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Party: Bungie, LLC
Product: Destiny
Deal Type: Software Publishing and Development Agreement

SOFTWARE PUBLISHING AND DEVELOPMENT AGREEMENT

This Software Publishing and Development Agreement (this "**Agreement**") is entered into effective as of April 16, 2010 (the "**Effective Date**") by and between **Bungie, LLC** ("**Licensor**" or "**Bungie**"), a Delaware limited liability company with offices at 434 Kirkland Way, Kirkland, WA 98033, and **Activision Publishing, Inc.** ("**Activision**"), a Delaware corporation with offices at 3100 Ocean Park Boulevard, Santa Monica, California 90405, U.S.A.

RECITALS:

- A. Activision is engaged in the business of developing, publishing, licensing and distributing entertainment software products;
- B. Licensor is in the business of developing and producing entertainment software products, and owns and holds the rights to develop, manufacture, publish, license, market and distribute a series of entertainment software products currently being developed by Licensor entitled "**Destiny**" (also sometimes referred to herein or in the exhibits hereto as "**Tiger**") (the "**Destiny Property**");
- C. Activision and Licensor entered into a Development and Publishing Letter of Intent dated March 31, 2010 (the "**LOI**") pursuant to which Licensor and Activision entered in a relationship whereby Licensor agreed to develop certain interactive entertainment software products based on the Destiny Property to be exclusively published and distributed by Activision; and
- D. Activision and Licensor wish to enter into a long-form software development and publishing agreement with respect to the Destiny Property based on the terms set forth in the LOI and as provided by the LOI, which long-form agreement will supersede and replace the LOI.

The parties to this Agreement agree as follows:

1. Products

"**Product**" or "**Products**" means the following that are developed during the Development Term (as such term is defined in [Section 4.1](#)): (a) a series of interactive entertainment software products being developed by Licensor based on the Destiny Property, planned to be massively-multiplayer-style (i.e., client-based mission structures with persistent elements), sci-fantasy, action-shooter games (collectively, "**Destiny Games**" and individually, each a "**Destiny Game**" or "**Destiny Game #1**", "**Destiny Game #2**", "**Destiny Game #3**" and "**Destiny Game #4**" as applicable) for operation on the platforms and formats described in [Section 2](#); (b) major downloadable content expansion pack-type software releases developed by Licensor for each Destiny Game (collectively, "**Comets**" and individually, each a "**Comet**" or "**Comet #1**", "**Comet #2**", "**Comet #3**" and "**Comet #4**" as applicable); (c) smaller interstitial downloadable content software releases developed by Licensor for each Destiny Game (collectively, "**DLC Releases**" and individually, each a "**DLC Release**"); (d) Conversions (as defined in [Section 5.1](#)); and (e) any related value-added services or other premium content offered in connection with the Destiny Games and/or Comets; but Products exclude Ancillary Markets (as such term is defined in [Section 5.5](#)) and Bungie.net (as described in [Exhibit B](#) hereto). The concept document for Destiny Game #1 is attached hereto as [Exhibit A](#).

1A. Release Plan

The release plan for the Destiny Games ("**Release Plan**") is currently comprised of four (4) major retail Destiny Game releases tentatively scheduled for the Fall of 2013, 2015, 2017 and 2019 and four (4) Comet releases following each Destiny Game release tentatively scheduled for the Fall of 2014, 2016, 2018 and 2020. In addition, as part of the Destiny Games Licensor shall also produce DLC Releases as mutually agreed by the parties in the time periods between retail Destiny Games and Comet releases. The expected business model for the Products is a blend of retail packaged goods sales (although the parties acknowledge and agree that the future retail model for iterations of the Destiny Games may be via digital download rather than disk or packaged goods), subscriptions, downloadable content, value-added services and micro-transactions, the exact mix of which shall be determined by mutual agreement of Licensor and Activision. Pricing strategy for the Products shall be subject to mutual approval, provided in the event of a deadlock, Activision shall have the tie-breaking vote. Activision will have control and final approval over all decisions relating to retail sales and promotions, discounts, rebates, etc., provided that Activision shall meaningfully consult with Licensor on such decisions in advance.

2. Platforms

2.1 Subject to [Section 5](#) of this Agreement:

(a) A cross-console and console transition plan for Destiny Games #1 and #2 is attached hereto as [Exhibit C](#) ("**Native Release Plan**"), which shall be the plan of record for Destiny Games #1 and #2. The parties hereto shall discuss and mutually agree on the operating platforms for all other Products, as well as plans to manage cross-platform development efforts and platform transition to next generation consoles during the Development Term (as such term is defined in [Section 4.1](#)), in good faith.

(b) As described in the Native Release Plan, Destiny Game #1, along with any related DLC Releases as well as Comet #1, shall be initially developed by Licensor to operate on and be compatible with the Microsoft Xbox 360 video game console ("**Xbox 360**") and the next successor console platform released by Microsoft configured for both the NTSC and PAL television/video system standards ("**Xbox 720**"). The parties acknowledge and agree that the budget set forth in the Payment Schedule set forth on [Exhibit E](#) attached hereto is scoped to delivery of only the Xbox 360 SKU (plus content pipeline) for Destiny Game #1. The parties also currently contemplate the development and commercial release of Destiny Game #1 for the PlayStation 3 computer entertainment system ("**PS3**") in the Fall of 2014, subject to the parties hereto conducting a joint technical feasibility analysis that reasonably establishes to the parties' mutual satisfaction that Destiny Game #1 is able to be developed for the PS3 at quality and feature parity to the Xbox 360 version of Destiny Game #1 (the Xbox 360, the Xbox 720 and the PS3 are collectively referred to herein as the "**Destiny Game #1 Platforms**"). The parties hereto shall mutually agree to the incremental budget to fund the PS3 technical feasibility analysis. The cost of the technical feasibility analysis shall be included in the overall Project Accounting (as such term is defined in [Section 11.5](#)) for purposes of calculating Operating Income (as such term is defined in [Section 11.1](#)); provided, however, that in the event the parties hereto agree that a PS3 version of Destiny Game #1 is not feasible, any costs of the technical feasibility analysis in excess of Two Million Dollars (\$2,000,000) shall be excluded from the overall Project Accounting. The parties shall seek to conclude technical diligence on whether to develop Destiny Game #1 for the PS3 by no later than January 31, 2011. The parties shall then commence a business diligence phase ending no later than March 31, 2011, to ascertain the commercial desirability of the PS3 SKU, taking into consideration the then prevailing information regarding expected market conditions and console transitions. The baseline framework for analyzing the SKU-plan of the Products is attached hereto as Exhibit F. Licensor agrees that it shall not willfully take any actions (or make any omissions) in its development of the Xbox 360 version of Destiny Game #1 to hinder or undermine the ability to also develop Destiny Game #1 for the PS3. In no event shall Licensor be required to simultaneously ship Destiny Game #1 for the Xbox 360 and PS3 in the Fall of 2013.

(c) Subject to the terms of [Section 5](#), Destiny Game #2, along with any related DLC Releases as well as Comet #2, shall be initially developed by Licensor to operate on and be compatible with the Xbox 360, Xbox 720 and the Sony PlayStation 4 computer entertainment system (i.e., the next successor platform released by Sony after PlayStation 3) configured for both the NTSC and PAL television/video system standards ("**PS4**"), and collectively, the Xbox 360, Xbox 720 and PS4 are referred to herein as the "**Destiny Game #2 Console Platforms**"), and personal computer with Windows-based operating system ("**PC**") (the "**Destiny Game #2 PC Platform**") (the Destiny Game #2 Console Platforms and the Destiny Game #2 PC Platform are collectively referred to herein as the "**Destiny Game #2 Platforms**"). The parties hereto agree that prior to commencing production on the Xbox 720, PC and PS4 SKUs of Destiny Game #2, Activision and

Licensor shall mutually agree on the business case and technical feasibility of such SKUs, the incremental development budget, and production schedule therefor.

(d) The Destiny Game #1 Platforms, the Destiny Game #2 Platforms and such operating platforms as the parties may mutually agree pursuant to Section 2.1(a) are collectively referred to herein as the "**Platforms**" and each individually as a "**Platform**". Xbox 360, Xbox 720, PS3 and PS4 are collectively referred to herein as "**Console Platforms**" and each individually as a "**Console Platform**".

3. Territory

The territory of this Agreement shall be worldwide, except where prohibited by applicable law or regulation (the "**Territory**").

4. Term

- 4.1 The commencement date of the development term (the "**Development Term**") is April 16, 2010 and the Development Term shall continue until Licensor's delivery to Activision of the Release to Certification Version (as such term is defined in Section 9.1) of Comet #4.
- 4.2 Activision and Licensor shall mutually agree upon a budget to support the continuing operation of the Products for a period of three (3) years following the commercial release of Comet #4 ("**Support Term**"). During the Support Term, Licensor shall be responsible for continuing support obligations with respect to the Products as described in Section 7.1(xviii). If Activision fails to continue publication and distribution of the Products in a manner consistent with other equivalent interactive entertainment software products that it publishes and distributes and customary market practices (it being expressly understood that over the course of the Development Term, one (1) or more of the Products could become technically obsolete), or fails to fund Licensor's dedicated support team during the Support Term, such failure will be deemed a material breach of this Agreement, subject to all applicable cure-periods contained in Section 17.2 of this Agreement.
- 4.3 The distribution term for the Products (the "**Distribution Term**") shall commence on the Effective Date and shall be perpetual (subject to the restrictions set forth in, and termination in accordance with, this Agreement). Upon conclusion of the Development Term, Activision agrees that it shall not exercise its publishing and distribution rights to the Products under this Agreement to intentionally create confusion in the marketplace regarding any future Licensor game. In the event Licensor terminates this Agreement in accordance with Section 17.2, or in the event Activision terminates this Agreement pursuant to Section 17.1, then the Distribution Term for the Products shall automatically cease and all such rights shall revert to Licensor in perpetuity, provided, however, that in the event of a termination by Activision pursuant to Section 17.1, Activision shall retain certain rights as set forth in Section 17.1.

5. Grant of Rights

- 5.1 During the Distribution Term, Licensor hereby grants to Activision, and Activision hereby accepts, subject to the terms set forth in this Agreement (including Licensor's exclusive right to develop all Products and Conversions as set forth in Section 5.4), the exclusive, royalty-bearing, non-transferable (except as set forth in Section 21.13), non-sublicensable (except as set forth in Section 5.3) right and license in the Territory to: (a) publish and distribute the Products on the Platforms, (b) publish and distribute all versions, conversions and adaptations of the Products for all other platforms, operating systems, media, devices, or methods of distribution, whether now known or hereafter created or devised, including, but not limited to, Sony PlayStation (e.g., PS3, PS4), PC, handheld (e.g., Nintendo DS and Sony PSP), mobile operating systems, online and server based systems, and/or casual extensions of the Products which may be playable via handheld gaming devices, a PC or mobile handset, which versions, conversions and adaptations are developed during the Development Term (the "**Conversions**"), but Conversions specifically exclude remakes and spinoffs of the Products and Ancillary Markets, (c) subject to mutual written approval of the parties, distribute the Products for the Platforms in combination or bundled with hardware, software and other products distributed by third parties, and (d) publish and distribute localized versions of the Products in the Territory.
- 5.2 During the Distribution Term, Licensor hereby grants to Activision, and Activision hereby accepts, subject to the terms set forth in this Agreement (including Licensor's exclusive right to develop all

Products and Conversions as set forth in Section 5.4), the exclusive, royalty-bearing, non-transferable (except as set forth in Section 21.13), non-sublicensable (except as set forth in Section 5.3) right and license in the Territory to manufacture, reproduce, display, perform, advertise, promote, market, sell and license the Products, Conversions, and localized versions of the Products solely to the extent necessary for Activision to exercise its rights and licenses granted in Section 5.1.

- 5.3 During the Distribution Term and subject to the terms set forth in this Agreement (including Licensor's exclusive right to develop all Products and Conversions as set forth in Section 5.4), Activision shall have the right to sublicense the rights granted under Sections 5.1 and 5.2 to (a) an Affiliate (as such term is hereinafter defined) of Activision for so long as it remains an Affiliate of Activision if the Affiliate agrees to be bound by the terms of this Agreement, Activision guarantees the Affiliate's compliance with the terms of this Agreement, and Activision and the Affiliate agree to be jointly and severally liable for all obligations related to the Affiliate's compliance with the terms of this Agreement; and (b) third parties that have been approved in writing by Bungie to the extent that, and only for so long as, the third party is acting on Activision's or an Activision Affiliate's behalf; Activision and the applicable Activision Affiliate guarantee third party's compliance with the terms of this Agreement; and Activision indemnifies Licensor from all damages, costs, and expenses resulting from the third parties compliance with the terms of this Agreement; provided that Activision shall not in any way be relieved of its obligations under this Agreement and shall ensure that any such sublicensee complies with the terms of this Agreement. Activision must secure written agreements with each non-Affiliate sublicensee to ensure that (x) sole and exclusive ownership of all Licensor Product Intellectual Property (as such term is defined in Section 6.2) created or developed by the non-Affiliate sublicensee shall be fully transferred and assigned to Licensor (including the right to seek damages for past and future infringement) without any payment of compensation to the non-Affiliate sublicensee and Licensor shall thereafter own all rights to improvements, additions, and modifications to and enhancements and derivatives of the Licensor Product Intellectual Property; and (y) the non-Affiliate sublicensee shall, upon Licensor's request, take any step that Licensor may reasonably require to ensure that all Licensor Product Intellectual Property created or developed by the non-Affiliate sublicensee is assigned to Licensor, including the execution and delivery to Licensor an assignment of rights with respect to the Licensor Product Intellectual Property substantially in the form reasonably specified by Licensor. Notwithstanding the foregoing, to the extent an Activision Affiliate sublicensee creates Licensor Product Intellectual Property, Activision shall ensure that the sole and exclusive ownership of such Licensor Product Intellectual Property is fully transferred and assigned to Licensor (including the right to seek damages for past and future infringement) without any payment of compensation to such Activision Affiliate sublicensee, including taking any action that Licensor may reasonably require to ensure that all Licensor Product Intellectual Property created or developed by the Activision Affiliate sublicensee is assigned to Licensor (such as the execution and delivery to Licensor of an assignment of rights to such Licensor Intellectual Property substantially in the form requested by Licensor), and Licensor shall thereafter own all rights to improvements, additions and modifications to and enhancements and derivatives of such Licensor Product Intellectual Property. For the purposes of this Agreement, "Affiliate" means, with respect to any entity, any other entity that (i) owns or is owned by that entity or (ii) that controls, is controlled by, or is under common control with that entity. For any entity to "control" or "own" another entity, it must do one of the following: (1) hold or own more than 50% of the ownership or equity of the owned or controlled entity, or (2) have the right to vote more than 50% of that entity's voting equity.
- 5.4 Licensor shall have the exclusive right to develop all Products including any Conversions. This right includes Licensor's sole discretion (after consultation with Activision) to define the creative and technical scope for all Products and Conversions, subject to the mutual approval of the parties hereto to the final project scope, budget, development plan and production schedule. Either party hereto shall have the right to propose a Conversion. In the event of a Conversion proposed by Activision, Licensor and Activision shall commence a technical diligence period not to exceed five (5) months (excluding a PS3 Conversion, which is addressed in Section 2.1(b)). During the technical diligence period, the parties will analyze the technical feasibility and business case for the Conversion proposed by Activision. In all cases, a Conversion for a Console Platform must have the ability to achieve feature parity in all material respects with the applicable Destiny Game for the other Console Platforms, and satisfy technical, security, design and quality guidelines as determined above (any other guidelines to be discussed in good faith and mutually determined by Licensor and Activision during the technical and business diligence process). In the event of a casual Conversion, or Conversion intended for a Console Platform or any other Platform with technical specifications incapable of achieving feature parity with a Destiny Game developed for Console Platforms (e.g., handheld or mobile extensions to the Destiny Property), then Licensor shall determine (in consultation with Activision) the game and technical design of such Conversion. In the event Licensor elects not to develop any such Conversion requested by Activision

and approved by Licensor, Activision shall have the right to have such Conversion developed by one of its internally-owned studios or by a third party developer, provided that Licensor shall have the right to approve any third party developer proposed to be utilized by Activision, such approval not to be unreasonably withheld or delayed (it being expressly understood and agreed by the parties that (a) only an AAA-caliber developer that is not a competitive risk to Licensor is reasonable for Licensor to approve, and (b) Licensor hereby expressly disapproves of Valve, Epic and Gearbox as potential third party developers for Conversions (unless such third party developer should become an Activision majority or wholly-owned studio), and (c) Licensor cannot disapprove of the use by Activision of an Activision majority or wholly-owned studio), and Licensor shall otherwise provide production, QA, associated management services, and other reasonable assistance to Activision and any internal Activision studio or third party developer in connection with the development of any such Conversions. All rights to any and all work performed by a developer on any such Conversions shall be fully and irrevocably assigned to and exclusively owned by Licensor, excluding any Activision Product Intellectual Property (as such term is defined in [Section 6.2](#)) and subject to the license rights to Activision relating to such Conversions as described in [Section 6.2](#). The parties will mutually agree on the exact structure of and parties to any contract with a third party developer engaged for any such Conversion; provided that such contract must ensure that (x) sole and exclusive ownership of all Licensor Product Intellectual Property created or developed by the third party developer shall be fully transferred and assigned to Licensor without any payment of compensation to the third party developer and Licensor shall thereafter own all rights to improvements, additions, and modifications to and enhancements and derivatives of the Licensor Product Intellectual Property; and (y) the third party developer or Activision, as applicable, shall, upon Licensor's request, take any step that Licensor may reasonably require to ensure that all Licensor Product Intellectual Property created or developed by the third party developer is assigned to Licensor, including the execution and delivery to Licensor an assignment of rights with respect to the Licensor Product Intellectual Property substantially in the form reasonably specified by Licensor.

- 5.5 All ancillary market opportunities in connection with the Products including, without limitation, all linear media deals (e.g., films), book publishing and traditional licensing and merchandising (collectively, "**Ancillary Markets**"), shall be led by Licensor, but subject to the mutual approval of the parties hereto. Ancillary Markets shall specifically exclude soundtrack and/or music publishing related arrangements in connection with the Products, which such rights are exclusively reserved to Licensor.
- 5.6 During the Distribution Term, Activision and its Affiliates shall have a royalty-bearing, non-transferable (except as set forth in [Section 21.13](#)), non-sublicensable (except as set forth in [Section 5.3](#)) right and license in the Territory under all Intellectual Property (as such term is defined in [Section 6.1](#)) laws to utilize the Licensor Product Intellectual Property (as such term is defined in [Section 6.2](#)) to the extent necessary to exercise its exclusive rights under [Section 5](#), including, subject to the limitations set forth in this Agreement, in the event of the approved development of any Conversions by an Activision internal studio or third party developer in accordance with [Section 5.4](#), having access to and use of relevant source and object code, Game Assets (as such term is defined in [Section 6.2](#)), technology, engines, characters, settings, storylines, and other Intellectual Property that is Licensor Product Intellectual Property solely in connection with, and for the purpose of and to the extent necessary for, the development of any Conversions not developed, but approved, by Licensor.

6. Ownership

- 6.1 For purposes of this Agreement, the term "**Intellectual Property**" shall mean, regardless of form, know-how, techniques, inventions, discoveries, improvements, methods, processes, patents, patent rights, patent registrations and applications, renewals, continuations and extensions thereof, published and unpublished works of authorship, art, copyrightable materials and copyrights, titles, computer code, designs, themes, objects, buildings and architecture, automobiles, characters, character names, stories, dialog, catch phrases, locations, game play, rules, concepts, artwork, animation, sounds, musical compositions, sound recordings, graphics and visual elements and other works, audio-visual effects and other works, methods of operation, databases, collective works, compilations, literary works and any related documentation, copyright registrations and applications, renewals and extensions thereof, mask works, industrial rights, words, names, symbols, devices, designs, and other designations, and combinations of the preceding items, used to identify or distinguish a business, good, group, product, or service, trademarks, service marks, trade names, logos, trademark registrations and applications, renewals and extensions thereof, rights in information that is not generally known or readily ascertainable, trade secrets, rights in trade dress, product designs, product features, and packaging, publicity, personality and privacy rights, rights of attribution and integrity and other similarly afforded

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