

PROJECT MONITORING AGREEMENT

This Project Monitoring Agreement ("PMA") is entered into this by and between the Rhode Island Economic Development Corporation ("RIEDC") and 38 Studios, LLC ("38 Studios") as of the 2nd day of November, 2010.

PREAMBLE

WHEREAS, the RIEDC and 38 Studios, with The Bank of New York Mellon Trust Company, N.A., as Trustee, have entered into that certain Loan and Trust Agreement dated as of November 1, 2010 (the "Loan and Trust Agreement"), pursuant to which the RIEDC and 38 Studios make various covenants with each other including the execution and delivery of this PMA;

WHEREAS, in connection with this PMA, 38 Studios and International Business Machines Corporation ("IBM") have entered into that certain IBM Customer Agreement and that certain IBM Statement of Work, copies of which are attached hereto and made a part hereof (collectively, the "IBM Agreements"), pursuant to which IBM will provide certain assessment and milestone verification services with respect to the development by 38 Studios of video game and interactive digital media product currently known as "Copernicus" (the "Project Monitoring Services") and

WHEREAS, the RIEDC and 38 Studios desire for the RIEDC to be a complete and full beneficiary of the work product produced by IBM pursuant to the IBM Agreements and to have total access to such work product during its development.

NOW, THEREFORE, for the mutual promises set forth herein, in further consideration of the covenants set forth in the Loan and Trust Agreement, and other good and valuable consideration, the receipt and sufficiency of which hereby is acknowledged, the RIEDC and 38 Studios hereby agree as follows:

1. The IBM Agreements. 38 Studios represents and warrants that attached hereto are complete and accurate copies of the IBM Agreements, without amendment. 38 Studios agrees to perform all of its obligations pursuant to the IBM Agreements.
2. Assignment of Rights and Third Party Beneficiary Designation. 38 Studios hereby recognizes that but for this PMA and the IBM Agreements, the RIEDC would not have entered into the Loan and Trust Agreement, and the benefits of the IBM Agreements are a necessary benefit of the bargain made by the RIEDC with respect to the Loan and Trust Agreement, resulting in the RIEDC being a direct and necessary beneficiary of the IBM Agreements. Accordingly, in the event that IBM fails to provide the Project Monitoring Services as required by the IBM Agreements: (a) 38 Studios shall enforce the IBM Agreements against IBM, and (b) if 38 Studios fails to enforce the IBM Agreements against IBM within a reasonable time after written request from the RIEDC, the RIEDC shall have the right to enforce the IBM Agreements against IBM, for the sole purpose of

requiring the performance of the Project Monitoring Services and delivery of the work product, either in 38 Studios' name as 38 Studios' attorney-in-fact or in the RIEDC's own name, and the RIEDC is hereby granted all right and power necessary for such enforcement.

3. RIEDC Participation. 38 Studios shall (a) provide, and assure that IBM provides, to the RIEDC copies of all assessments, reports, reviews, verifications, correspondence (including emails or other digital media communications), memoranda, papers or any other written manifestation of the work product or process by which the work product produced and is being communicated between 38 Studios and IBM pursuant to the IBM Agreements simultaneously with such communication being transmitted between 38 Studios and IBM; and (b) invite, and assure that IBM is inviting, the RIEDC to all substantive (that is, non-administrative) meetings, conferences, discussions, telephone calls, web based meetings, colloquy, or any other live or delayed discussion between 38 Studios and IBM regarding the work product or process related thereto pursuant to the IBM Agreements, in a timely way that assures that the RIEDC may, if it so chooses, participate in such discussion, which right may be waived only in advance of such discussion. It is the intent of the parties hereto that the RIEDC shall participate and have access to IBM's work product and the process related thereto on a then current and simultaneous basis with 38 Studios and as if the RIEDC were a party to the IBM Agreements with respect to the benefits of IBM's work product and the process related thereto. The RIEDC acknowledges that the IBM work product and the communications described in this Section 3 will contain confidential and proprietary information of 38 Studios relating to the Copernicus project, the public disclosure of which may cause irreparable and significant harm to 38 Studios and the commercial prospects for the Copernicus game, and accordingly the RIEDC shall, to the extent permitted by law, treat such work product and communications as confidential at all times and not disclose them outside the RIEDC.
4. Covenants. With respect to the IBM Agreements, 38 Studios shall:
 - a. not terminate, amend, alter or modify them without the express written consent of the RIEDC;
 - b. fully perform all of terms, covenants and obligations of 38 Studios reflected therein including but not limited to making payment in a timely manner;
 - c. 
 - d. otherwise comply with and fulfill the agreements set forth herein.
5. Default. Any failure by 38 Studios to comply with the terms hereof or the IBM Agreements shall be deemed an event of default hereunder and at the election of the RIEDC an event of default under the Loan and Trust Agreement. In the event of default hereunder, at the RIEDC's election, the RIEDC may terminate this PMA and otherwise reserves all other rights and remedies at law and in equity.

6. Miscellaneous.

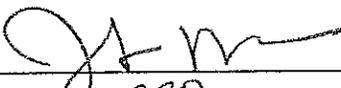
- a. This agreement shall be construed as a contract governed by the laws of the State of Rhode Island without regard to conflicts of laws principles.
- b. This agreement constitutes the entire and whole agreement between the RIEDC and 38 Studios with respect to the IBM Agreements, except as otherwise set forth herein, and may be waived, terminated, amended or modified only by a written instruments by the parties hereto.
- c. Any waiver hereunder shall be in writing, signed by the parties, and any singular waiver shall not be deemed an ongoing waiver unless so indicated in writing.

IN WITNESS WHEREOF, the undersigned have signed this Project Monitoring Agreement as of the date first above written:

RHODE ISLAND ECONOMIC DEVELOPMENT CORPORATION

By: 
Its: EXECUTIVE DIRECTOR

38 STUDIOS, LLC

By: 
Its: CEO

IBM AGREEMENTS

(attached hereto)

IBM Global Services
Statement of Work for

Project Copernicus: Assessment and Milestone Verification

Prepared for

38 Studios LLC
5 Clock Tower Place Suite 140
Maynard, MA 01754

September 14, 2010

6710 Rockledge Drive
Bethesda, MD 20817

The information in this Statement of Work may not be disclosed outside of IBM, 38 Studios or the Rhode Island Economic Development Corporation and may not be duplicated, used or disclosed in whole or in part for any purpose other than to evaluate the Statement of Work, provided that if a contract is awarded to IBM as a result of or in connection with the submission of this Statement of Work, 38 Studios and/or Rhode Island Economic Development Corporation will have the right to duplicate, use or disclose the information to the extent provided by the contract and Rhode Island Economic Development Corporation may disclose this SOW to the extent necessary to comply with Rhode Island public records laws.. This restriction does not limit the right of 38 Studios or Rhode Island Economic Development Corporation to use information contained in this Statement of Work if it is obtained from another source without restriction. The parties retain joint ownership of this Statement of Work. This Statement of Work constitutes "Information" of both IBM and 38 Studios for the purposes of the Agreement for Exchange of Confidential Information between the parties, signed by 38 Studios on August 11, 2010.

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1. IBM Statement of Work

This Statement of Work (SOW) describes the work to be undertaken by IBM (Services) under the *{IBM Customer Agreement ("ICA" or "Agreement")}*, number *{Agreement Number}*, dated *{Agreement Date}*, (Agreement) and the terms and conditions contained herein. Described within this SOW is the project, which consists of the deliverable Materials to be provided by IBM, and the IBM responsibilities and related 38 Studios responsibilities to be provided in accordance with the terms of this SOW.

Changes to this SOW will be processed in accordance with the procedure described in Appendix B-1 Project Change Control Procedure. The investigation and the implementation of changes may result in modifications to the Estimated Schedule, Charges, and other terms of this SOW and the Agreement.

The following are incorporated in and made part of this SOW:

- a. Appendix A – Deliverable Materials Guidelines
- b. Appendix B – Project Procedures

To the extent there is any contradiction, inconsistency or ambiguity between the terms of this SOW and the Agreement, this SOW will govern.

1.1 Project Scope

This SOW describes the scope of the project.

In this project IBM will:

- a. Conduct an Initial Assessment of Project Copernicus
- b. Conduct Quarterly Milestone Verification Reviews of Project Copernicus

In addition, the following terms apply to this SOW:

- a. Work under this SOW will be performed at the 38 Studios facility in Maynard, MA, and Providence, RI, except for any project related activity which IBM determines would be best performed on IBM premises in order to complete its obligations and responsibilities under this SOW. Such activity will be billable to 38 Studios.
- b. IBM will provide the Services under this SOW during normal business hours, 8:00 AM to 6:00 PM Eastern Time, Monday through Friday, except national holidays. If necessary, 38 Studios will provide after-hours access to 38 Studios facilities to IBM personnel. Out-of-town personnel may work hours other than those defined as normal business hours to accommodate their travel schedules.

1.2 IBM Responsibilities

Under this SOW, IBM will undertake the following activities:

1.2.1 Ongoing Project Management

IBM will provide ongoing project management for the IBM responsibilities in this SOW. The purpose of this activity is to provide technical direction and control of IBM project personnel and to provide a framework for project planning, communications, reporting, procedural and contractual activity. This activity is composed of the following tasks:

- a. Review the SOW and the contractual responsibilities of both parties with the 38 Studios Project Manager
- b. Maintain project communications through the 38 Studios Project Manager.
- c. Coordinate the establishment of the project environment
- d. Establish documentation and procedural standards for deliverable Materials

- e. Review the IBM standard invoice format and billing procedure to be used on the project, with the 38 Studios Project Manager
- f. Administer the Project Change Control Procedure with the 38 Studios Project Manager
- g. Coordinate and manage the technical activities of IBM project personnel

Completion Criteria:

This activity will be complete when IBM has satisfied the completion criteria for all remaining activities in Section 1.2 IBM Responsibilities.

Deliverable Materials:

- None

1.2.2 Initial Assessment of Project Copernicus

The objective of this activity is to conduct the initial assessment of Project Copernicus to identify and measure progress, issues, or risks and establish a baseline upon which to measure during future assessments.

This activity is composed of the following tasks:

- a. Conduct up to 15 interviews with Project Copernicus Stakeholders, including but not limited to the [REDACTED]
- b. Review plans and available documentation
- c. Review available Project Financials
- d. Analyze methods being utilized for Project Copernicus
 - (1) Program Management
 - (2) Change Management (a structured approach to transitioning individuals, teams, and organizations from a current state to a desired future state)
 - (3) Risk Management (the identification, assessment, and prioritization of risks followed by coordinated and economical application of resources to minimize, monitor, and control the probability and/or impact of unfortunate events or to maximize the realization of opportunities.
 - (4) Issue Management refers to the discipline and process of managing business issues and usually implies using technology to electronically automate the process
 - (5) Financial Management
 - (6) Requirements (singular documented needs of what a particular product or service should be or perform)
- e. Analyze Findings, Issues and Risks
- f. Develop go-forward recommendations and risk mitigation strategies
- g. Review and Finalize results; Develop final report
- h. Present report to 38 Studios

This activity will be complete when IBM has delivered the One-Time Report: Assessment of Project Copernicus to the 38 Studios Project Manager.

Deliverable Materials:

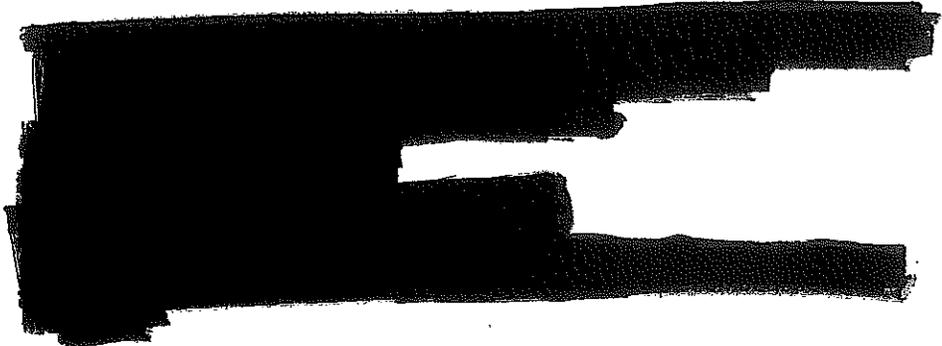
- One-Time Report: Assessment of Project Copernicus

1.2.3 Quarterly Milestone Verification of Project Copernicus

The objective of this activity is to verify progress of Project Copernicus on an estimated quarterly basis and provide an executive level report to stakeholders for decisions and/or actions.

This activity is composed of the following tasks:

IBM Statement of Work for 38 Studios LLC



This activity will be complete when IBM has delivered the Quarterly Report: Rhode Island Milestone Verification Report to the 38 Studios Project Manager.

Deliverable Materials:

- Quarterly Report: Rhode Island Milestone Verification Report

1.3 38 Studios Responsibilities

The successful completion of the proposed scope of work depends on the full commitment and participation of 38 Studios management and personnel. The responsibilities listed in this section are in addition to those responsibilities specified in the Agreement, and are to be provided at no charge to IBM. 38 Studios is required to perform its obligations in the Agreement and this SOW without exception. IBM's performance is predicated upon the following responsibilities being managed and fulfilled by 38 Studios, as scheduled in the IBM Project Plan. Delays in performance of these responsibilities may result in additional cost and/or delay of the completion of the project, and will be handled in accordance with Appendix B-1 Project Change Control Procedure.

1.3.1 38 Studios Project Manager

Prior to the start of this project, 38 Studios will designate a person called the 38 Studios Project Manager who will be the focal point for IBM communications relative to this project and will have the authority to act on behalf of 38 Studios in all matters regarding this project. The 38 Studios Project Manager's responsibilities include the following:



1.3.2 RIEDC Representative

IBM agrees that 38 Studios shall provide the following items to Rhode Island Economic Development Corporation ("RIEDC"): (a) provide to the RIEDC, through a representative designated as such by the RIEDC, copies of drafts and final copies of all reports, memoranda, documents, correspondence, conclusions, records and any other written manifestations of the work product produced by IBM pursuant to this SOW and the Agreement; and (b) to invite and allow the RIEDC

representative the right to attend any and all meetings, conferences, telephone calls, work sessions or other working activities between IBM and 38 Studios with respect to the implementation or communication regarding the work product produced by IBM pursuant to this SOW and the Agreement.

Other 38 Studios Responsibilities

38 Studios responsibilities include the following:

- a. Ensure that 38 Studio's staff is available to provide such assistance as IBM reasonably requires and that IBM is given reasonable access to 38 Studios senior management, as well as any members of its staff to enable IBM to provide the Services. 38 Studios will ensure that its staff has the appropriate skills and experience. If any 38 Studios staff fails to perform as required, 38 Studios will make suitable additional or alternative staff available
 - (1) Senior Management includes, but is not limited to, the 38 Studios Chief Executive Officer; Chief Financial Officer; Copernicus Studio General Manager; Copernicus Chief Technology Officer; Copernicus Executive Producer.
- b. Provide all information and materials reasonably required to enable IBM to provide the Services. 38 Studios agrees that all information disclosed or to be disclosed to IBM is and will be true, accurate and not misleading in any material respect. IBM will not be liable for any loss, damage or deficiencies in the Services arising from inaccurate, incomplete, or otherwise defective information and materials supplied by 38 Studios.
- c. 38 Studios will be responsible for the review and evaluation of the IBM recommendations as well as all final decisions and implementations relating to, or resulting from, the IBM recommendations contained in the deliverable Materials
- d. Unless otherwise expressly stated in this Statement of Work, 38 Studios will be responsible for ensuring its own compliance with all laws and regulations, including but not limited to, those pertaining to product safety and regulatory compliance for non-IBM products including those recommended by IBM. It is 38 Studio's sole responsibility to obtain advice of competent legal counsel as to the identification and interpretation of any relevant laws, rules and regulations that may affect 38 Studio's business and any actions 38 Studios may need to take to comply with such laws. IBM makes no representations or warranties with respect to product safety or regulatory compliance of non-IBM products.

1.3.3 Laws, Regulations and Statutes

38 Studios is responsible for the identification of, interpretation of, and compliance with, any applicable laws, regulations and statutes that affect 38 Studio's applications or business.

38 Studios is responsible for determining that any non-IBM products and their integration are in compliance with national building and installation codes and other laws and regulations, including product safety regulations.

1.3.4 Data File Content and Security

38 Studios is responsible for the actual content of any data file, selection and implementation of controls on its access and use, backup, recovery, integrity, and security of the stored data.

1.3.5 Facilities

38 Studios will provide IBM and its personnel with suitable office space, and other accommodations and facilities that IBM may reasonably require to perform the Services, in particular secretarial support, supplies, furniture, computer facilities, telephone/fax communications, high speed internet connectivity and other facilities for up to 4 IBM personnel while working on the 38 Studios Project Copernicus Assessment and Milestone Verification project. The IBM project team will be located in an area adjacent to 38 Studio's subject matter experts and technical personnel, and all necessary security badges and clearance will be provided for access to this area. 38 Studios will be responsible for ensuring that it has appropriate backup, security and virus-checking procedures in place for any computer facilities 38 Studios provides or which may be affected by the Services.

1.4 Deliverable Materials

Type I Materials

IBM will deliver one copy of each of the following Type I Materials (as described in Appendix A: Deliverable Materials Guidelines)

- a. One-Time Report: An Assessment of Copernicus
- b. Quarterly Report: Rhode Island Milestone Verification Report

1.5 Completion Criteria

IBM will have fulfilled its obligations under this SOW when any one of the following first occurs:

- a. IBM satisfies the Completion Criteria set forth in Section 1.2 IBM Responsibilities and delivers the items described in the Section 1.4 Deliverable Materials; or
- b. IBM provides the number of hours of Services specified in Section 1.7 Charges or in any approved Project Change Request or other written change authorization;
- c. 38 Studio IBM terminates the Services in accordance with the provisions of this SOW and the Agreement

1.6 Additional Terms and Conditions

1.6.1 Termination

Either party may terminate this Statement of Work by giving the other party not less than 30 days written notice. Upon termination, 38 Studios will pay IBM for 1) all Services IBM provides and any Products and Materials IBM delivers through termination, 2) all expenses IBM incurs through termination, and 3) any charges IBM incurs in terminating the Services.

1.6.2 Economic Monetary Union (EMU)

IBM is not providing any Economic and Monetary Union ("EMU") services under this SOW. IBM Product Specifications specify the EMU readiness of the IBM Products. IBM does not make any representations regarding the EMU readiness of the non-IBM products. Under the terms of this SOW, IBM is not responsible for: (1) 38 Studio's products, (2) a third party's products (including products 38 Studios licenses from IBM subcontractors), or (3) IBM Products not provided and selected by IBM under this SOW (collectively "Other Products") to correctly process monetary data in the Euro denomination. IBM will be relieved of its obligations under this SOW due to the inability of such Other Products to correctly process monetary data in the Euro denomination. 38 Studios acknowledges that it is responsible for assessing its current systems and taking appropriate action to migrate to Euro-ready systems.

1.6.3 Business Contact Information

38 Studios authorizes International Business Machines Corporation and its subsidiaries (and their successors and assigns, contractors and IBM Business Partners) to store and use 38 Studio's business contact information wherever they do business, in connection with IBM products and services or in furtherance of IBM's business relationship with 38 Studios.

IBM may cite your company's name and the general nature of the Services we performed for you to our other customers and prospective customers as an indication of IBM's experience, unless we both specifically agree otherwise in writing.

1.6.4 Required Consents

38 Studios is responsible for promptly obtaining and providing to IBM all Required Consents necessary for IBM to provide the Services described in this SOW. A Required Consent means any consents or approvals required to give IBM and its subcontractors the right or license to access, use and/or modify (including creating derivative works) the hardware, software, firmware and other products 38 Studios uses, without infringing the ownership or license rights (including patent and copyright) of the providers or owners of such products.

38 Studios will indemnify, defend and hold IBM, its subcontractors and majority-owned subsidiaries, harmless from and against any and all claims, losses, liabilities and damages (including reasonable attorneys' fees and costs) arising from or in connection with any claims (including patent and copyright infringement) made against IBM, alleged to have occurred as a result of 38 Studio's failure to provide any Required Consents to IBM.

IBM will be relieved of the performance of any obligations that may be affected by 38 Studio's failure to promptly provide any Required Consents to IBM.

1.6.5 38 Studios Games and Products

The parties do not envisage that IBM will make any revisions, amendments or contributions to any game or product being produced by 38 Studios, whether under Project Copernicus or any other 38 Studios project (the "Games"), nor that IBM will otherwise participate in development of any Games under this SOW. Nevertheless, in the event that IBM does participate in any way in development of any Games in connection with performing this SOW, IBM agrees that 38 Studios will in all events retain ownership of Games, including any and all contributions made by IBM, and all intellectual property rights therein. IBM will have no rights to any further or additional compensation in connection with 38 Studios' development, distribution or exploitation of any Games as a result of any such contributions by IBM.

1.8.6 No Modifications to Agreement

In the event that IBM exercises its right to modify the Agreement under Section 1.7 thereof, such modifications shall have no effect on this SOW. This SOW shall be governed by the Agreement in the form of the Agreement in effect on the date of signature of this SOW by 38 Studios.

1.7 Signature Acceptance

This SOW and the referenced Agreement identified below are the complete agreement between 38 Studios and IBM regarding Services, and replace any prior oral or written communications between us. Accordingly, in entering into this SOW, neither party is relying upon any representation that is not specified in this SOW including without limitation, any representations concerning 1) estimated completion dates, hours, or charges to provide any Service; 2) the experiences of other customers; or 3) results or savings 38 Studios may achieve.

Each party accepts the terms of this SOW by signing this SOW by hand or, where recognized by law, electronically. By such acceptance each party agrees that no modifications have been made to this SOW.

Once accepted, please return a copy of this document to the IBM address shown below. Any reproduction of this SOW made by reliable means (for example, photocopy, electronic scan or facsimile) is considered an original and all Services ordered under this SOW are subject to it.

Agreed to:		Agreed to:
38 Studios LLC		IBM
		6710 Rockledge Dr, Bethesda, MD 20817
By:		By:
Authorized signature		Authorized signature
Name (type or print):		Name (type or print): Charles Nugent
Date:		Date:
Customer number: 3927812		Referenced Agreement Name <i>{Agreement Name}</i>
		Referenced Agreement number: <i>{Agreement #}</i> , dated <i>{Agreement Date}</i>
Customer address: 5 Clock Tower Place Suite 140 Maynard, MA 01754		
Project Name: Project Copernicus: Assessment and Milestone Verification		

Appendix A: Deliverable Materials Guidelines

A - 1: One-Time Report: An Assessment of Copernicus

Purpose:

The purpose of this report is gather an initial assessment of Project Copernicus. This report will form the foundation upon which future quarterly reports will reference and measure.

Completion Criteria: This document, estimated to be up to 20 pages in length, may consist of the following, as appropriate and determined by IBM

- a. Executive Summary of Project Copernicus
- b. Review and Description of Key Assessment Objectives
- c. Results of IBM's Assessment of Objectives – Executive Summary
- d. Results of IBM's Assessment of Objective – Detailed Report
 - (1) Financial Status
 - (a) Budget vs. Actual (expenses and headcount)
 - (b) Estimate to Complete
- e. Major Issues "Punch List"
- f. Recommendations and Key Findings
- g. Actionable Timeline

Delivery:

IBM will deliver one copy of this Type I report to the customers in electronic format.

A - 2: Quarterly Report: Rhode Island Milestone Verification Report

Purpose:

This report will be produced on a quarterly basis to verify the progress of Project Copernicus.

Content:

Completion Criteria: This document, estimated to be up to 8 pages in length, may consist of the following, as appropriate and determined by IBM

- a. Executive Summary of Project Copernicus
- b. Results of IBM's Assessment of Objectives – Executive Summary
- c. Results of IBM's Assessment of Objective – Detailed Report
 - (1) Financial Status
 - (a) Budget vs. Actual (expenses and headcount)
 - (b) Estimate to Complete
 - (2) Parsed list of master results relevant to Rhode Island's interests
- d. Recommendations and Key Findings

Delivery:

IBM will deliver one copy of this Type I report to the customers in electronic format.

Appendix B: Project Procedures

B - 1: Project Change Control Procedure

The following process will be followed if a change to this SOW is required:

- a. A Project Change Request (PCR) will be the vehicle for communicating change. The PCR must describe the change, the rationale for the change and the effect the change will have on the project.

- c. Both Project Managers will review the proposed change and agree to implement it, recommend it for further investigation, or reject it.
- d. IBM will specify any charges for such investigation. A PCR must be signed by authorized representatives from both parties to authorize investigation of the recommended changes. IBM will invoice 38 Studios for any such charges per the terms of this SOW and the Agreement. The investigation will determine the effect that the Implementation of the PCR will have on price, schedule and other terms and conditions of this SOW and the Agreement
- e. A PCR must be signed by authorized representatives from both parties to authorize implementation of any agreed changes to the SOW and the Agreement. Until a change is agreed in writing, both parties will continue to act in accordance with the latest agreed version of the SOW.
- f. A PCR that has been signed by authorized representatives from both parties constitutes a change authorization for purposes of this SOW and the Agreement.

B - 2: Deliverable Materials Acceptance Procedure

Each deliverable Material as defined in Appendix A - Deliverable Materials Guidelines will be reviewed and accepted in accordance with the following procedure:

- a. One (1) printed draft of the deliverable Material will be submitted to the 38 Studios Project Manager. It is the 38 Studios Project Manager's responsibility to make and distribute additional copies to any other reviewers
- b. Within five (5) business days of receipt, the 38 Studios Project Manager will either accept the deliverable Material or provide the IBM Project Manager a written list of requested revisions. If IBM receives no response from the 38 Studios Project Manager within five (5) business days, then the deliverable Material will be deemed accepted
- c. The IBM Project Manager will consider 38 Studio's timely request for revisions, if any, within the context of IBM's obligations as stated in Appendix A - Deliverable Materials Guidelines
- d. Those 38 Studios revisions agreed to by IBM will be made and the deliverable Material will be resubmitted to the 38 Studios Project Manager at which time the deliverable Material will be deemed accepted
- e. Those 38 Studios revisions not agreed to by IBM will be managed in accordance with Appendix B-1 Project Change Control Procedure. Any conflict arising from this deliverable Materials Acceptance Procedure will be addressed as specified in the Escalation Procedure set forth in Appendix B-3.

B - 3: Escalation Procedure

The following procedure will be followed if resolution is required to a conflict arising during the performance of this SOW.

- a. When a conflict arises between 38 Studios and IBM, the project team member(s) will first strive to work out the problem internally
- b. Level 1: If the project team cannot resolve the conflict within two (2) working days, the 38 Studios Project Manager and IBM Project Manager will meet to resolve the issue
- c. Level 2: If the conflict is not resolved within three (3) working days after being escalated to Level 1, the 38 Studios Executive Sponsor will meet with the IBM Project Executive to resolve the issue
- d. If the conflict is resolved by either Level 1 or Level 2 intervention, the resolution will be addressed in accordance with the Project Change Control Procedure set forth in Appendix B-

1. If the conflict remains unresolved after Level 2 intervention, then either party may terminate this SOW. If the conflict is addressed by termination, 38 Studios agrees to pay IBM for a) all Services IBM provides and any Products and Materials IBM delivers through termination, b) all expenses IBM incurs through termination, and c) any charges IBM incurs in terminating the Services

- e. During any conflict resolution, IBM agrees to provide Services relating to items not in dispute, to the extent practicable pending resolution of the conflict. 38 Studios agrees to pay invoices per this SOW and the Agreement.

Schedule A: Charges

~~IBM and 38 Studios Confidential~~

