

## PROMOTIONAL PRODUCT LICENSE AGREEMENT

This OP Kit License Agreement (the “**Agreement**”) is made by and between the undersigned Licensee and WizKids/NECA, LLC (“**Licensor**”). (Licensee and Licensor are each referred to as a “**Party**”, collectively as the “**Parties**”). The Parties agree as follows:

**1. DEFINITIONS.** In this Agreement the following words and expressions shall have the following meanings:

1.1. “**Authorized Locations**” means Licensee’s physical retail business premises where Licensee intends to make the Authorized Uses of the Licensed Product.

1.2. “**Authorized Uses**” means: (1) use in connection with in-store organized play events; and (2) any additional uses authorized by Licensor in writing.

1.3. “**Intellectual Property**” means all intellectual property including, but not limited to: patents; trademarks; copyrights; trade, brand, and business names, trade secrets, know-how, or other confidential information and any other proprietary rights for any other industrial or intellectual property throughout the world, whether registrable or not, as well as the right to apply for any of the foregoing rights.

1.4. “**Licensed Content**” means all text, images, video, sound, and other content supplied by Licensor to Licensee for use in connection with the Licensed Product.

1.5. “**Licensed Product**” means the promotional product (e.g., organized play kit, promo cards, etc.) identified in each addendum enclosed with such kit, including any Licensed Content to be used in connection with such kit. Each subsequent addendum will be made part of and integrated into this Agreement by Licensee’s receipt and physical acceptance of the Licensed Product.

1.6. “**Modification**” means the process of modifying the Licensed Product, by adding, altering, or removing elements.

**2. OWNERSHIP; LICENSE; RESTRICTIONS ON USE.**

2.1. Ownership; License. Licensor owns or has secured all Intellectual Property for the Licensed Product, in whole or in part, and reserves such rights for itself and/or its third-party licensing partners, as applicable. This Agreement does not grant ownership of any Intellectual Property for the Licensed Product to Licensee. Licensor hereby grants Licensee a limited, non-exclusive, revocable, non-transferable license to use the Licensed Product solely for Authorized Uses at the Authorized Locations. Licensor reserves the right to use or sell the Licensed Product and to grant further licenses to the Licensed Product.

2.2. Storage. Licensee shall store the Licensed Product only at the Authorized Locations and shall safeguard the Licensed Product from access by third parties, except as needed to conduct the Authorized Uses.

2.3. Restrictions on Use. Licensee may use the Licensed Product only for Authorized Uses. For the avoidance of doubt, Licensee or its employees may not: (a) produce copies of the Licensed Product in whole or in part; (b) prepare any Modification of the Licensed Product in whole or in part; (c) sell or otherwise distribute the Licensed Product in whole or in

part, except as permitted by the Authorized Uses; or (d) grant licenses in the Licensed Product in whole or in part.

2.4. Clear Credit. Licensee agrees to mention Licensor and Licensor’s licensing partners in any announcements, advertisements, or other information materials in connection with any Authorized Uses of the Licensed Product.

**3. REPRESENTATIONS AND WARRANTIES.**

3.1. Each Party warrants and represents to the other that: (a) it has the full authority to enter into this Agreement; (b) the execution of this Agreement and the performance of its obligations under this Agreement do not and will not violate any other agreement to which it is a party; (c) this Agreement constitutes a legal, valid and binding obligation when executed and delivered; and (d) any and all activities it undertakes in connection with this Agreement will be performed in compliance with applicable laws, rules and regulations. Licensor furthermore warrants and represents that, to the best of its knowledge: (a) it owns or has secured all necessary rights to the Intellectual Property for the Licensed Product to make the grants in this Agreement; (b) any use of the Licensed Product by Licensee will not infringe any third party Intellectual Property; (c) Licensor has gained all permissions necessary for the use of the Licensed Product.

3.2. Limited Warranty. If the Licensed Product does not perform substantially in accordance with Licensor’s documentation, Licensee shall be entitled to either, at Licensee’s option, the replacement of the Licensed Product or the refund of any amounts paid by Licensee for the Licensed Product. LICENSOR DOES NOT WARRANT THE PERFORMANCE OR RESULTS LICENSEE MAY OBTAIN BY USING THE LICENSED PRODUCT. LICENSOR MAKES NO WARRANTIES, EXPRESS OR IMPLIED, OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE.

**4. DISCLAIMER; LIMITATION OF LIABILITY.** LICENSOR WILL NOT BE HELD LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, OR SPECIAL DAMAGES, INCLUDING ANY LOST PROFITS OR LOST SAVINGS ARISING FROM THE USE OF OR INABILITY TO USE THE LICENSED PRODUCTS. IN NO EVENT SHALL THE TOTAL LIABILITY OF LICENSOR AND ITS FUNDERS, SUCCESSORS, PARENTS, SUBSIDIARIES, AFFILIATES, OFFICERS, DIRECTORS, AGENTS, DEVELOPERS, NETWORKS, DISTRIBUTORS, JOINT VENTURERS AND ATTORNEYS (EACH AN “**AFFILIATE**”) TO LICENSEE FOR ALL DAMAGES, LOSSES, AND CAUSES OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING WITHOUT LIMITATION, NEGLIGENCE), OR OTHERWISE, EXCEED THE AMOUNT ACTUALLY PAID BY LICENSEE TO LICENSOR FOR THE LICENSED PRODUCT. ANY DISPUTE, CLAIM OR CONTROVERSY AT LAW OR EQUITY (EACH, A “**CLAIM**”) BROUGHT BY LICENSEE AGAINST LICENSOR AND/OR ITS AFFILIATES, WHICH ARISES OUT OF OR IS RELATED TO THIS AGREEMENT OR THE LICENSED PRODUCTS, MUST BE FILED WITHIN ONE YEAR AFTER SUCH CLAIM AROSE REGARDLESS OF ANY STATUS OR LAW TO THE CONTRARY. IN THE EVENT THAT LICENSEE DOES NOT FILE ANY SUCH CLAIM

WITHIN SUCH ONE-YEAR PERIOD, SUCH CLAIM SHALL BE BARRED. The express terms of the Agreement are instead of all warranties, conditions, terms, undertakings and obligations implied by statute, common law, custom, trade usage, course of dealing or otherwise, all of which are hereby excluded to the fullest extent permitted by law.

## 5. INDEMNIFICATION.

5.1. By Licensor. Licensor shall indemnify Licensee against all claims, causes of action, demands, judicial and/or administrative proceedings, liabilities, errors, damages, costs, and expenses, including court costs and reasonable attorneys' fees (each a "Dispute"), which may occur as a result of, or arise out of, the acts or omissions of Licensor and/or Affiliates in connection with the performance of (1) Licensor's obligations under this Agreement; (2) any breach of the covenants, representations, and warranties made by Licensor to Licensee in this Agreement; or (3) any claim that any content and/or materials provided as part of the Licensed Product by the Licensor to Licensee violate or infringe upon any Intellectual Property or other rights of any third party.

5.2. By Licensee. Licensee shall indemnify Licensor against all Disputes, which may occur as a result of, or arise out of, the acts or omissions of Licensee and/or Licensee's Affiliates in connection with the performance of (1) Licensee's obligations under this Agreement; (2) any breach of the covenants, representations, and warranties made by Licensee to Licensor in this Agreement; or (3) any claim that any content and/or materials added to the Licensed Product in connection with Licensee's use thereof violate or infringe upon any Intellectual Property or other rights of any third party.

5.3. Defense and Settlement of Third Party Claims. A party seeking indemnification will give the other Party prompt notice of a claim. Failure to give such prompt notice will relieve the indemnifying party of its indemnification obligations to the extent that such failure has prejudiced the indemnifying party's defense of such claim. The indemnifying party may assume the defense of each claim to which its indemnity applies. The indemnified party will cooperate fully (at the expense of the indemnifying party) with the indemnifying party in defending and settling the claim in question. If the indemnified party desires to settle a claim, it will obtain the prior written consent of the indemnifying party, which consent will not be unreasonably withheld or delayed. Failure to obtain such consent shall relieve the indemnifying party of its indemnification obligations with respect to such claim. This Section will survive termination or expiration of this Agreement for a period of three years.

6. **TERM AND TERMINATION.** The license in this Agreement is granted for an unlimited period of time, provided that the license ends immediately in the event of a breach by Licensee or termination of any rights in the Licensed Product by Licensor's licensing partners. In this case, Licensee must: (1) immediately cease any further use of the Licensed Product and Licensed Content; and (2) within 10 business days, destroy any remaining Licensed Product and Licensed Content and provide

Licensor with a written confirmation of such destruction. In the event of termination of this Agreement, any provisions of this Agreement, which by their nature should survive termination, shall survive termination.

7. **CONTRACT PENALTY.** In the event of any breach of this Agreement, Licensor may, in its sole discretion, decide to suspend or terminate any further business with Licensee including, but not limited to: (1) canceling any of Licensee's open orders for Licensor's product; and (2) rejecting any and all future orders by Licensee for Licensor's product.

## 8. GENERAL.

8.1. Notices. Any official correspondence under this Agreement must be in writing and must be delivered by personal delivery, electronic mail (e-mail), facsimile or by certified or registered mail, and shall be deemed given upon personal delivery, five days after deposit in the mail, or upon acknowledgment of receipt of electronic transmission.

8.2. No Further Obligations. No agreement, other than this Agreement, shall be deemed to exist between the Parties unless and until such time as a separated agreement shall have been made between the Parties, acting in their sole discretion. Neither Party has an obligation under this Agreement to enter into any transaction with the other Party.

8.3. Waiver. The failure of either Party to insist upon strict performance of any of the terms of this Agreement shall not be construed a waiver for the future of any such term, and the same shall continue in full force and effect.

8.4. Renewals and Modifications by the Parties. Renewals or modifications of the Agreement must be in writing and signed by the Parties or their duly authorized agents.

8.5. Severability and Modification. If any provision of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, the invalidity shall not affect other provisions or applications of the Agreement and, to this end, the provisions of the Agreement are declared to be severable. The Parties agree that if any court or tribunal refuses to enforce the restrictive covenants contained herein, neither this Agreement nor any part thereof, shall be void, and that the particular restriction deemed to be unreasonable or unenforceable shall be reduced or otherwise modified by such court or tribunal, but only to the extent necessary to permit its enforcement and only in such court's jurisdiction. The Parties further agree that if any provision cannot be reduced or modified to make it reasonable and/or permit its enforcement, said provision shall then be severed from this Agreement and the remaining provisions shall be interpreted in such a way as to give maximum validity and enforceability to this Agreement.

8.6. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey, applicable to contracts to be fully performed therein, and without regard to conflict of laws rules thereof.

8.7. Arbitration. Except for the right of either party to seek injunctive or other equitable relief in any court of

competent jurisdiction, the Parties agree to enter into good faith negotiations to resolve any Claim, for a period of thirty (30) days from the date the Claim arose. If such negotiation is unsuccessful, any Claim under this Agreement shall be resolved by final and binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association. Such arbitration shall take place in Newark, New Jersey. Judgment upon an arbitration award may be entered in any court of competent jurisdiction. All Claims Licensee brings against Licensor must be resolved in accordance with this section. All Claims filed or brought contrary to this section shall be considered improperly filed. Should Licensee file a Claim contrary to this section, Licensor may recover reasonable attorney's fees and costs, provided that Licensor has notified you in writing of the improperly filed Claim, and Licensee has failed to withdraw the Claim within thirty (30) days of such notice. In the event that the agreement to arbitrate above is found not to apply to a particular Claim, the Parties irrevocably consent to and submit to the exclusive jurisdiction and venue of the state and federal courts located in Newark, New Jersey and waives any objection or defense based on lack of personal jurisdiction, improper venue, or *forum non-conveniens*.

8.8. Prohibition of Class and Representative Actions and Non-Individualized Relief. LICENSEE AND LICENSOR AGREE THAT THEY EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY ON AN INDIVIDUAL BASIS AND NOT AS PART OF ANY PURPORTED CLASS OR REPRESENTATIVE ACTION OR PROCEEDING. UNLESS BOTH LICENSEE AND LICENSOR AGREE OTHERWISE, THE ARBITRATOR MAY NOT CONSOLIDATE OR JOIN MORE THAN ONE PERSON'S OR PARTY'S CLAIMS, AND MAY NOT OTHERWISE PRESIDE OVER ANY FORM OF A CONSOLIDATED, REPRESENTATIVE, OR CLASS PROCEEDING. ALSO, THE ARBITRATOR MAY AWARD RELIEF (INCLUDING MONETARY, INJUNCTIVE, AND DECLARATORY RELIEF) ONLY IN FAVOR OF THE INDIVIDUAL PARTY SEEKING RELIEF AND ONLY TO THE EXTENT NECESSARY TO PROVIDE RELIEF NECESSITATED BY THAT PARTY'S INDIVIDUAL CLAIM(S). ANY RELIEF AWARDED CANNOT AFFECT OTHER LICENSEES.

8.9. Equitable Relief. Licensee agrees that money damages may be difficult or impossible to ascertain, and serve

This agreement is made valid as of the date of agreement (the "Effective Date") by Licensee on the WizKids Event System.

as inadequate compensation for breach of this Agreement. Licensee hereby consents in advance to the entry by a court of competent jurisdiction of: (1) equitable relief to enforce the terms of this Agreement; and (2) such further relief as may be granted by a court of competent jurisdiction.

8.10. No Exclusive Remedy. The remedies of this Agreement shall be in addition to, and not exclusive of, any other rights or remedies which may accrue to Licensor.

8.11. Relationship. The relationship between the Parties is as set out in the Agreement and no employment, joint venture, partnership or agency relationship shall exist between the Parties and neither shall have the power to bind the other.

8.12. Binding Agreement; Assignments. This Agreement is binding upon the Parties, their successors, permitted assigns, and personal representatives. Licensor may freely assign any of its rights and obligations under this Agreement. Licensee may not transfer its rights or obligations under this Agreement without Licensor's prior written consent. Upon receiving Licensor's consent, Licensee shall transfer the Licensed Product to such transferee. Licensee may not retain any copies of the Licensed Product for any transfer to be valid and legal.

8.13. Attorneys Fees and Costs. In the event of a dispute related in any way to this Agreement, the non-prevailing party shall pay all costs and expenses, including reasonable attorneys' fees, that may arise from enforcing this Agreement, obtaining an interpretation of any provision of this Agreement, or in pursuing any remedy whether such remedy is pursued or interpretation is sought by mediation, arbitration, the filing of a lawsuit, an appeal, and/or otherwise.

8.14. Counterparts. This Agreement may be signed in counterparts (including by scanned PDF), each of which shall be deemed originals, but shall constitute the same instrument.

8.15. Entire Agreement. This Agreement contains the entire agreement between the Parties regarding the subject matter hereof and supersedes all previous negotiations, representations, and agreements both written and oral between the Parties.