agreement shall be construed in accordance with the laws of the State of Texas and applicable United States federal law and all claims and/or lawsuits in connection with this Agreement must be brought in Dallas County, Texas where exclusive venue shall lie. Licensee hereby agrees that service of process by certified mail to the address set forth below, with return receipt requested, shall constitute valid service of process upon Licensee. If for any reason Licensee has moved or cannot be validly served, then Licensee appoints the Secretary of State of the state of Texas to accept service of process on Licensee's behalf.

16. Delivery of Notices, Payments and Royalty Statements. Unless otherwise directed in writing by the parties, all notices given hereunder shall be sent to the applicable addresses set forth on the signature page hereof.   All notices, requests, consents and other communications under this Agreement shall be in writing and shall be deemed to have been delivered on the date personally delivered or on the date deposited in the United States Postal Service, postage prepaid, by certified mail, return receipt requested, or telegraphed and confirmed, or delivered by electronic facsimile and confirmed. Any notice to Id Software shall also be sent to its counsel: D. Wade Cloud, Jr., Hiersche, Martens, Hayward, Drakeley & Urbach, P.C., 15303 Dallas Parkway, Suite 700, LB 17, Dallas, Texas 75248. Licensee shall forward all Royalty payments and statements to Id Software at Id Software's address as shown on the signature page of this Agreement, under otherwise directed in writing by Id Software.

17. No Partnership, Etc. This Agreement does not constitute and shall not be construed as constituting a partnership or joint venture between Id Software and Licensee. Neither party shall have any right to obligate or bind the other party in any manner whatsoever, and nothing herein contained shall give, or is intended to give, any rights of any kind to any third persons.

18. Counterparts. This Agreement may be executed in several counterparts, each of which will be deemed to be an original, and each of which alone and all of which together, shall constitute one and the same instrument, but in making proof of this Agreement it shall not be necessary to produce or account for each copy of any counterpart other than the counterpart signed by the party against whom this Agreement is to be enforced. This Agreement may be transmitted by facsimile, and it is the intent of the parties for the facsimile (or a photocopy thereof) of any autograph printed by a receiving facsimile machine to be an original signature and for the facsimile (or a photocopy thereof) and any complete photocopy of the Agreement to be deemed an original counterpart.

19. Entire agreement. This Agreement constitutes the entire understanding between Licensee and Id Software regarding the subject matter hereof. Each and every clause of this Agreement is severable from the whole and shall survive unless the entire Agreement is declared unenforceable. No prior or present agreements or representations between the parties hereto regarding the subject matter hereof shall be binding upon the parties hereto unless incorporated in this Agreement, except the Limited Use Software License Agreement shall remain binding and in effect. No modification or change in this Agreement shall be valid or binding upon the parties hereto unless in writing and executed by the parties to be bound thereby.

20. Assignment. This Agreement shall bind and inure to the benefit of Id Software, its successors and assigns, and Id Software may assign its rights hereunder, in Id Software's sole discretion. This Agreement is personal to Licensee, and Licensee shall not sublicense, assign, transfer, convey nor franchise its rights granted hereunder.

21. Survival. The following provisions shall survive the expiration or earlier termination of this Agreement: paragraphs 6., 9., 10., 11., 12., 13., 14., 15., 16., 18., 19., 21., 22.a. and 22.b.

22. Miscellaneous.

a. All captions in this Agreement are intended solely for the convenience of the parties, and none shall effect the meaning or construction of any provision.

b. The terms and conditions of this Agreement have been negotiated fully and freely among the parties. Accordingly, the preparation of this Agreement by counsel for a given party will not be material to the construction hereof, and the terms of this Agreement shall not be strictly construed against such party.

By signing in the spaces provided below, the parties have agreed to all of the terms and provisions set forth in this Agreement.

AGREED:

LICENSEE:_____
          (INSERT   COMPANY
          NAME, IF APPLICABLE)

BY:_____
NAME:_____
         (PLEASE PRINT)
TITLE:_____
        (APPLICABLE IF A COMPANY)
ADDRESS:_____

_____
TELEPHONE:_____
TELECOPIER:_____
DATE OF EXECUTION:_____

AGREED:

ID SOFTWARE, INC.

BY:_____
NAME: Todd Hollenshead
TITLE: Chief Executive Officer
ADDRESS: 18601 LBJ Freeway
         Suite 615
         Mesquite, Texas 75150
DATE OF EXECUTION:_____