



한국게임산업진흥원  
Korea Game Industry Agency

kotri

# 동남아 게임시장 4분기 특별보고서

[태국]

[주요 내용]

<태국 진출 온라인게임 계약서 조사 및 사본>

1. 계약서 항목 별 주요 내용
2. 계약서 사본 (총 19장)

특별 4호 - 2007년 4분기

※ 조사방법 : '06년도 서비스 한 바 있는 한국 캐주얼 온라인 게임 업체인 A사와 태국 중소규모 게임 유통 업체인 B사의 계약서 입수, 사례 분석 조사

## 1. 계약서 항목 별 주요 내용

### □ 제 1항 (Article 1. Definitions)

- 계약서 상 주요 영문 용어에 대한 정의
- 'Thai Version', 'Confidential Information', 'Intellectual Property' 'Licensed Material' 등
- 특히 'Derivative Merchandise'의 종류 열거 : 옷, 악세사리, 생활용품, 모바일 콘텐츠, 음원등

### □ 제 2항 (Article 2. Grant of License)

- 동 계약서상 License의 특징은 독점, 매출에 따른 로열티 지급, 양도 불가 등임
- 계약서상 열거되지 않은 권리는 Licensor에게 있음을 명확히 하여 수출자 (개발 업체)의 이익을 보호
- 기타, 게임에 후속작에 대한 우선권이 Licensee에 있음을 명기

### □ 제 3항 (Article 3. Delivery of Game & Translation)

- 게임의 현지화를 신속하고 효율적으로 추진하기 위해 Licensor, Licensee의 의무사항 명기
- Close Beta, Open Beta, Commercial Service의 시행 스케줄 명기
- 서버 업그레이드, 해킹방지, 오류 및 바이러스 체크 등의 사항은Licensee측에서 지원토록 함

### □ 제 4항 (Article 4. Responsibilities of each Party)

- Licensor, Licensee의 의무사항 명기

- Licensor : 게임 개발, 업그레이드, 프로그램 기능 개선 등
- Licensee : 현지 마케팅, 판매, 서버관리, 고객관리 등

**□ 제 5항 (Article 5. Installation & Technical Assistance)**

- 기술적인 문제 해결을 위한 Licensor측 직원 현지 파견 문제 언급
- 담당자 파견에 소요되는 비용에 대한 세부 사항까지 명기

**□ 제 6항 (Article 6. Payment)**

- 계약금, 로열티 지불 관련 사항 명기
  - 동 계약의 경우 계약금은 3회에 걸쳐 납부, 지불 기한 명기
  - 로열티는 총 서비스 판매액의 20%이며, 매달 30일에 지불함

**□ 제 7항 (Article 7. Repot & Audit)**

- Licensee가 Licensor측에 '월간 동향 보고서'를 제출토록 규정
- Licensor 감사권을 부여, Licensee는 감사 관련 사항에 협조토록 규정

**□ 제 8항 (Article 8. Advertising)**

- Licensee는 현지 광고 및 프로모션 등의 마케팅 사업에 충실해야함
- Licensee측에서 현지에 적합한 게임 광고에 관한 계획을 작성해야함
  - 소요 예산, 마케팅 일정, 현지 매체 정보 등
- Licensor는 Licensee에게 계약한 게임의 이전 프로모션, 마케팅 샘플을 제시해야할 의무가 있음

**□ 제 9항 (Article 9. License for Derivative Merchandises of Game)**

- 온라인 게임 관련 상품에 대한 권리를 Licensee에 부여
- Licensee는 상품 제작을 위해 타 기업과 Sublicense계약을 체결할 수 있음
- 관련 상품의 로열티는 제품에 따라 차이를 둠
  - 일반 상품 : Licensee에게 부여되는 판매 수익의 40%
  - 도서,만화,기타출판물 : Licensee에게 부여되는 판매 수익의 40%

- 모바일콘텐츠 : Licensee에게 부여되는 판매 수익의 25%
- Sublicense : Sublicensee 판매 수익의 50%

□ 제 10항 (Article 10. Intellectual Property)

- 온라인 게임 관련 지적재산권은 원칙적으로 Licensor의 소유임을 명기
- 계약서상에 언급된 부분에 한하여 Licensee가 게임 관련 지재권을 행사할 수 있다고 규정

2. 계약서 사본 (총 19장 중 1-10장)

1.

Exclusive License and Distribution Agreement

This License and Distribution Agreement (this "Agreement"), is entered into as of this **"날 자"** (hereinafter as the "Effective Date") by and between

\_\_\_\_\_ a corporation duly organized and validly existing under the laws of Korea and having its principal place of business at \_\_\_\_\_

(hereinafter as the "Licensor")

and \_\_\_\_\_ a corporation duly organized and validly existing under the laws of Thailand and having its principal place of business at \_\_\_\_\_

Thailand (hereinafter as the "Licensee").

Licensor and Licensee shall be referred to individually as a "Party" and collectively as the "Parties".

RECITAL

WHEREAS, Licensor have developed and possess all rights in computer programs and online game "\_\_\_\_\_" (hereinafter as the "Game") and possess valuable know-how and technical information on the installation, design, service and use of the Game and desires to grant the exclusive license to the Licensee to distribute and market the Game in the Territory (as defined below);

WHEREAS, Licensee desires to manage, distribute and market the Game in the territory;

NOW, THEREFORE, in consideration of the mutual promises and covenant contained herein and other good and valuable consideration, the Parties agree as follows:

Article I.

Definitions

The terms defined in this Article shall have the meaning ascribed to them hereinafter whenever they are used in this Agreement, unless otherwise clearly indicated by the context.

1.1 "Thai Version" shall mean the Game in Thai.



2.

- 1.2 "Confidential Information" shall mean all materials, know-how, software or other information including, but not limited to, proprietary information and materials regarding a Party's technology, products, business information or objectives, including the software for the Game and Technical information under this Agreement, which is the type that is customarily considered to be confidential information by persons engaged in similar activities.
- 1.3 "End Users" shall mean the users of the Game through network game service system established and operated by Licensee with individually assigned ID numbers for each End User.
- 1.4 "Game" shall mean **-게임명-**, as known as **"-게임명"** including any modified or advanced version of the Game obliged to provide or distribute by Licensor under the Agreement for error correcting, updating or debugging purpose, under the same title.
- 1.5 "Intellectual Property" shall mean all patents, designs, utility models, copyrights, know-how, trade secrets, service mark, trade dress and any other intellectual property right in or related to the Game, Technical Information or Derivative Merchandises.
- 1.6 "Servers" shall mean the servers established, installed and operated by Licensee within the Territory only for the service of the Game to the End Users in the Territory.
- 1.7 "Gross Service-Sales Amount" shall mean the monies generated from distribution and sales of the Game's prepaid card, calculated in the Billing System WITHOUT any deduction of any tax or whatsoever and the Game's Offline Package WITHOUT any deduction of any tax or whatsoever.
- 1.8 "Technical Information" shall mean the information on or related to the operation, maintenance, service and marketing of the Game.
- 1.9 "Territory" shall mean the territory of Thailand. The Territory can be extended only upon the mutual agreement written by the Parties.

3.

1.10 "Localization" shall mean the language converting of the Korean version of the Game and server installation in one site in the Territory.

1.11 "Wholesaler-Discounts" shall mean the discount which will be offered by the Licensee to all wholesalers who run sales market.

1.12 "Licensed Material(s)" shall mean visual graphical images, figures, portraits, models, patterns, pictures, backgrounds of various characters used within or in relation to the Game, and sound sources (background music, sound effects, etc) which are originally contained in the Game under and subject to all applicable intellectual property rights and trademarks wholly retained by Licensor.

1.13 "Derivative Merchandise(s)" shall mean various types of products which are based upon and deriving from the Licensed Materials. The Derivative Merchandises shall include, but not limit to, clothes, accessories, toys, pillows or cushions, cups, stationeries, sports goods, office and household appliances, watches, clocks, cameras, pendants for mobile telephones, jigsaw puzzles, cosmetics, cartoons, cosmetics, food products, ornaments, books, downloadable sounds and standby pictures for mobile telephones.

1.14 "Offline Package (s)" shall mean a package which includes "게임명" CD (if necessary), a pre-paid point card, non-commercial Licensed Material and/or Derivative merchandise, and any other promotional materials related to the Game service (if necessary).

## Article 2.

### Grant of License

2.1 Licensor hereby grant to Licensee, subject to the terms and conditions contained in this Agreement, the exclusive, royalty-bearing and non-transferable license (the "License") to service, use, promote, distribute and market the Game to the End Users and to use the Technical Information for such purpose within the Territory.

2.2 For the purposes of service, use, promotion, distribution and marketing of the Game under this Agreement, Licensor grant to Licensee a royalty free exclusive right to use in the Territory the name, title and characters of the Game in all versions as devised by the Licensor.



4.

2.3 All of the rights on or in relation to the Game, except as granted under this Agreement, including, but not limited to, the rights on the character business of the Game(except the characters are designated by Licensee ), shall remain exclusively with Licensor. But if Licensee wants to get the license of the above rights, Licensor shall grant Licensee the license if the condition offered by Licensee to Licensor is the same or better than those of third parties who want to get the license.

2.4 If Licensee wants to get the license of the sequel of the Game (if any), Licensee is entitled to enjoy the priority right for the agency in the Territory and in the South East Asia area. All terms and conditions regarding the agency shall all be consulted by Parties separately.

2.5 Licensor grants to Licensee the royalty free exclusive right to use Licensor's logos, trademarks, trade name and other Intellectual Property for, with limitation to, the service, the marketing of the Game and sale of Derivative Merchandises in the Territory.

### Article 3.

#### Delivery of Game & Translation

3.1 Licensor shall provide Licensee with the game texts, artworks, technical manual and other information of the current available version of the Game as propaganda to promote and market the service of the Game in the Territory by **계약일로부터 한달 이내** All other materials and tools that is necessary for the promotion and service of the Game in the Territory, such as opening movies, game strategy information and the set of tools to pursue the customer service and monitoring works shall also be provided immediately upon its completion in Korea to Licensee no later than **계약 일로부터 한달이내**

3.2 Licensee shall endeavor its best commercial efforts to complete, and furnish to Licensor, the Thai translation of Licensed Game within ( 45 )days after receipt of Licensed Game. And for each patch thereafter, Licensee shall endeavor its best commercial efforts to complete the translation of the patch within five(5) days after receipt of Licensor's patch.

3.3 Licensee shall deliver the document that has been translated to Licensor as soon as it



5.

is practical, so that Licensor can start the localization as quickly as possible.

3.4 Licensee shall endeavor its best commercial efforts to beginning of Closed Beta Test, including game leaflet, home page, advertising material and game command list.

3.5 Licensor shall endeavor to incorporate, as much as it is appropriate, the translation work to be done by Licensee for task, map, tool, skill, options, monster, treasure, ect. of Licensed Game.

3.6 Licensor shall endeavor to provide Licensee with the Thai Version and the technical assistance that is necessary for Licensee to launch its closed beta service of the Game in the Territory by **계약일로부터 3달** The above technical assistance and service shall include but not be limited to the assistance to the initial server setup, technical training of engineers and service staffs designated by Licensee.

3.7 Licensor shall continue after the closed beta service in the Territory to provide Licensee with the Thai Version for the upgraded or modified versions of the Game, and the service on debugging, anti-hacking and other technical assistance necessary for Licensee to launch its open beta service of the Game in the Territory scheduled in **계약일로부터 5달**

3.8 Licensor shall, after the open beta service in the Territory, continue to provide Licensee with the Thai Version for the upgraded or modified versions of the Game, and the service on debugging, anti-hacking and other technical assistance necessary for Licensee to launch its commercial service of the Game in the Territory before **계약일로부터 약 6달**

3.9 Licensor shall, after the commercial service in the Territory, continue to provide Licensee with the Thai Version for the upgraded or modified versions of the Game, and the service on debugging, anti-hacking and other technical assistance necessary for Licensee to maintain the commercial service in the Territory to a mutually satisfactory status.

3.10 Once Licensee receives the Thai Version and technical documents on the Game (collectively "Delivery Materials") from Licensor, Licensee shall perform its review and test and inform Licensor of any defect, if any. Licensor should correct and repair

6.

the defect within five (5) working days after being informed by Licensee.

3.11 The Licensor shall be responsible for the localization of the Game, however, text image change, which shall be performed by the Licensee.

3.12 Licensor and Licensee may, upon mutual written agreement, consent to change the delivery date.

3.13 Licensee shall, within five (5) days following its receipt of Deliverables of Game at each service, in writing, accept or reject it. The Licensee's failure to respond with such five(5) days period shall be deemed acceptance.

3.14 Both Parties agree that the characters of the Game may be replaced by the characters proposed by mutual agreement. For marketing purposes, Licensee may request Licensor to make modification, amendment or revision of any part of the Game including the name of title of the Game, and the Parties shall further negotiate and make an appropriate solution in this respect.

#### **Article 4.**

##### **Responsibilities of each Party**

4.1 Licensor shall be responsible for product development, product upgrade and functional improvement. Licensee may request Licensor for all kinds of schedule and data illustration required for the Game management and the complete services. Licensor shall provide assistance in every possible aspect within five(5) working days from the date Licensee inform Licensor.

4.2 Licensor shall have rights to be paid the advanced payment and the running royalty by Licensee as provided in this Agreement. Licensor shall do its best effort to support Licensee's operation and marketing of the Game in the Territory.

4.3 Licensee shall be responsible for marketing, sales, setting and management of servers, management and support of subscribers/membership, and collection of related fee in the Territory.

4.4 The Licensee shall make prior written notification to Licensor of the ~~Offline~~ Package of the Game including but not limited to prepaid cards which the Licensee

7.

intends to manufacture, produce, sell, or distribute under this Agreement within the Territory.

4.4 All the parties shall assist one another in furtherance of the purposes of this Agreement.

#### **Article 5,**

##### **Installation & Technical Assistance**

5.1 In connection with the Online Service of the Game whether it is on promotional purpose in releasing the Public Beta Version or commercial reason within Territory, the Licensee shall be solely responsible for the cost of the Servers and hardware rental needed to service the Game in the Territory at Licensee's expense. The Licensee at its obligation and subject to the terms and conditions of this Agreement shall perform the installation of Game Server(s) and Web Server(s) for the relevant Territory, the establishment of the Web Site in Thai language, and the development of the online billing system for the Game within Territory at the Licensee's own cost whatsoever provide the customized billing solution to Licensor in a timely manner for integration. The Licensor shall provide reasonable technical supports and necessary trainings for the usage of the Server(s) to the Licensee until and after the Licensee commences the charge on the Online Service of the Game within the Territory. The Licensee hereby acknowledges that the Intellectual Property of the software used in the Server shall be exclusively owned by the Licensor.

5.2 Licensor shall provide to Licensee technical support concerning installation of the Game, program configuration of servers and operation of Game applications together with some other related detailed technical documents before the open of game services to the public.

5.3 In the event that a system problem occurs in Game service, and Licensee is unable to resolve the problem upon using best efforts, Licensee shall notify Licensor for the problem. Upon such a notification, Licensor shall make reasonable efforts to assist Licensee in resolving the problem. Notwithstanding any provisions to the contrary and for avoidance of any doubt, Licensor cannot and shall not be responsible for any defect, bug, malfunction or other similar situation that is caused, directly or indirectly, in part or wholly, by external factors (e.g., hacking) (collectively, "Externally-Caused Situations"), provided, however, that the Parties shall make best



8.

efforts to fix and rectify such situation to the best of their abilities.

5.4 Licensor shall dispatch its engineers to Licensee for technical assistance of the Game in the Territory at each stage of Close Beta, Open Beta and Commercial Service. At each stage of Close Beta, Open Beta and Commercial Service, the air ticket shall be borne by Licensor, but the accommodation cost, incurred by such engineers in the Territory, shall be borne by Licensee. Additionally, other all the expenses, incurred by such engineers in the Territory, including but not limited to, food and other general expenses (USD 30 per day & person) for working and living during their stay for the period of technical assistance also shall be borne by Licensee. Except for the three (3) dispatches, Licensor shall, upon the request of Licensee, dispatch its engineers to Licensee for smooth service of the Game in the Territory. Any form of other expenses incurred by the dispatch upon Licensee's request shall be borne by Licensee.

5.5 Licensor shall provide Licensee with telephone access for technical assistance of all kinds of assistance request.

5.6 On Licensee's request, Licensor will provide 7 days technical training of the Licensee's personnel for the Game. Training will be in the areas of engineering use and maintenance of the Game, operation, sales and marketing. Licensor shall not charge any fee for the said training program.

5.7 Any further assistance may be rendered by Licensor upon mutual agreement of the Parties.

#### Article 6.

#### Payment

6.1 In consideration of the License and technical assistance granted under this Agreement, Licensee shall pay to Licensor as follows;

##### (a) Initial Payment

Licensee shall pay to Licensor a sum of USD (withholding tax excluded) in the following manner:

- (i) 1<sup>st</sup> Installment Payment: USD - shall be paid within 계약일로부터 일주일
- (ii) 2<sup>nd</sup> Installment Payment: USD - shall be paid within 계약일로부터 5주

9.

(iii) 3<sup>rd</sup> Installment Payment: USD - shall be paid within thirty days (30) after the initial date of Open Bet in the Territory.

(b) Royalty

In addition to the Initial Payment, Licensee agrees also pay the following royalties to Licensor:

Licensee shall pay to Licensor twenty percent (20%) of the Gross Service Sales Amount as running royalties. The royalty payment shall be made on a monthly basis within thirty (30) days after the end of each month, accompanied by the detailed report on the calculation of "Service Sales Amount" for the applicable month.

(c) The Licensor cannot delay payments hereof in any occasion. Notwithstanding, any payment due to Licensor under this Agreement and not paid on the due date for payment shall bear annual interest at [15] % (but in no event more than the maximum rate allowed by law) from the date when payment falls due to the date of actual payment.

6.2 Any and all payment under this Agreement by Licensee to Licensor shall be made in US Dollar and by wired transfer to the account designated by Licensor specified as below:

Account Name

Account Number

Name of Bank

Bank Address

Swift Code

6.3 For all payments to be made in US Dollar under this Agreement, the applicable foreign exchange rate shall be the basic exchange rate published by the Bank of Thailand on the due date for the relevant payment.

6.4 The Licensee shall supply the Licensor with all appropriate forms required to be submitted by the Licensee and/or the Licensor to avoid withholding taxes insofar as local laws allow and shall give the Licensor reasonable help in completing and filling these forms and shall give the Licensor a certificate for any such tax which is withheld. In the event that applicable law requires deduction or withholding from any payments due to the Licensor under this Agreement, the Licensee shall increase

10.

the applicable gross amounts payable to the extent necessary to ensure that the amount received by the Licensor is not less than the stated amounts.

#### Article 7.

##### Report & Audit

- 7.1 Licensee shall maintain complete and accurate books and records in sufficient detail to reflect its operations under this Agreement and to enable the royalties accrued and payable under this Agreement to be determined.
- 7.2 Licensee shall provide Licensor with a monthly report (the "Monthly Report") in writing on its business activities in relation to the Game including but not limited to the list of end-users number, the fees charged by Licensee, sales revenue of the pertinent month.
- 7.3 Licensee shall keep all of its record, contractual and accounting documents and company documents in relation to its business and activities under this Agreement in its offices, during the term of this Agreement and for two (3) years after the expiration or termination of Agreement.
- 7.4 During the term of this Agreement, Licensor may by themselves reasonably audit the company documents of Licensee with respect to its Game business that is related to this Agreement. The action of audit should be held at Licensee's office hour. For this purpose, Licensor may reasonably request Licensee to produce the relevant documents, and may visit Licensee's office. Licensee shall provide all assistance and cooperation required by Licensor for such audit. All expenses incurred for such audit shall be borne by Licensor.
- 7.5 The server management and the billing server management shall be solely carried out by the Licensee and if requested to the Licensee by the Licensor, Licensee shall share the online customer's database without any limitation. The billing server management shall be solely carried out by the Licensee and the Licensor shall have full access to the billing server database without any limitation to compute the revenue in the head-count of customers online within the Territory.

#### Article 8.

##### Advertising



11.

- 8.1 Licensee shall exert its best efforts to advertise, promote and perform marketing activities on the Game in the Territory.
- 8.2 For the advertising of the Game in the Territory, Licensee shall provide a Marketing Plan for the Game, including but not limited to, budget, schedule and media information for marketing within one quarter from the date of advertising the materials.
- 8.3 Licensor shall provide Licensee with samples of the marketing and promotional materials for the Game which have been or will be produced and used by Licensor during the term of this Agreement. For the marketing and advertising materials for use in the Territory, Licensee shall provide Licensor with samples thereof and Licensor shall present the suggestion and opinion prior to Licensee's actual use of such advertising materials. Licensor's failure to respond within two (2) working days after receipt of such samples of advertising material shall be deemed as acceptance of such advertising materials.
- 8.4 The Licensee agrees to maintain the quality of Game or the Marketing Materials manufactured under this Agreement up to the specifications, quality, and finish of the production sample of such Game approved by the Licensor under the clause, and agrees not to change such Game in any respect without first submitting to the Licensor samples showing such proposed changes and obtaining written approval of such samples by the Licensor in accordance with the clause. From time to time after it has commenced manufacturing the Game, The Licensee, upon request, shall furnish free of charge to the Licensor a reasonable number of random production samples of any Offline package specified by Licensor in its request and shall sell to the Licensor such quantity of Units requested by the Licensor on terms no less favorable to the Licensor than those offered to any third party.

#### **Article 9.**

##### **License for Derivative Merchandises of Game**

- 9.1 Licensor hereby grants, and Licensee hereby accepts, during the term of this Agreement, an exclusive right and license to use and re-produce the Licensed Materials in order to manufacture, distribute and sell the Derivative Merchandise within the Territory with the prior written notice to Licensor.

12.

2 Licensee shall be permitted to sublicense to the third party the rights granted hereunder by this Article within the Territory with the prior written notice to Licensor. Licensor hereby agrees and warrants that Licensee shall cause its sub-licensee to prepare, execute and submit its statement to Licensee and Licensor to the effect that such sub-licensee shall be bound by any and all obligations hereunder, prior to the sublicense contemplated herein. Licensee shall cause such sub-licensee to be subject to all of Licensee's obligations, including but not limited to, quality assurance and payment, under this Agreement.

### 3 Derivative Merchandises Royalty

(a) Licensee shall pay to Licensor royalties on a quarterly basis ("Derivative Merchandises Royalty") for each type of Derivative Merchandise (Non-sale promotional products and the characters designated by Licensee shall be excluded from the royalty calculation). Unless otherwise specifically provided in this Agreement, the payment shall be subject to the rate provided below:

(i) General merchandises – (40% ) percent of Licensee's income from the sales of the Derivative Merchandise.

(ii) Books/cartoons/other printed matters – (40 % ) percent of Licensee's income from the sales of the Derivative Merchandise .

(iii) Ring sounds and standby pictures download services for mobile phones (collectively, the "Mobile Services") – (25%) percent of Licensee's income arising from or in relation to the Mobile Services.

(iv) Sublicense – (50%) percent of the royalty collected from the sub-licensee regardless of the type of Derivative Merchandises.

(b) The Derivative Merchandises Royalty payment shall be made on a monthly basis within thirty (30) days after the end of each quarter, accompanied by the detailed report on the calculation of "Service-Sales Amount" for the applicable month.

#### (c) Artwork Manual

(i) Licensor shall provide Licensee with the artwork manual which will contain artwork information on the Licensed Materials, such as color tones and their application samples, application instructions, etc., to the licensed merchandises upon signing of this Agreement.

(ii) Licensee shall faithfully comply with such artwork manual and in case the content of the Artwork manual seems unclear, Licensee shall discuss with Licensor in advance for a possible reasonable adjustment.

#### (d) Sales Plan



13.

Prior to the manufacturing of each of the Derivative Merchandises, Licensee shall provide with Licensor in writing, of a detailed Sales Plan for each type of the Derivative Merchandises, which shall contain information on description of the Derivative Merchandises to be manufactured, production and distribution schedules, retail price of such Derivative Merchandise and any other information related to the sales activities of Licensee in regard to such Derivative Merchandise

#### **Article 10.**

##### **Intellectual Property**

- 10.1 All of the Intellectual Property on the Game and Licensed Materials shall be exclusively owned by Licensor, and Licensee can exercise the right or license on the Intellectual Property only granted under this Agreement.
- 10.2 Licensor represents and warrants that Licensor shall bear all of the cost and to be responsible to complete all the registration of the rights hereof (including but without limitation, the trade mark, Marks, patent, copyright, etc) and other necessary rights of the Game in Korea and the Territory. Licensor shall provide the certificates related to the said Intellectual Property to Licensee within thirty days upon the execution of the agreement.
- 10.3 Licensor hereby represents and warrants that Licensor have a legal and valid right to grant the rights and licenses under this Agreement to Licensee and that the Game and Technical Information do not violate or infringe any patent, copyright and trademark of any third party in the Territory as well as in Korea.

#### **Article 11.**

##### **Indemnification**

- 11.1 Licensor agree to indemnify and hold harmless Licensee from any kind of losses, costs, expenses or liabilities, including reasonable attorneys' fees and costs of settlement, resulting from any claim by a third party upon Licensor' breach of the agreement; provided that Licensee (a) promptly notifies Licensor of such claim; (b) allows Licensor to control the defense of such claim and/or any related settlement negotiations; and (c) provides any reasonable assistance requested by Licensor in connection with such claim.
- 11.2 Each Party agrees to indemnify and hold the other Party harmless from and against

14.

any claims, losses, liabilities, damages, costs, and expenses (including but not limited to court costs and reasonable fees for attorneys and other professionals) which arise as a result of (a) its own breach of any of the warranties expressly set forth in Article 10 above, (b) its own breach of any of the obligations expressly set forth in this Agreement, or (c) expenses which are incurred by the other Party in connection with the settlement or avoidance of any of the foregoing types of claims.

- (i) As a condition to indemnification, each Party shall promptly inform the other Party in writing of the assertion of any such claim, demand or suit, and the Parties will cooperate with and assist each other with respect to the defense and/or settlement of such matter (in a manner consistent with their respective confidentiality obligations and preservation of attorney/client, work product and other privileges);
- (ii) Each Party shall have the right, at its own expense, to participate in the defense of any such claim, demand or suit with legal counsels of its own choosing.

#### **Article 12.**

##### **Confidentiality**

All confidential Information disclosed by the Parties under this Agreement shall be maintained in confidence by the receiving Party and shall not be used for any purpose other than explicitly granted under this Agreement. Each Party agrees that it shall provide Confidential Information received from the other Party only its employees, consultants and advisers who need to know for the performance of this Agreement. The receiving Party shall be responsible for any breach of this Article by its employees, consultants and advisers.

#### **Article 13.**

##### **Term**

13.1 This Agreement shall become effective on the initial date of Commercial Service and continue for a period of three (3) years, unless there is any earlier termination pursuant to Article 14 or under any applicable laws and regulation.

13.2 No later than six (6) months prior to the expiration of this Agreement, Licensor shall give Licensee the first of negotiation for a period of thirty (30) days for

15.

renewal of a license agreement for the Game. The above provision shall apply at the expiration of each Renewed Term. If no agreement in writing is made between the Parties for renewal two (2) months before the expiration of this Agreement, this Agreement shall expire without any further extension or renewal.

#### **Article 14.**

##### **Termination**

14.1 This Agreement may be terminated upon the mutual written agreement of the Parties.

14.2 Each Party shall have the right to immediately terminate this Agreement:

- (a) upon written notice to the other Parties in the event of the other Parties' material breach of this Agreement and such breach shall continue for a period of thirty (30) days after the breaching Parties' receipt of written notice setting forth the nature of the breach or its failure to perform and the manner in which it may be remedied; or
- (b) if the other Parties or their creditors or any other eligible party files for its liquidation, bankruptcy, reorganization, composition or dissolution, or if the creditors of the other Parties have taken over its management.

14.3 Upon the effective date of such termination, all rights granted to Licensee hereunder shall immediately cease and shall revert to Licensor, and Licensee shall immediately cease servicing of the Game and return to Licensor any and all software, technical documents and other materials or information provided by Licensor to Licensee under this Agreement.

14.4 No termination of this Agreement shall affect the Parties' rights or obligations that were incurred prior to the termination.

#### **Article 15.**

##### **Force Majeure**

15.1 Notwithstanding anything in this Agreement to the contrary, no default, delay or failure to perform on the part of either Party shall be considered a breach of this Agreement if such default, delay or failure to perform is shown to be due entirely to causes beyond the reasonable control of the Party charged with such default, delay,

16.

or failure, including, without limitation, causes such as strikes, lockouts or other labor disputes, riots, civil disturbances, actions or inactions of governmental authorities or suppliers, epidemics, war, embargoes, severe weather, fire, earthquake, acts of God or the public enemy.

15.2 If the default, delay or failure to perform as set forth above in section 15.1 exceeds sixty (60) days from the initial occurrence, a Party who is not affected from such force majeure event shall have the right to terminate this Agreement with a written notice to the other Parties.

#### Article 16

##### Effect of Termination

6.1 Upon expiration of this Agreement, or upon termination of this Agreement due to the fault of or a material breach of the terms hereof by the Licensee;

i) all rights granted hereunder shall forthwith revert to the Licensor without further formality;

ii) all royalties accrued due (in according month) shall be immediately due and payable;

iii) the Licensee shall not thereafter exploit, use or deal in the Game or the Materials and the Licensee will procure the immediate discontinuance of the manufacture, distribution and marketing of the Units and use of the Game and shall destroy any moulds, patterns, and similar with items from which the Units or the marketing materials were made. However, if the Licensee has terminated this Agreement breach of the terms hereof by the Licensor, the Licensee shall have the right to service. If Licensor has terminated this Agreement breach of the terms hereof by the Licensee, the Licensee shall either destroy all Units which remain unsold or sell them and service material.

iv) the Licensee will return to the Licensor all Deliverable Materials supplied to the Licensee by the Licensor, other items provided by the Licensor and all information about the Game such as User's connection record, his individual information remaining in Web and/or Game Server(s) immediately at the end of the Term. The Licensor shall have the option to conduct a physical inventory and/or may require the Licensee to supply a certified statement signed by a director of the Licensee that all provisions of this Clause have been complied with.

6.2 Upon expiration of this Agreement, or upon termination of this Agreement due to the fault of or a material breach of the terms hereof by the Licensor;

i) the Licensee shall have the right, but not the obligation, to terminate this



17.

Agreement

- ii) any termination of this Agreement (howsoever occasioned) shall not affect any accrued rights or liabilities of either party nor shall it affect the coming into force or the continuance in force of any provision of this Agreement which is expressly intended to come into or continue in force on or after such termination.

**Article 17.**

**General Provisions**

17.1 No Party's rights, duties or responsibilities under this Agreement may be assigned, delegated or otherwise transferred in any manner, without prior written consent of the other Parties.

17.2 It is understood and agreed by the Parties hereto that this Agreement does not create a fiduciary relationship between them, that Licensee shall be an independent contractor, and that nothing in this Agreement is intended to constitute either Party an agent, legal representative, subsidiary, joint venture, employee or servant of the other for any purpose whatsoever.

17.3 If any kind of notices, consents, approvals, or waivers are to be given hereunder, such notices, consents, approvals or waivers shall be in writing, shall be properly addressed to the Party to whom such notice, consent, approval or waiver is directed, and shall be either hand delivered to such Party or sent by certified mail, return receipt requested, or sent by Fed. Ex., DHL or comparable international courier service, or by telephone, facsimile or electronic mail (in either case with written confirmation in any of the other accepted form of notice) to the following addresses or such addresses as may be furnished by the respective Parties from time to time:

If to Licensor

Attention: \_\_\_\_\_  
Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Korea  
Tel: \_\_\_\_\_  
E-mail: \_\_\_\_\_

If to Licensee

18.

Attention:  
Name:  
Address:  
Bangkok, 10210, Thailand  
Tel:  
E-mail:

17.4 No course of dealing or delay by a Party in exercising any right, power or remedy under this Agreement shall operate as a waiver of any such right, power or remedy except as expressly manifested in writing by the Party waiving such right, power or remedy, nor shall the waiver by a Party of any breach by the other Party of any covenant, agreement or provision contained in this Agreement be construed as a waiver of the covenant, agreement or provision itself or any subsequent breach by the other Party of that or any other covenant, agreement or provision contained in this Agreement.

17.5 This Agreement, including all exhibits, addenda and schedules referenced herein and attached hereto, constitutes the entire agreement between the Parties hereto pertaining to the subject matters hereto and supersedes all negotiations, preliminary agreements, and all prior and contemporaneous discussions and understandings of the Parties in connection with the subject matters hereof.

17.6 This Agreement shall be written in English and all disputes on the meaning of this Agreement shall be resolved in accordance with English version of this Agreement.

17.7 This Agreement may be amended only upon the execution of a written agreement between the Parties which makes specific reference to this Agreement.

17.8 This Agreement shall be interpreted, construed and enforced in accordance with the laws of the Republic of Korea. Any controversy or claim arising between the Parties under or related to this Agreement has not been resolved, both Parties agree that Korea District Court should have non-exclusive jurisdiction in the first instance

17.9 If any section, subsection or other provision of this Agreement or the application of such section, subsection or provision, is held invalid, then the remainder of the

19.

Agreement and the application of such section, subsection or provision to person or circumstances other than those with respect to which it is held invalid shall not be affected thereby.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement the day and year first above written.

Licensor:

By:  2006.5.29

Name: 

Title: 

Licensee:

By:  2006/5/29

Name: 

Title: 



**【자료원】**

- KOTRA 방콕무역관 자체조사
  - 태국 게임 유통업체 A사 (계약서 제공 및 인터뷰)

KOTRA 방콕무역관 김경민

Tel : (66-2)233-1322

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E-mail : kotra16@kotrathai.com