

Form PTO-1594 (Rev. 03/01) OMB No. 0651-0027 (exp. 5/31/2002) Tab settings	<b>RECORDATION FORM COVER SHEET</b> <b>TRADEMARKS ONLY</b>	U.S. DEPARTMENT OF COMMERCE U.S. Patent and Trademark Office
To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.		
1. Name of conveying party(ies): Take Two Interactive Software, Inc.  <input type="checkbox"/> Individual(s) <input type="checkbox"/> Association <input type="checkbox"/> General Partnership <input type="checkbox"/> Limited Partnership <input checked="" type="checkbox"/> Corporation-State <input type="checkbox"/> Other _____  Additional name(s) of conveying party(ies) attached? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	2. Name and address of receiving party(ies) Name: <u>Artificial Mind and Movement Inc.</u> Internal Address: <u>Suite 600</u>  Street Address: <u>416 de Maisonneuve Blvd. West</u> City: <u>Montreal, Quebec Canada H3A 1L2</u>  <input type="checkbox"/> Individual(s) citizenship _____ <input type="checkbox"/> Association _____ <input type="checkbox"/> General Partnership _____ <input type="checkbox"/> Limited Partnership _____ <input type="checkbox"/> Corporation-State _____ <input checked="" type="checkbox"/> Other <u>Canadian corporation</u> <small>If assignee is not domiciled in the United States, a domestic representative designation is attached: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No (Designations must be a separate document from assignment)</small> Additional name(s) & address(es) attached? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
3. Nature of conveyance: <input checked="" type="checkbox"/> Assignment <u>50% ownership</u> <input type="checkbox"/> Merger <input type="checkbox"/> Security Agreement <input type="checkbox"/> Change of Name <input type="checkbox"/> Other _____ Execution Date: <u>5/6/2003</u>	4. Application number(s) or registration number(s): A. Trademark Application No.(s) <u>78/424364</u> <u>78/424370; 78/424377; 78/424380;</u> <u>78/424383.</u> Additional number(s) attached <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No B. Trademark Registration No.(s) _____	
5. Name and address of party to whom correspondence concerning document should be mailed: Name: <u>Dawn Harrington</u> Internal Address: _____  Street Address: <u>Greenberg Traurig, LLP</u> <u>200 Park Avenue</u>  City: <u>New York</u> State: <u>NY</u> Zip: <u>10166</u>	6. Total number of applications and registrations involved: ..... <span style="border: 1px solid black; padding: 2px;">5</span>  7. Total fee (37 CFR 3.41).....\$ <u>140.00</u> <input type="checkbox"/> Enclosed <input checked="" type="checkbox"/> Authorized to be charged to deposit account  8. Deposit account number: <u>60-1561</u>	
<b>DO NOT USE THIS SPACE</b>		
9. Signature.  <div style="display: flex; justify-content: space-between; align-items: flex-end;"> <div style="width: 30%;"> <u>Dawn Harrington</u>                      Name of Person Signing                 </div> <div style="width: 30%; text-align: center;">                       Signature                 </div> <div style="width: 30%; text-align: right;"> <u>July 7, 2004</u>                      Date                 </div> </div> <div style="text-align: right; margin-top: 5px;"> <span style="border: 1px solid black; padding: 2px;">15</span> </div>		

CH \$140.00 501561 78424364

Total number of pages including cover sheet, attachments, and document: 15  
 Mail documents to be recorded with required cover sheet information to:  
 Commissioner of Patents & Trademarks, Box Assignments  
 Washington, D.C. 20231



April 29, 2003

ARTIFICIAL MIND AND MOVEMENT INC.  
416 de Maisonneuve Blvd. West  
Suite 600  
Montreal, Quebec  
CANADA  
H3A 1L2

Attention: President

Re: Co-ownership and Publishing Agreement for SCALER

Gentlemen:

ARTIFICIAL MIND AND MOVEMENT INC. ("A2M") and TDK MEDIACTIVE, INC. ("TDK" and together with A2M, the "Parties") have had various discussions regarding A2M's original creation and wholly owned intellectual property in the form of a video game currently in development by A2M known as "*Scaler*" (the "Property"), and A2M's interest in having TDK exclusively publish throughout the world video games based on the Property.

TDK has agreed to publish video games based on the Property and to also provide A2M with funding for the further development and completion of certain video games based on the Property. In consideration therefore, A2M has agreed, among other things, to assign, transfer and/or to otherwise convey to TDK, upon the terms and conditions set forth herein, a fifty percent ownership interest in the Property.

Accordingly, this letter of agreement when signed by both Parties below (the "Agreement") shall set forth the terms and conditions of their mutual understanding with respect to the foregoing.

I. **Property**

- 1.1 As used herein Property shall mean without limitation any and all video game design, development, characters' likeness, names and bios, environments, scenes, graphics, animation, music, settings, and the like embodied therein and associated therewith, and any and all other elements which have or may be used in the future to develop video games based on the original A2M game development project currently known as "*Scaler*", as well as any and all ancillary rights associated therewith, including but not limited to all right, title and interest to all copyrights, products (including but not limited to toys, apparel, comic books, footwear, films, animation, etc.).

MTL\_LAW #1272678 v. 6

www.tdk-mediactive.com

  
TDK MEDIACTIVE, INC.  
4373 Park Terrace Drive  
Westlake Village, CA 91361  
818.707.7063 fax: 818.707.7101  
**TRADEMARK**

REEL: 002887 FRAME: 0791

- 1.2 Notwithstanding any other provisions to the contrary, the Property shall however specifically exclude for all purposes any and all of A2M's video game development tools and technology, programming, computer codes, including source codes and object codes, ports, conversions, and software, as well as any and all past, current and future improvements thereto (collectively, the "A2M Tools and Technology").
- 1.3 In order for the Parties to be easily able to visually identify the Property, a copy of the main characters, bios and a brief synopsis of the story line including a game description is attached hereto as Exhibit 1.
2. **Ownership, Assignment and Licensing**
- 2.1 Upon and subject to the terms and conditions hereof, A2M hereby:
- 2.1.1 assigns and transfers to TDK 50% of the intellectual property rights to the Property;
- 2.1.2 grants to TDK, including its wholly owned subsidiaries, affiliates and sub-licensees, the exclusive right and license to use, manufacture, sell, publish and otherwise exploit the Property in connection with the manufacture, sale, advertising and publication of video games in all formats and for all platforms, hand-held devices, console systems or other game delivery systems whether now known or hereafter developed including but not limited to the SONY PLAYSTATION, PLAYSTATION 2 ("PS2"), MICROSOFT XBOX ("Xbox"), NINTENDO GAME CUBE ("GCN"), GAMEBOY ADVANCE ("GBA"), GAMEBOY COLOR as well as any and all follow-up or "next generation" versions thereof, as well as any newly created systems, platforms or devices for video game delivery in any manner whatsoever including but not limited to computers, cellular telephones, the internet, wireless devices, on-line games (including massively multiplayer on-line games), arcade games as well as any other video game product for any video game delivery system without limitation whatsoever whether electronic, wireless, cable or satellite and whether now known or hereafter developed (each a "Platform"); and
- 2.1.3 grants TDK a non-exclusive, royalty-free, worldwide license to use, reproduce, perform and display A2M Tools and Technology solely in connection with the publishing and exploitation of video games based on the Property.
- 2.2 Notwithstanding the foregoing, the use of any currently existing Platform other than PS2, Xbox, GCN, GBA and GAMEBOY COLOR for the distribution of a video game based on the Property shall be subject to the prior written approval of A2M, which shall not be unreasonably withheld. The development of any video game based on the Property other than the Initial Game (as defined in Subsection 5.1 hereof) on any Platform shall further be subject to an agreement to be negotiated in good faith by the Parties, based on the principles set forth herein.

- 3 -

**3. Term**

3.1 The term of this Agreement shall commence upon execution hereof and continue in perpetuity, unless terminated in accordance with the relevant provisions hereof.

**4. Territory**

4.1 This Agreement shall apply worldwide.

**5. Development Requirements**

5.1 A2M is currently in the process of developing a video game based on the Property (the "Initial Game") in accordance with the budget and milestone schedule set forth in Section 6 below and Exhibit 2 attached hereto (the "Budget and Milestone Schedule").

5.2 The Initial Game shall be developed by A2M in accordance with generally accepted professional standards, consistent with, or better than, the previous games developed by A2M.

5.3 The Initial Game will initially be developed in three SKUs: one SKU for the PS2, one SKU for the Xbox and one SKU for the GCN. Should a GBA SKU of the Initial Game be later requested by TDK, the development thereof shall then be subject to an agreement to be negotiated in good faith by the Parties, based on the principles set forth herein.

5.4 The current planned retail ship date by TDK for the Initial Game in North America is on or about October 2004 and it is a material term hereof that the Initial Game be developed by A2M with sufficient time for TDK to meet said ship date and to allow for quality and assurance review by TDK as well as by the respective Platform owners, if applicable, with sufficient time to remedy any required changes required by either the Platform owner, TDK or A2M.

5.5 Notwithstanding the foregoing, for purposes of quality assurance issues TDK and A2M understand and agree that the nature of their relationship as reflected in this Agreement is one of equal and shared input of all creative issues and each Party shall each use its best efforts to accommodate the other Party's quality issues and concerns in a timely and professional manner.

**6. A2M Development Services; Monthly Payments by TDK; Game Budgets**

6.1 The Budget and Milestone Schedule sets forth A2M's work requirements for the development of the Initial Game and TDK's monthly payment obligations in connection therewith.

6.2 The Initial Game shall be developed in accordance with the Game Design Document ("GDD") and the Technical Design Document ("TDD"), both of which are approved by TDK and are attached hereto as Exhibit 3 and Exhibit 4 respectively, as specified in the Budget and Milestone Schedule.



TRADEMARK

REEL: 002887 FRAME: 0793

- 4 -

- 6.3 Based on an aggregate budget for the PS2, Xbox and GCN SKUs of the Initial Game of US\$4,000,000, TDK's contribution to such budget shall be US\$2,000,000 (the "Development Cost"), payable to A2M in installments as set forth in Budget and Milestone Schedule.
- 6.4 Each payment due A2M from TDK shall be made pursuant to the Budget and Milestone Schedule (see Exhibit 2). A2M will submit an invoice in a timely manner and TDK shall pay each invoice within fourteen (14) business days from its receipt of such invoice.
- 6.5 TDK shall evaluate each milestone deliverable pursuant to the Budget and Milestone Schedule, including the final version thereof, and submit a written acceptance or rejection thereof (as signed by its authorized representative for the purposes thereof) to A2M within ten Business Days after TDK's receipt of each such deliverable, failing which A2M may thereafter send TDK a final request for acceptance thereof. Should TDK fail to formally accept or reject such deliverable as stated above within 5 additional Business Days from its receipt of the final request from A2M, such deliverable shall be irrevocably deemed accepted by TDK. However, if TDK timely submits substantive comments on such deliverable, the foregoing delays shall be reset. For the purposes of the Agreement, a "Business Day" shall mean any day other than a day which is a Saturday, a Sunday or a statutory holiday in the Province of Québec or California.
- 6.6 The remaining portion of the aggregate budget for the PS2, Xbox and GCN SKUs of the Initial Game referred to in Subsection 6.3 hereof, in an amount of US\$2,000,000, has been and shall continue to be contributed by A2M in a combination of cash and services, from the initial development of the Initial Game over the last two years until completion thereof as per the Budget and Milestone Schedule.
7. Localization
- 7.1 For no additional cost A2M agrees to provide to TDK as soon as available all reference, instruction and other associated text material and written documentation (including but not limited to a user's manual) pertinent to the technical performance of each SKU of the Initial Game and its respective Platform for distribution purposes in any particular country of intended release, such material to include but not necessarily be limited to scripts, audio and text files and the like in order to enable TDK, including its subsidiaries, affiliates, distributors and sub-licensees to translate all user instructions, text materials and technical information for the localization of each SKU including but not necessarily limited to NTSC and PAL formats.
- 7.2 Notwithstanding the foregoing A2M will provide integration services as TDK shall require and shall upon TDK written request, deliver an NTSC, PAL or other version to TDK or its designee.

- 5 -

## 8. Royalties

### NORTH AMERICAN SALES

8.1 TDK shall pay royalties to A2M (the "Royalties") on a quarterly basis within 45 days after the close of any calendar quarter where there have been any Net Sales for the PS2, Xbox and GCN SKUs of the Initial Game as follows:

8.1.1 if the initial wholesale price is US\$30.00 or greater, the Royalty shall be 19% of such Net Sales;

8.1.2 if the initial wholesale price is less than US\$30.00 but greater than US\$22.50, the Royalty shall be 15% of such Net Sales;

8.1.3 if the initial wholesale price is less than US\$22.50, the Royalty shall be 9.5% of such Net Sales.

8.2 Notwithstanding the above, the Royalty shall increase to 35% of Net Sales on a Platform-by-Platform (SKU-by-SKU), non-cross collateralized basis, when the following sell-through levels have been achieved:

8.2.1 500,000 units for the PS2 SKU;

8.2.2 200,000 units for the Xbox SKU; and

8.2.3 200,000 units for the GCN SKU,

provided however that notwithstanding that the above 35% Royalty has been met because the sell-through threshold has been achieved, the Royalty rate shall nonetheless be reduced to 17.5% of Net Sales at such time as any of the SKUs' retail selling price has effectively been reduced to US\$19.95 or less.

8.3 Subject to the definitions and distinctions set forth herein for North American Sales and Non-North American Sales, the term Net Sales shall mean all amounts actually received by TDK or its wholly owned subsidiaries or affiliates from the sale of video games, less: a) any Platform royalties and manufacturing costs paid to Platform manufacturer, and b) credits for discounts, price protection, replacements, returns and consumer marketing rebates. In the event that any of the games are sold as a "bundle", the Royalty shall be based on a pro-rata share of the product based on the Property included in the bundle in relation to all other products included in that bundle. TDK shall be entitled to keep a 20% reserve on all Net Sales, said reserve to be liquidated on a rolling 6-month basis.

### NON-NORTH AMERICAN SALES

i. In countries outside of North America the above North American Sales definition of Net Sales and payment of corresponding Royalties shall apply provided that TDK distributes SKUS either itself or through any subsidiary or affiliate.

- 6 -

- ii. In the event that TDK sublicenses any of the rights hereunder to any person other than a subsidiary or affiliate of TDK for distribution outside of North America, then TDK and A2M shall not utilize the definition of Net Sales for purposes of calculating the Royalties payable hereunder but instead agree in these instances to share equally in the net receipts actually received by TDK from any such sublicenses, it being understood that TDK and/or A2M shall be entitled to deduct any actual localization out-of-pocket costs directly related to any such sublicense transactions before determining net receipts under this specific provision.

8.4 Notwithstanding anything to the contrary else where in this Agreement, A2M shall have no approval rights at all in any way with respect to a transfer of this Agreement and any or all of the rights hereunder as part of a sale (entire or partial, but not individually) of TDK's stock, and/or assets irrespective of what the form such a transaction might take including without limitation a stock sale, any recapitalization, including any event which may or may not result in a change of the current ownership or control of TDK.

#### 9. Marketing Expenditures by TDK

9.1 TDK agrees to spend no less than US\$1,250,000 in marketing, advertisement, promotion and publicity expenditures to launch the initial PS2, Xbox and GCN SKUs of the Initial Game into the marketplace. A2M shall have reasonable consultation rights with respect to any and all marketing plans in connection therewith prior to their implementation. Notwithstanding the foregoing TDK shall have the right to eliminate the foregoing obligation to the above marketing expenditure if it is unsatisfied, in its sole discretion, with the Alpha version of the Initial Game when it is delivered hereunder by A2M.

#### 10. Credits

10.1 A2M shall receive appropriate on screen, on box and in manual credit for designing and developing the Initial Game. A2M shall also receive appropriate copyright credit on any marketing materials. The size and placement of said credit shall be pre-approved by A2M, acting reasonably.

10.2 For the purposes of such credit, TDK shall use, print, mark or reproduce A2M's trade-marks, trade names, business names, logos, or other indicia as A2M may direct from time to time.

#### 11. Support to A2M

11.1 TDK shall provide at its own cost support to A2M in the form of testing of product, relations with Platform manufacturers (e.g. submission and approval process of product) over the course of the various development phases of the product. For the purposes hereof, "Platform manufacturers" shall mean Sony as to PS2, Microsoft as to Xbox and Nintendo as to GCN.

- 7 -

## 12. Ancillary Rights Exploitation

- 12.1 All ancillary rights exploitation of the Property shall be undertaken jointly between TDK and A2M and the net receipts derived therefrom shall be shared equally between the Parties.
- 12.2 In the event that either TDK or A2M is significantly undertaking the efforts to maximize the ancillary opportunities from the Property then the Parties shall negotiate in good faith, consistent with the rates generally charged by third parties as agents or producers in the merchandising or production business, an appropriate fee or percentage compensation to the Party undertaking such excess work.
- 12.3 In the event that the Parties mutually decide to utilize the services of an outside agency or producer the costs or fees associated therewith shall be shared equally between TDK and A2M (or off-the-top if any third party commissions or otherwise take fees from revenues generated from ancillary activities prior to distribution of any amounts hereunder) and the remainder after such third party fees shall be shared equally between TDK and A2M.

## 13. Intellectual Property Rights Protection

- 13.1 TDK shall be responsible to apply for intellectual property rights protection for or in connection with the Property, as the Parties acting reasonably and in good faith consider being advisable for the best protection of their rights, title and interests therein. All such intellectual property rights on the Property will be applied for with A2M and TDK as joint owners. TDK shall also be responsible for maintaining such intellectual property rights from time to time. The Parties agree to cooperate in obtaining and maintaining all intellectual property rights on the Property.
- 13.2 Any and all costs associated with trademark registrations, copyright registrations, enforcement proceedings and the like reasonably necessary to perfect or otherwise enforce the rights in and to the Property, except to the extent of A2M's representations and warranties in Subsection 14.1 below relative to A2M's current ownership of the Property, shall be shared equally between the Parties, and neither Party shall incur any expenses hereunder without first obtaining the written approval of the other Party to that effect.

## 14. Warranties and Representations; Indemnifications

### 14.1 A2M Warranties and Representations:

14.1.1 A2M warrants and represents that it has the full right, power and authority to enter into this Agreement and to fully perform all of its obligations hereunder.

14.1.2 A2M further warrants and represents that it owns all right, title and interest in and to the Property, free of any and all third party claims, as well as in all of the A2M Tool and Technology.

- 8 -

#### 14.2 TDK Warranties and Representations:

14.2.1 TDK warrants and represents that it has the full right, power and authority to enter into this Agreement and to fully perform all of its obligations hereunder.

14.2.2 TDK further warrants and represents that it has the requisite licenses from Sony, Microsoft and Nintendo to release any video games contemplated by this Agreement.

14.2.3 TDK further warrants and represents that it will comply with all laws, rules and regulations governing the manufacture, marketing and sales of any video games published hereunder.

#### 14.3 Mutual Indemnities:

14.3.1 Each Party agrees to fully indemnify and hold harmless the other Party and its officers, directors, employees, agents and the like for any breach of its respective warranties and representations as set forth above.

#### 15. Termination

15.1 In the event of a material breach by either Party of its obligations hereunder, the other Party may notify the breaching Party of said breach by written notice. The breaching Party shall then have 20 Business Days from its receipt of said notice to cure said breach to the reasonable satisfaction of the other Party, failing which such other Party shall then have the right to terminate this Agreement by written notice to the breaching Party within 30 days from the expiry of such cure period, subject to all of its other rights and recourses against the breaching Party, as the case may be. Notwithstanding the foregoing, if such breach is incapable of being cured in the 20 Business Day period, such notice will not effectively terminate the Agreement as long as the breaching Party is diligently and actively pursuing the cure of such breach for an additional period of no more than 90 days from such notice.

15.2 TDK, in its sole discretion, may request the termination of this Agreement and the development of the Initial Game at any time prior to its commercial release (the "Termination Date") upon:

15.2.1 a thirty day written notice thereof to A2M at least 30 days prior to the Termination Date; and

15.2.2 payment to A2M as of the Termination Date of (i) all outstanding amounts due by TDK pursuant to the Budget and Milestone Schedule, (ii) a termination premium equal to the amounts otherwise payable to A2M pursuant to the Budget and Milestone Schedule for the then current month and the next succeeding month thereunder, and (iii) all other sums due by TDK to A2M whatsoever, if any.

15.3 In addition to either Party's other termination rights hereunder, and for the term of this Agreement, either Party (the "Terminating Party") may, by giving written

TRADEMARK 

REEL: 002887 FRAME: 0798

- 9 -

notice to the other Party, immediately terminate this Agreement if the other Party (the "Insolvent Party") ceases to carry on (by discontinuance, sale other than as provided in Subsection 8.4 above with respect to TDK, or otherwise) all or substantially all of its business, liquidates its assets, stops payment of its debts or becomes bankrupt, if a receiver, administrator, administrative receiver or manager is appointed or any distress or execution or other process is levied on or enforced (and not being discharged within 30 days) over the whole or any part of the Insolvent Party's assets, if the Insolvent Party offers to make or makes any arrangement with or for the benefit of its creditors, or if any petition to consider a resolution for the making of an administration order or to wind up or dissolve the Insolvent Party's business is passed or presented, or suffers any analogous proceedings, subject to any applicable laws, rules or regulations.

- 15.4 If this Agreement is terminated pursuant to Subsection 15.3 above and for greater certainty, all rights granted or licensed by or to the Terminating Party to the Insolvent Party hereunder shall immediately terminate, and neither this Agreement nor any right or interest herein shall be deemed an asset in any insolvency, receivership, bankruptcy arrangement proceedings, and neither the Insolvent Party, its receivers, representatives, trustees, agents, administrators, successors and/or assigns shall have any right to sell, exploit or in any way deal in any of the Property or the Initial Game, subject to any applicable laws, rules or regulations.
- 15.5 Upon termination of this Agreement by A2M pursuant to Subsection 15.1 or 15.3 or by TDK pursuant to Subsection 15.2 above or upon any other termination hereof which is not attributable to A2M's fault or negligence, provided that such termination occurs prior to the first commercial release of the Initial Game, all of TDK's rights, title and interest in and to the Property and the Initial Game shall then automatically and irrevocably revert to A2M. Upon termination of this Agreement by TDK pursuant to Subsection 15.1 or 15.3 or any other termination which is attributable to A2M's fault or negligence, if the Initial Game is later released by A2M (alone or with third parties), any and all sums paid by TDK to A2M hereunder until such termination shall be repaid by A2M to TDK only upon such first commercial release of Initial Game. In addition and in such event after A2M has fully recouped its costs (i.e. US\$4,000,000 as per Budget and Milestone Schedule) and TDK has been repaid all amounts due to it hereunder, in the event that the termination took place after such time as TDK has per this Agreement paid to A2M at least US\$1,500,000 then TDK shall be entitled to an on-going financial participation of 25% of A2M's net revenues from sales or exploitation of the Initial Game provided however that in such event TDK shall have forfeited its 50% ownership in the ownership of the Property.
- 15.6 As consideration for A2M's agreement to forego certain monthly installments and reduce others, in the event this Agreement is terminated by either party for any reason, TDK agrees to pay A2M a Recoupment Amount, in addition to any other amounts due under this Agreement upon Termination or otherwise. The Recoupment Amount will be:

- 10 -

- 15.6.1 \$100,000 if the Termination Date or date of termination under Section 15.3 is on or after July 31, 2003 and before September 30, 2003;
- 15.6.2 \$200,000 if the Termination Date or date of termination under Section 15.3 is on or after September 30, 2003 and before November 30, 2003;
- 15.6.3 \$300,000 if the Termination Date or date of termination under Section 15.3 is on or after November 30, 2003 and before February 29, 2004;
- 15.6.4 \$350,000 if the Termination Date or date of termination under Section 15.3 is on or after February 29, 2004 and before March 31, 2004;
- 15.6.5 \$400,000 if the Termination Date or date of termination under Section 15.3 is on or after March 31, 2004 and before April 30, 2004;
- 15.6.6 \$300,000 if the Termination Date or date of termination under Section 15.3 is on or after April 30, 2004 and before May 31, 2004;
- 15.6.7 \$200,000 if the Termination Date or date of termination under Section 15.3 is on or after May 31, 2004 and before June 30, 2004;
- 15.6.8 \$100,000 if the Termination Date or date of termination under Section 15.3 is on or after June 30, 2004 and before July 31, 2004.

In no event, however, will TDK be obligated to pay A2M a combined Development Cost plus Recoupment Amount of more than \$2,000,000 in total per this Agreement.

## 16. Assignment

- 16.1 For greater certainty, nothing in this Agreement shall prevent or otherwise restrict any change of ownership or control of TDK. In such event the transfer of rights under this Agreement by TDK shall be deemed to not require any consent or approval of A2M.

## 17. Governing Law

- 17.1 This Agreement shall be governed by the laws of the State of California and both parties further agree that in the event of a dispute arising hereunder each party consents to the jurisdiction of the California Courts.

## 18. Binding Agreement

- 18.1 The Parties agree that the terms of this Agreement are binding, and that its provisions supersede all prior and contemporaneous agreements, negotiations and understandings between the Parties, both oral and written.
- 18.2 Recognizing that time is of the essence, this Agreement shall serve as the intent on the part of each Party to enter into a more formal "long form" definitive

agreement with respect to the subject matter hereof, which shall reflect this Agreement and contain any other provisions on which the Parties may agree as well as all other provisions customarily found in agreements of similar nature and scope, all in form and substance satisfactory to both Parties (the "Definitive Agreement").

- 18.3 The Parties shall use their respective best efforts to complete and execute the Definitive Agreement within 90 days of the date of this Agreement, provided that, until the Definitive Agreement is fully executed, this Agreement shall remain in full force and effect and govern the relationship of the Parties.
- 18.4 No waiver or modification of any provision of this Agreement shall be effective unless in writing and signed by both Parties.
- 18.5 This Agreement may be executed in counterparts, each of which shall be deemed an original, and any and all of which together shall constitute one and the same instrument.

If you are in agreement with the above terms and conditions, please sign in the space provided below and return an original to us to confirm that the foregoing accurately summarizes our agreement regarding the subject matter hereof.

Very truly yours,

TDK MEDIACTIVE, INC.

By: [Signature]  
Duly Authorized Representative

At Westlake Village, California

Date 5-6-03

AGREED TO AND ACCEPTED

ARTIFICIAL MIND AND MOVEMENT INC.

By: [Signature]  
Duly Authorized Representative

At MONTREAL, CANADA

Date APRIL 30, 2003

- 12 -

### Exhibit 1: Game description

#### **Basic Storyline**

In the lands of the Chameleons, life goes on peacefully as it did for many years. Scaler is like any other young chameleon: enthusiastic, energetic but he has a power that no other chameleon possesses: he can steal the shape of the creatures he meets.

One night, an unknown thief steals Queen Camille's precious Royal eggs! Scaler will have to look for the stolen eggs in order to bring back peace to the chameleon village.

#### **Gameplay**

Scaler is a 3D platformer game in which a young chameleon sets off on an adventure. Gameplay uses platformer mechanics but also adds an original twist: Scaler can steal the shape of his opponents, and each new transformation gives him a new ability.

In addition to shape shifting, Scaler can climb high trees and "slide" down vines. Our hero will explore each level, battling enemies, overcome obstacles and saving the Queen's eggs one at a time.

#### **Main character**



Scaler is a young chameleon with all the unwariness and naiveté associated with teenagers. He is an energetic fellow, an acrobat of sorts: he can jump, run, climb and slide. Scaler has lightning-quick reflexes and many abilities, such as grabbing platforms' edges just before falling down. Being a courageous teenage chameleon, Scaler knows when it is time to go above his fear. He might be scared at first, but he will eventually meet any danger head-on. Even when he shows courage, our hero is still prone to accidents. In fact, Scaler is a bit clumsy. He often means well, but the outcomes of some of his actions are not what he usually meant them to be. He often gets himself knee-deep in trouble that way!

TRADEMARK

REEL: 002887 FRAME: 0802

- 13 -

**Exhibit 2: Budget and Milestone Schedule**

Based on an aggregate budget for the PS2, Xbox and GCN SKUs of the Initial Game of US\$4,000,000, TDK's contribution to such budget shall be US\$2,000,000, payable to A2M in monthly installments as set forth below:

#	Date	Payment
1	2003-03-31	USD 100,000
2	2003-04-30	USD 100,000
3	2003-05-31	USD 100,000
4	2003-06-30	USD 100,000
5	2003-07-31	USD 0
6	2003-08-31	USD 100,000
7	2003-09-30	USD 0
8	2003-10-31	USD 100,000
9	2003-11-30	USD 0
10	2003-12-31	USD 100,000
11	2004-01-31	USD 100,000
12	2004-02-29	USD 100,000
13	2004-03-31	USD 100,000
14	2004-04-30	USD 250,000
15	2004-05-31	USD 250,000
16	2004-06-30	USD 250,000
17	2004-07-31	USD 250,000
		USD 2,000,000

- 14 -

**Exhibit 3: Game Design Document**