

## **“MADE IN NY” MARKETING CREDIT AGREEMENT FOR DIGITAL GAMING MEDIA PRODUCTIONS**

This agreement (“Agreement”) is made and entered into as of the date signed by an authorized representative of the Mayor’s Office of Media and Entertainment, (the “Effective Date”) between the City of New York (the “City”), a municipal corporation acting by and through its Mayor’s Office of Media and Entertainment (“MOME”), having its principal place of business at 1 Centre Street, 27<sup>th</sup> floor, New York, New York 10007, and the applicant identified in the attached application (“Digital Gaming Media Production Entity” or the “Company”).

### ARTICLE I: BACKGROUND

- A. Chapter 19 of Title 43 of the Rules of New York (the “Rules”) sets forth the rules governing the City’s “Made in NY” Marketing Credit Program for Digital Gaming Media Productions (the “Program”), offering co-branded advertising opportunities to digital gaming media productions that meet certain criteria.
- B. The Company submitted an application for the “Made in NY” Marketing Credit (the “Application”) attached as Exhibit A for the Digital Game identified in the application, in accordance with 43 RCNY § 19-03. The Application is attached as the cover page of this Agreement.
- C. Based on the information provided by the Company in the Application, MOME determined that the Digital Game qualifies for the Program. MOME approved the application contingent on the Company’s compliance with this Agreement.

### ARTICLE II: THE COMPANY’S REPRESENTATIONS AND WARRANTIES

- A. The Company represents that (i) the facts provided in the Application, including but not limited to information about the production costs, the date the Digital Game was completed, and the Digital Game, are true and accurate; (ii) it has read and understands the Rules; and (iii) the Digital Game meets the definition of a “qualified digital gaming

media production” in 43 RCNY § 19-02 and all criteria for participation in the Program set forth in the Rules.

- B. The Company represents and warrants that the Digital Game and its commercial exploitation and the Advertising Material (as defined in Article III(B)(4)) will not violate or infringe upon the rights of any third parties.
- C. The Company makes the preceding representations and warranties to induce MOME to enter into this Agreement, and MOME relies upon such representations and warranties in the execution of this Agreement.

### ARTICLE III: MEDIA PLAN AND TRADEMARK LICENSE

#### A. *Media Plan.*

1. MOME will provide the Company with media assets for the Digital Game in accordance with the media plan in the Certificate of Marketing Credit (Exhibit C) (the “Media Plan”).
2. Together, the subway cards and the bus shelters are the “Media Assets” and the last date of the Media Plan being displayed in the immediately preceding clauses is the “End Date.”
3. The City’s duty to provide the Media Plan to the Company is subject to availability of the Media Assets and the Company’s compliance with the requirements in this Agreement, including compliance with the Delivery Schedule (as defined in Article IV(C)), and the Rules.

#### B. *Trademark License.*

1. MOME grants to the Company, and its subsidiary and affiliated entities, a non-exclusive license to photograph, record, reproduce, or otherwise use the “Made in NY” trademark (“Trademark”) depicted in Exhibit B solely (i) in the Advertising Material and (ii) in the Digital Game as required by Article V or as otherwise specified by MOME in writing.
2. The Company may use the Trademark only as expressly allowed in Article III(B)(1). The Company shall not use the Trademark on or in connection with

any merchandise, products or other items of any kind sold or otherwise distributed.

3. The Company's use of the Trademark must comply with the City of New York Official Licensing Style Guide, which is available on-line at <https://www.nyc.gov/assets/mome/pdf/Exhibit-C-NYC-Style-Guide-Made-in-NY.pdf> or upon request to MOME. Advertising Material that includes the Trademark must include the following credit: "The 'Made in NY' logo is a trademark of the City of New York and is used with the City's permission."
4. "Advertising Material" means advertisements, promotional materials, and educational materials that are produced or disseminated in connection with the Digital Game, in any media, including, but not limited to television, newspaper, Internet, brochures, circulars, point-of-purchase collateral, and promotional and display material.
5. MOME represents and warrants, and the Company acknowledges that: (i) the City is the sole owner of all trademark and other intellectual property rights with respect to the Trademark and any and all registrations and applications to register the Trademark and (ii) such intellectual property rights are valid. The Company must do nothing inconsistent with or adverse to such ownership and validity.

#### ARTICLE IV: THE COMPANY'S RESPONSIBILITIES

- A. The Company must ensure that all Advertising Materials for the Media Assets conform to the requirements set forth in the Metropolitan Transportation Authority's ("MTA") Advertising Policy, which is available on-line at <https://new.mta.info/doing-business-with-us/advertising> and upon request to MOME.
- B. The Company must not violate the City's prohibition against advertisements, sponsorships or branding promoting alcohol on City-owned and City-controlled property. Such property includes, but is not limited to, subway cards, bus shelters and Wi-Fi kiosks.

The Company must submit for review and approval by MOME, or MOME's designated representative, all Advertising Material that includes the Trademark in accordance with the following schedule ("Delivery Schedule"):

1. The Company must submit to MOME all Advertising Material, including, but not limited to, creatives for print advertising for subway, bus, print and online at least five weeks prior to the first display date.
  2. If the Company is required to bear the costs of printing of Media Assets under Article IV(I), the Company must deliver the approved Advertising Material to the posting facility at least 10 business days prior to the first display date.
- C. The Company's failure to deliver in accordance with the Delivery Schedule may result in delayed distribution or cancellation of the Media Plan in part or as a whole.
- D. MOME is not responsible for any delays or cancellations caused by third party vendors.
- E. The Company must submit for review and approval by MOME, or MOME's designated representative, any press release that includes the Trademark or reference to the Program no later than five business days prior to dissemination.
- F. The Company grants to the City a non-exclusive license to use the Advertising Material that includes the Trademark to promote MOME and the Program in perpetuity in any medium now known or hereinafter devised.
- G. The Company must maintain records, in paper or electronic form, of any qualified production costs used to calculate the Media Assets for at least three years from the date of filing of the tax return applicable to the time period when the Company receives the marketing credit. The Company must provide such records to the City upon reasonable notice.
- H. The Company must bear the costs of printing for all Media Assets if (1) the qualified digital gaming media production costs, as defined in section 19-02 of Title 42 of the Rules, are \$10 million or more; or (2) more than five percent of the beneficial ownership of the Company is owned directly or indirectly by a publicly traded entity; or (3) the Company has more than \$35 million in annual revenue.

ARTICLE V: IN-GAME CREDIT REQUIREMENT

- A. The Company must include the Trademark in the Digital Game in a location ready accessible and easily readable by the end user such as in-game credits, printed packaging, or in another manner approved in writing by MOME.
- B. The sentence “The ‘Made in NY’ logo is a trademark of the City of New York and is used with the City’s permission” must appear along with the Made in NY logo unless waived in writing by MOME.

ARTICLE VI: CONTRIBUTION TO A CULTURAL INSTITUTION  
OR COMMUNITY ORGANIZATION

- A. No later than 30 days following the End Date, the Company must contribute the specified amount to the Cultural Institution or Community Organization identified in the application.
- B. No later than 30 days following the End Date, the Company must provide MOME with proof of payment to the Cultural Institution or Community Organization in the form of a cancelled check or letter of acknowledgment.

ARTICLE VII: THE COMPANY’S INDEMNIFICATION AND LIABILITY

- A. To the fullest extent permitted by law, the Company must indemnify and defend the City and its officials, employees, contractors, and agents from and against all claims, liabilities, damages or expenses arising from the Digital Game and its commercial exploitation and the Advertising Materials other than any resulting from the breach by MOME of the representation and warranty concerning its ownership of the Trademark in Article III(B)(5).
- B. Within 30 days of MOME’s demand, the Company must repay MOME for its costs for the Media Assets, including any unpaid invoices for goods or services relating to the Media Assets (*e.g.*, MOME’s printing costs), upon any of the following conditions:
  - 1. The Company violated a representation or warranty in this Agreement.

2. The Company fails to provide written notification to MOME confirming the contribution to the Cultural Institution or Community Organization by the deadline in Article VI(B) above.
  3. The Company no longer accepts the Media Plan.
  4. The Company does not release the Digital Game to the public.
- C. The repayment of such costs pursuant to Article VII(B) shall not exhaust or limit any the availability of any other right or remedy of City under this Agreement or otherwise under the law.

#### ARTICLE VIII: AMENDMENTS AND ASSIGNMENTS

- A. This Agreement may not be modified, released or discharged except in writing executed by a duly authorized representative of both parties.
- B. The Company may not assign, license or otherwise transfer any of the rights granted under this Agreement. But the Company may assign this Agreement to: (a) its parent company or any affiliate, subsidiary or other entity with an ownership interest in the Digital Game; (b) for purposes of distribution and other exploitation of the Digital Game; (c) in the event of any company reorganization, merger or acquisition; or (d) to any party which succeeds to all or substantially all of the Company's assets.

#### ARTICLE IX: MISCELLANEOUS

- A. This Agreement constitutes the entire agreement between MOME and the Company and supersedes any and all prior agreements or representations, whether oral or written pertaining to the subject matter hereof.
- B. This Agreement and the rights and obligations created hereunder, neither create, nor are intended to create, any relationship of partnership, agency, or joint venture between MOME and the Company.

- C. This Agreement is to be governed in all respects and construed in accordance with the substantive laws of the state of New York without regard to its choice of law provisions.
- D. The parties agree that any claims arising under this Agreement or related thereto will be heard and determined in the courts of the United States located in New York City and the parties must submit to the jurisdiction of the courts of the State of New York and federal district court located in the City and County of New York.

Accepted and Agreed by both parties as of the date signed by an authorized representative of the Mayor's Office of Media and Entertainment.

NAME OF COMPANY:

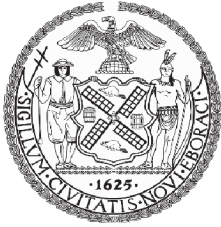
THE CITY OF NEW YORK  
MAYOR'S OFFICE OF MEDIA & ENTERTAINMENT

By: \_\_\_\_\_  
NAME:  
TITLE:

By: \_\_\_\_\_  
NAME:  
TITLE:

Date: \_\_\_\_\_

Date: \_\_\_\_\_



THE CITY OF NEW YORK  
MAYOR'S OFFICE OF MEDIA & ENTERTAINMENT

**“Made In NY” Marketing Credit Program  
for Digital Gaming Media Productions**

**Certificate of Marketing Credit**

Digital Game Title: \_\_\_\_\_

Company Name: \_\_\_\_\_

Subject to the Company’s compliance with Program Rules in 43 RCNY Chapter 19 and the Agreement, MOME will provide the following marketing credits to the Company:

\_\_\_\_ New York City subway cards to be displayed from \_\_\_\_\_ to \_\_\_\_\_

Other: \_\_\_\_\_

