

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549**

FORM 10-K

**[X] Annual Report Pursuant to Section 13 or 15(d) of
The Securities Exchange Act of 1934**

OR

**Transition Report Pursuant to Section 13 or 15(d) of
the Securities Exchange Act of 1934
for the Transition Period from to**

For the fiscal year ended
October 31, 2005

Commission File number 000-51128

MAJESCO ENTERTAINMENT COMPANY

(Exact name of registrant as specified in its charter)

DELAWARE

(State or other jurisdiction of
incorporation or organization)

06-1529524

(I.R.S. Employer
Identification No.)

160 Raritan Center Parkway
Edison, New Jersey 08837
(Address of principal executive office)

Registrant's telephone number, including area code (732) 225-8910

Securities registered pursuant to Section 12(b) of the Act: NONE

Securities registered pursuant to Section 12(g) of the Act:

Common Stock, Par Value \$0.001

(Title of class) Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act.
Yes No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes No

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (§ 229.405 of this chapter) is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, or a non-accelerated filer. See definition of "accelerated filer and large accelerated filer" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer Accelerated filer Non-accelerated filer

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes No

The aggregate market value of the common stock held by non-affiliates as of April 30, 2005 was \$131.7 million.

The outstanding number of shares of common stock as of January 30, 2006 was 22,242,476.

The Registrant's proxy or information statement is incorporated by reference into Part III of this Annual Report on Form 10-K.

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PART I

Item 1. Business

Forward-looking Statements

Statements in this annual report on Form 10-K that are not historical facts constitute forward-looking statements which are made pursuant to the safe harbor provisions of Section 21E of the Securities Exchange Act of 1934. These statements relate to future events or our future financial performance and involve known and unknown risks, uncertainties and other factors that may cause our or our industry's actual results, levels of activity, performance or achievements to be materially different from any future results, levels of activity, performance or achievements expressed or implied by these forward-looking statements. Those factors include, among other things, those listed under "Risk Factors" and elsewhere in this annual report. In some cases, you can identify forward-looking statements by terminology such as "may," "will," "should," "expects," "plans," "anticipates," "believes," "estimates," "predicts," "potential" or "continue" or the negative of these terms or other comparable terminology. These statements are only predictions. Actual events or results may differ materially. Moreover, neither we nor any other person assumes responsibility for the accuracy or completeness of these statements. We are under no duty to update any of the forward-looking statements after the date of this annual report to conform these statements to actual results.

Introduction

We are a provider of interactive entertainment products. Our products allow us to capitalize on the large and

growing installed base of interactive entertainment platforms and an increasing number of interactive entertainment enthusiasts. We sell our products primarily to large retail chains, specialty retail stores, video game rental outlets and distributors. We also sell our products internationally through distribution agreements with international publishers. We have developed our retail and distribution network relationships over our 19-year history.

We publish software games for almost all major current generation interactive entertainment hardware platforms, including Nintendo's Game Boy Advance, or GBA, Nintendo's DS, Micro and GameCube, Sony's PlayStation 2, or PS2, and PlayStation Portable, or PSP™, Microsoft's Xbox and the personal computer, or PC.

In addition to games, we have created a line of videos that can be viewed on all of Nintendo's current handheld systems including the GBA, the GBA SP, the DS and the Micro. The videos come on a standard Nintendo cartridge and require no additional hardware to view. Initially, our video product line consisted of 45 minutes of popular, youth-oriented episodic content from Nickelodeon, Cartoon Network, Disney and others. In November 2005, we released three feature-length motion pictures from DreamWorks: Shrek, Shrek 2 and Shark Tale. While we plan to be opportunistic with this product line and focus on 90-minute content and feature-length movies, we do not expect GBA video to be a material portion of our business going forward.

Our video game titles are targeted at various demographics at a range of price points, from lower-priced "value" titles to more expensive "premium" titles. In some instances, these titles are based on licenses of well known properties, and in other cases based on original properties. We collaborate and enter into agreements with content providers and video game development studios for the creation of our video games.

While throughout most of our history we focused on value-priced games, in the past few years, we began to grow our presence in the premium console games market. These premium products require larger budgets for development and marketing and require higher unit sales to generate a profit.

During the second half of fiscal 2005, we had several major developments that ultimately led us to revise our business model and shift our product strategy away from capital intensive premium console games to a focus on value products and lower-cost games for handheld systems. In conjunction with

our shift in strategy, we evaluated our existing portfolio of premium console titles in development and decided to sell our rights or cancel a number of these titles. Although there can be no assurances, these actions have improved the financial position of the company by significantly reducing our future obligations and in some instances generating cash.

Going forward, we will look to offer a greater number of value priced video games. We will continue to publish titles for popular handheld systems such as the GBA, DS and PSP, as well as look for opportunistic titles for home consoles and personal computers. We believe that a decreased emphasis on premium titles, along with a renewed focus on value and handheld titles, will allow us to capitalize on our strengths and expertise while reducing some of the cost and risk associated with publishing a large number of premium console titles.

We believe this revised business model is a more sustainable one, which will provide us a greater opportunity for success in the interactive entertainment market.

2005 Developments

During the second half of fiscal 2005, we had several major developments that ultimately led us to revise our business model and shift our product strategy away from capital intensive premium console games to a focus on value products and lower-cost games for handheld systems. During the latter half of the year the interactive entertainment industry experienced some softness related to the hardware transition which was compounded by increased competition for consumers' discretionary spending. In the third quarter, we announced key management changes, including the resignation of our CEO. In addition, the factor, our principal source of financing, imposed a limitation on cash advances and letters of credit which was subsequently partially restored.

In the later part of the fiscal year, we experienced weak sales across all of our product lines, specifically premium console games and GBA Video. As a result, it was necessary to increase our provisions for price protection and for slow moving inventory. Additionally, as a result of our weak sales and our subsequent decision to sell our rights or cancel a number of video games, we recorded impairment charges related to capitalized software development costs and prepaid license fees of \$36.8 million, and inventory of \$5.1 million. Accordingly we incurred an operating loss of \$70.2 million.

Corporate Background

Majesco Sales Inc. was incorporated in 1986 under the laws of the State of New Jersey. On December 5, 2003, Majesco Sales Inc. completed a reverse merger with Majesco Holdings Inc. (formerly ConnectivCorp), then a publicly traded company with no active operations. Majesco Holdings Inc. was incorporated in 1998 under the laws of the State of Delaware. As a result of the merger, Majesco Sales Inc. became a wholly-owned subsidiary and the sole operating business of the public company. On April 4, 2005, Majesco Sales Inc. was merged into Majesco Holdings Inc., and, in connection with the merger, Majesco Holdings Inc. changed its name to Majesco Entertainment Company. Our principal executive offices are located at 160 Raritan Center Parkway, Edison, NJ 08837, and our telephone number is (732) 225- 8910. Our web site address is www.majescoentertainment.com.

Industry Overview

The interactive entertainment industry is mainly comprised of video game hardware platforms, video game software and peripherals. Within this industry, North American combined sales of video game hardware, video game software and video game peripherals were approximately \$11.0 billion in 2004 according to the NPD Group. Of that total, video game software accounted for \$6.2 billion, PC software accounted for \$1.1 billion and hardware and accessories accounted for \$3.7 billion.

Video Game Hardware Platforms

Video game hardware platforms are comprised of home game consoles, or consoles, and portable handheld game devices, or handhelds, as well as multi-functional devices such as PCs, Personal Digital

Assistants, or PDAs, and mobile phones. The current generation of consoles was first introduced in 2000 and 2001, and now includes Nintendo's GameCube, Sony's PlayStation 2 and Microsoft's Xbox and Xbox 360. According to the respective platform manufacturers, as of November 2005 the North American installed base is approximately 10 million for the GameCube, 37 million for the PlayStation 2 and 14 million for the Xbox. On November 22, 2005, Microsoft launched the first of the next-generation consoles, the Xbox 360. Additional next-generation consoles including Sony's PlayStation 3 and Nintendo's Revolution, are expected to be released in 2006. These advanced consoles will feature improved graphics capabilities, increased storage capacity and incremental online, wireless and multi-media entertainment functionality intended to attract a wider audience.

The current generation of handhelds is dominated by Nintendo's GBA, which was the first handheld to be released based on 32-bit technology. The GBA has a North American installed base of approximately 30 million units as of November 2005, according to Nintendo. In November 2004, Nintendo launched a new handheld system, the DS, which features a dual screen, wifi capability and higher capacity storage media, and is backward compatible with GBA cartridges. According to Nintendo, the North American DS installed base is 4.0 million as of January 2006. More recently, in September 2005, Nintendo launched the GBA Micro, which offers the same functionality as the GBA, at a smaller size. In March, 2005, Sony launched the Sony PlayStation Portable system. According to Sony, the North American PSP installed base is approximately 3 million as of October 2005 and was expected to exceed 5 million by the end of 2005.

The ability of multi-functional devices, such as PCs, PDAs and mobile phones to serve as video game platforms has also been greatly enhanced. This is due to periodic advances in microprocessors, graphics chips, storage capacity, operating systems and media and digital rights management. These advances have enabled developers to introduce video games for multi-functional devices with enhanced game play technology and high resolution graphics.

Video Game Software

Video game software is created by the console and handheld manufacturers, and by independent publishers and developers. Console and handheld manufacturers license publishers to develop video games for their platforms and retain a significant degree of control over the content, quality and manufacturing of these products. Most manufacturers also receive a royalty for every software title manufactured for their platform. The publishers, subject to the approval of the platform manufacturers, determine the types of games they will create. Publishers either utilize their own in-house development teams or outsource game development to third-party developers. Following development, publishers then market and sell these products to retailers, either directly or through resellers.

Premium games are often based on licensed popular content or original content with strong characters and storylines, and generally receive extensive development and marketing investments. Premium games are also higher priced than value titles.

Value games are generally priced below a suggested retail price of \$20.00. Success in the value category is largely based on the ability to cost-effectively publish value titles, bring them to market quickly, capitalize on current trends, and place these titles with major retailers.

Many of the consoles and handhelds available today are capable of playing video content in addition to games. Video content generally consists of pre-recorded movies, television programming and other entertainment that publishers have licensed from content providers.

Traditionally, video games and video content have been delivered using CDs, DVDs or cartridges. More recently, some new games have added levels of play and other supplemental content that can now be delivered via the Internet, through game portals, such as Xbox Live, and various Internet sites, such as Yahoo!. The popularity of this emerging download category is expected to increase, especially within the large-scale multiplayer game segment, and among the user bases of the next generation consoles, PDAs and mobile phones.

Peripherals

Most video game hardware platforms have a variety of peripherals that are designed to enhance the functionality of the device and the experience of the user. For instance, GBA users can purchase headphone peripherals that enable private listening. New peripherals have also been developed that enable users to play video games on their televisions without the need for dedicated home game consoles.

Strategy

Our objective is to be an innovative provider of diversified interactive entertainment offerings. Specifically, we will strive to:

Leverage our long-term success in the value category.

Publishing software for the value category (suggested price point below \$20), which requires a relatively low investment in development and marketing, has historically been one of our strengths. We have published a strong portfolio of value titles for the GBA platform that includes products based on well-known licensed properties (Frogger, PacMan, Cartoon Network, Strawberry Shortcake) as well as popular mass market interests/trends (Monster Trucks, Quad Desert Fury, Texas Hold 'Em Poker). We are one of the first publishers to develop a line of high-quality value titles for the Nintendo DS handheld system and to date have launched five such titles at the suggested retail price of \$20.00 or under. We have also opportunistically published console titles that offer a quality game play experience at value price points (Phantom Dust, Guilty Gear, Worms 4 Mayhem). Going forward, we will capitalize on our ability to quickly create or obtain high-quality products to sell at value prices and expand our value product line to other platforms, genres and distribution outlets.

Focus product development efforts on games for the leading handheld systems.

Video game development for handheld systems is generally less expensive and simpler than development for the current and next-generation home consoles. As such, we are focusing our premium game development efforts in this area in order to capitalize on the growing installed bases of the PSP and DS. We believe the PSP's exceptional graphics and wi-fi capability combined with its ability to play music and movies will expand the audience for handheld games and attract an older demographic of hardcore gamers. As an example, in November 2005 we released *Infected*, an original title designed exclusively for the PSP. We believe that the Nintendo DS touch screen interface is uniquely able to emulate the mouse interface of the PC and as such have licensed the right to publish DS versions of the well-known PC franchises *Age of Empires* and *Mech Assault*. Additionally, we are working with two Japanese-based publishers, Arc System Works and Taito, to bring their well-known franchises, *Bust-A-Move* and *Guilty Gear*, respectively, to US and European handheld audiences.

Strategically pursue alternative distribution channels for existing and new products.

To date, we have not participated in alternative distribution channels such as digital download sales; nor have we developed products for mobile phones, or for specific play or download via the internet or other online networks. We believe we have an opportunity to leverage existing and new products across these alternative distribution channels, and will seek to strategically establish a foothold in the fast-growing, related areas of mobile and internet entertainment content.

Increase our market share in Europe and Pacific Rim territories.

We have historically focused our efforts and resources on established domestic markets. As the global gaming market continues to grow, we believe that international markets represent a significant growth opportunity for us. Over the last two years, we have begun to expand our international presence and in late fiscal 2005 we established a co-publishing agreement with a leading international publisher for distribution in Europe and the PAL territories. Under this arrangement the publisher fulfills all sales, marketing and distribution needs for our multi-format product line-up. Our first sales

under this agreement are anticipated in 2006. International net revenues for 2005, 2004, and 2003 were not significant. However, based on our current arrangements, we anticipate international sales to have a more significant impact on our revenues in the future.

We are also developing similar relationships in Asia Pacific and Japan and are targeting new territories, such as China, for expansion.

Leverage our industry relationships and entrepreneurial environment to enter new categories and bring innovative products to market.

In the past, we have leveraged our experience, entrepreneurial environment and industry relationships with

developers, manufacturers, content providers, retailers and resellers to create and distribute new and innovative products. We will continue to capitalize on market trends and pursue new product opportunities in categories related to our core business.

Products

We offer our customers a wide selection of interactive entertainment products for a variety of platforms.

Games

As of December 31, 2005, our active catalog includes more than 30 video game titles, which we identify as value and premium titles.

Value Titles

We believe we are a leading publisher of value titles and will continue to expand our value product line to other platforms, genres and distribution outlets. Value titles are typically sold at suggested retail prices below \$20. Examples of products in this category include:

- Titles based on emerging consumer fads or trends where we rapidly develop a quality title to capitalize on such interest, such as Monster Trucks, Quad Desert Fury and Texas Hold 'Em Poker;
- Titles based on established brands where we can repackage classic games or develop titles based on well-known properties, such as Frogger, Pac-Man, Cartoon Network (Speedway and Block Party) and Looney Toons; and
- Titles that were once our premium titles but over time have become part of our value line.

Selected value titles, their compatible platforms and launch and anticipated launch dates include:

SELECTED TITLES	PLATFORM	LAUNCH DATE
Pacman Collection	GBA	July 2001
Frogger's Adventure	GBA	November 2001
Quad: Desert Fury	GBA	September 2003
Guilty Gear # X2 Reload	Xbox	September 2004
Cartoon Network Speedway	GBA	November 2003
Monster Trucks	GBA	October 2004
Texas Hold 'Em Poker	GBA	October 2004
Ultra Bust-A-Move	Xbox	October 2004
Quad: Desert Fury 2	GBA	February 2005
Phantom Dust	Xbox	May 2005
Majesco's Kids Cards	GBA	July 2005
Worms 4: Mayhem	Xbox, PC	October 2005
Looney Toons Double Pack	GBA	October 2005
Monster Trucks	DS	November 2005

SELECTED TITLES	PLATFORM	LAUNCH DATE
Bust-A-Move	DS	November 2005
Majesco's 3-in-1 Sports Pack	GBA	February 2006
Super Black Bass Fishing	DS	March 2006

Premium Titles

Our most successful proprietary premium title has been BloodRayne, which since its launch in October 2002 has generated significant consumer interest and worldwide retail sales of more than 752,000 units. As a result of this success, we developed a sequel, BloodRayne 2, which was released in October 2004, and entered into a number of licensing agreements including a strategy guide, a comic book, apparel, resin statues, replica swords and a feature film that is expected to be released in January 2006. In addition to intellectual properties that we own, we also license the rights to content from developers or media entertainment companies as in the cases of Psychonauts, Aeon Flux, Teen Titans and the classic action-suspense film Jaws.

We also entered into licensing arrangements with content providers for use of their intellectual properties in our games (Teen Titans, Jaws Unleashed) and GBA videos (Shrek, Shark Tale) (see "Game Boy Advance Video" below).

Selected premium titles, their compatible platforms and launch or anticipated launch dates include:

SELECTED TITLES	PLATFORM	LAUNCH DATE
BloodRayne	Xbox, PS2, GC, PC	October 2002
BloodRayne 2	Xbox, PS2, PC	October 2004
Advent Rising	Xbox, PC	May 2005
Nanostray	Nintendo DS	July 2005
Psychonauts	Xbox, PS2, PC	April, July 2005
Teen Titans	GBA	October 2005
Infected	PSP	November 2005
Aeon Flux	Xbox, PS2	November 2005
Teen Titans	Xbox, PS2, GC	February 2006
Age of Empires	DS	February 2006
Mech Assault	DS	May 2006
Jaws Unleashed	Xbox, PS2, PC	Summer 2006

In conjunction with our shift in strategy, we evaluated our existing portfolio of premium console titles in development and determined to sell our rights to or cancel a number of these titles. Specifically, we sold all rights to The Darkness and Ghost Rider and terminated development of Taxi Driver and Demonik among other titles. In the future we will focus our premium development efforts on the growing installed bases of the PSP and DS handheld systems.

Game Boy Advance Video

In addition to games, we have created a line of videos that can be viewed on all of Nintendo's current handheld systems including the GBA, the GBA SP, the DS and the new Micro. The videos come on a standard Nintendo cartridge and require no additional hardware to view. Initially, our video product line consisted of 45 minutes of popular, youth-oriented episodic content from Nickelodeon, Cartoon Network, Disney and others. In November 2005, we released three feature-length motion pictures from DreamWorks: Shrek, Shrek 2 and Shark Tale. While we plan to be opportunistic with this product line and focus on 90-minute content and feature-length movies, we do not expect GBA video to be a material portion of our business going forward.

Selected current GBA Video titles, the applicable content provider and launch dates include:

SELECTED TITLES	CONTENT PROVIDER	LAUNCH DATE
Dora the Explorer	Nickelodeon	May 2004
Fairly Odd Parents: Vol 1 & 2	Nickelodeon	May 2004
SpongeBob SquarePants: Vol 1 & 2	Nickelodeon	May 2004
All Grown Up!	Nickelodeon	May 2004
Cartoon Network Collection: Vol 1	Cartoon Network	May 2004
Codename: Kids Next Door: Vol 1	Cartoon Network	May 2004
Nicktoons Collection: Vol 1	Nickelodeon	May 2004
Teenage Mutant Ninja Turtles: Vol 1	4Kids Entertainment	June 2004
Yu-Gi-Oh!: Vol 1	4Kids Entertainment	June 2004
Dragon Ball GT: Vol 1	FUNimation Productions	September 2004
Kim Possible	Disney	December 2004
Lilo & Stitch	Disney	December 2004
Shrek	DreamWorks	November 2005
Shrek 2	DreamWorks	November 2005
Shark Tale	DreamWorks	November 2005

Peripheral Products

Currently, our peripheral products consist principally of our TV Arcade plug-and-play products. These products are stand-alone games that connect directly into television sets with standard RCA cables. These are battery operated and require no additional hardware or software. We expect to opportunistically extend our peripheral offerings in the future.

Product Development

Prior to initiating the development of a video game title, we perform market research, studio due diligence and financial analyses. The title must then be approved by our "green light" committee comprised of members from our executive, product development, finance, sales and marketing teams before being accepted for publication. Once accepted, the game is evaluated at regular milestones to ensure it is progressing on time, according to specifications and on budget. All members of the green light committee continue to be involved throughout the development process. In accordance with our current strategy, we will concentrate on procuring

value products, premium handheld products and opportunistically pursuing console titles.

We use third party development studios to create our video game products. We carefully select third parties to develop video games based on their capabilities, suitability, availability and cost. We usually have broad rights to commercially utilize products created by third party developers. Development contracts are structured to provide developers with incentives to provide timely and satisfactory performance by associating payments with the achievement of substantive development milestones, and by providing for the payment of royalties to them based on sales of the developed product, only after we recoup the development costs. We have worked and continue to work with independent third party developers, including:

- Appaloosa Entertainment
- A2M (Artificial Mind & Movement)
- Backbone Entertainment
- Double Fine Productions
- Hudson Soft
- Planet Moon
- Skyworks Technologies

7

-
- Taito
 - Terminal Reality

The development process for video games involves working with the platform manufacturers from initial game concept through approval of the final product. During this process, we work closely with these manufacturers to ensure that the title undergoes careful quality assurance testing. Each platform manufacturer requires that the software and a prototype of each title, together with all related artwork and documentation, be submitted for its pre-publication approval. This approval is generally discretionary.

The development process for GBA Videos is less complex than video games as we only need to compress existing video content. We do, however, need to work with the platform manufacturer and content licensors to gain approval on the quality of the compressed video prior to final manufacturing. The actual manufacturing process is the same as a GBA video game.

Intellectual Property

Platform Licenses

Hardware platform manufacturers require that publishers obtain a license from them to publish titles for their platforms. We currently have non-exclusive licenses from Nintendo for DS, GBA and GameCube, Sony for PS2 and PSP and Microsoft for Xbox and Xbox 360. Each license generally extends for a term of two to four years and is terminable under a variety of events. Each license allows us to create one or more products for the applicable system, and requires us to pay a per-unit license fee and/or royalty payment from the title produced and may include other compensation or payment terms. Publishers are not required to obtain licenses for publishing video game software for PCs. All of the hardware manufacturers approve each of the titles we submit for approval on a title-by-title basis, at their discretion.

Licenses From Third Parties

While we develop original titles, most of our titles are based on rights, licenses and properties, including copyrights and trademarks, owned by third parties. Even our original titles usually include some rights or properties from third parties. License agreements generally extend for a term of two to three years, are limited to specific territories or platforms, and are terminable under a variety of events. Several of our licenses are exclusive within particular territories or platforms. The licensors often have strict approval and quality control rights. Typically, we are obligated to make minimum guaranteed royalty payments over the term of these licenses and advance payment against these guarantees, but other compensation or payment terms such as milestone payments, are also common. From time to time, we may also license other technologies from third-party developers for use in our products, which also are subject to royalties and other types of payment.

Licenses To Third Parties

As we create original titles we may decide to license rights to third parties, sometimes on an exclusive basis, in order to generate publicity or market demand for our titles, generate additional revenue related to complementary products or a combination of these factors. For example, in regards to our BloodRayne franchise,

we have sold the movie rights, entered into a strategy guide deal and licensed a comic book series, replica swords, resin statues and an apparel line.

Intellectual Property Applications

We have filed five provisional patent applications with respect to aspects of the compression technology used by our GBA Video product. We also have filed several trademark applications with respect to some of the trademarks that we use, such as BloodRayne.

Manufacturing

Sony, Nintendo and Microsoft control the manufacturing of our products that are compatible with their respective video game consoles, as well as the manuals and packaging for these products, and

ship the finished products to us for distribution. Video games for Microsoft, Nintendo and Sony home game consoles consist of proprietary format CD-ROMs or DVD-ROMs and are typically delivered to us within a relatively short lead time, approximately two to three weeks. Sony PSP products adhere to a similar production time frame, but use a proprietary media format called a Universal Media Disc, or UMD.

With respect to GBA and DS products, that use a cartridge format, Nintendo typically delivers these products to us within 45 to 60 days after receipt of a purchase order. For our peripheral offerings we use third party manufacturers who typically deliver these products to us within three to five weeks from the time production commences.

Initial production quantities of individual titles are based upon estimated retail orders and consumer demand. At the time a product is approved for manufacturing, we must generally provide the platform manufacturer with a purchase order for that product, or an irrevocable letter of credit for the entire purchase price, or cash in advance. To date, we have not experienced any material difficulties or delays in the manufacture and assembly of our products. However, manufacturers' difficulties, which are beyond our control, could impair our ability to bring products to the marketplace in a timely manner.

Sales and Marketing

North America

Historically, our marketing programs principally supported our premium game titles. While we support most of our titles in some manner, those with the most potential will have long lead-time, multi-faceted marketing programs designed to generate enthusiasm and demand. Specific consumer marketing strategies we may employ include: TV, radio and print advertising; web site and online marketing; demo distribution; promotions and cross-promotions with third parties; and point-of-purchase advertising.

Additionally, we customize public relations programs that are designed to create awareness with all relevant audiences, including core gamers and mass entertainment consumers. To date, our public relations efforts have resulted in significant coverage for our company and individual titles in computer and video game publications, such as Electronic Gaming Monthly, Game Informer, GamePro, Nintendo Power, Official PlayStation Magazine and Official Xbox Magazine, as well as major newspapers, magazines and broadcast outlets, such as CNN, USA Today, Wired, Maxim, Newsweek, The New York Times and TV Guide, among others. We also host media events throughout the year at which print, broadcast and online journalists can preview, review and evaluate our products prior to their release.

In addition to regular face-to-face meetings and communications with our sales force, we employ extensive trade marketing efforts including: direct marketing to buyers and store managers; trade shows, such as Destination PlayStation, Electronic Entertainment Exposition, CES and the Interactive Entertainment Merchant Association Show and the Licensing Show; various store manager shows; and distribution and sales incentive programs.

We sell our products primarily to large retail chains, specialty retail stores, video game rental outlets and distributors. Our sales team has strong relationships with major retailers and communicates with them frequently. To supplement our sales team, we currently utilize eight sales representative organizations located throughout the United States. The firms we use were chosen based on their performance and retailer relationships. On average, two sales representatives per organization are assigned to our accounts. It is customary for the sales representatives and resellers of our games who are assigned specific customers to also distribute games produced by other manufacturers. Distribution channels are dominated by a select group of companies, and a publisher's access to retail shelf space is a significant competitive factor.

International

We have historically focused our efforts and resources on established domestic markets. As the global interactive entertainment market continues to grow, we believe that international markets

represent a significant growth opportunity for us. Over the last two years, we have begun expanding our international presence. In late fiscal 2005 we established a co-publishing agreement with a leading international publisher for distribution in Europe and the PAL territories. Under this arrangement the publisher fulfills all sales, marketing and distribution needs for our multi-format product line-up. Our first sales under this agreement are anticipated in 2006. International net revenues for 2005, 2004, and 2003 were not significant. However, based on our current arrangements, we anticipate international sales to have a more significant impact on our revenues in the future.

Customers

Our customers are comprised of national and regional retailers, specialty retailers and video game rental outlets. We believe we have developed close relationships with a number of retailers including Best Buy, Electronics Boutique, GameStop, Kmart, Target, Toys "R" Us and Wal-Mart. Jack of All Games, a subsidiary of Take-Two Interactive Software, Inc., is a leading reseller of our products to smaller retail outlets. For the fiscal year ended 2005, our most significant customers were Wal-Mart and Toys "R" Us, which accounted for approximately 34% and 23% of our net revenue, respectively.

Competition

In general, our products compete with other forms of entertainment, such as motion pictures, television and music, for the leisure time and discretionary spending of consumers. More specifically, the market for interactive entertainment products is highly competitive and relatively few products achieve significant market acceptance. We continue to face significant competition with respect to our products, which may also result in price reductions, reduced gross margins and loss of market share. Many of our competitors have significantly greater financial, marketing and product development resources than we do.

With respect to our video game products, we compete with many other third party publishers in both our value and premium market segments. We expect that competition may increase in the value or premium areas.

Current and future competitors may be able to:

- respond more quickly to new or emerging technologies or changes in customer preferences;
- carry larger inventories;
- gain access to wider distribution channels;
- undertake more extensive marketing campaigns;
- adopt more aggressive pricing policies;
- devote greater resources to securing the rights to valuable licenses and relationships with leading software developers;
- maintain better relationships with licensors and secure more valuable licenses;
- make higher royalty payments; and
- secure more and better shelf space.

Competitive factors such as the foregoing may have a material adverse effect on our business.

Seasonality

The interactive entertainment business is highly seasonal with sales typically higher during the peak holiday selling season during calendar fourth quarter. Traditionally, the majority of our sales for this key selling period ship in our fiscal fourth and first quarters, which end on October 31st and January 31st, respectively. Significant working capital is required to finance the manufacturing of inventory of products that ship during these quarters.

Employees

We had 74 full time employees as of January 31, 2006. We have not experienced any work stoppages and consider our relations with our employees to be good. None of our employees are represented by a union.

Item 1A. Risk Factors.

Our business and operations are subject to a number of risks and uncertainties as described below. However, the risks and uncertainties described below are not the only ones we face. Additional risks and uncertainties that we are unaware of, or that we may currently deem immaterial, may become important factors that harm our business, financial condition or results of operations. If any of the following risks actually occur, our business, financial condition or results of operations could suffer.

Our business activities may require additional financing that might not be obtainable on acceptable terms, if at all, which could have a material adverse effect on our financial condition, liquidity and our ability to operate going forward.

As we continue to operate our business, we expect our expenditures to decrease. Although there can be no assurance, our management believes that based on our current plan there are sufficient capital resources from operations, including our factoring and purchase order financing arrangements, to finance our operational requirements through at least the next twelve months. If we continue to incur operating losses, or if unforeseen events occur that would require additional funding, we may need to raise additional capital or incur debt to fund our operations. We would expect to seek such capital through sales of additional equity or debt securities and/or loans from financial institutions, but there can be no assurance that funds will be available to us on acceptable terms, if at all, and any sales of additional securities will be dilutive to investors.

Failure to obtain financing or obtaining financing on unfavorable terms could result in a decrease in our stock price and could have a material adverse effect on future operating prospects, or require us to significantly reduce operations.

We have experienced recent net losses and we may incur future net losses which may cause a decrease in our stock price.

We incurred net losses of \$70.9 million, \$11.2 million and \$10.8 million, in fiscal years 2005, 2004 and 2003, respectively. In fiscal years 2003 and 2004, these net losses were principally related to our operations, and included impairment reserves, financing costs, litigation expense, and non-cash charges to reflect the change in the fair value of our warrants issued in our February 2004 private placement. For fiscal year 2005, the net loss was due to weak sales across all of our product lines, which resulted in significant reserves relating to capitalized costs, increased provisions in price protection and other allowances. Going forward, we may not again be able to generate revenues sufficient to offset our costs, and may sustain further net losses in future periods. In addition, if we do become profitable, we may not be able to sustain or increase our profitability. Continued losses, or an inability to sustain profitability, may have an adverse effect on our future operating prospects and stock price.

We have experienced significant volatility in the price of our stock over the last twelve months.

The price of our common stock has experienced significant volatility over the last twelve months, and such prices may be higher or lower than the price you paid for your shares, depending on many factors, some of which are beyond our control and may not be directly related to our operating performance. These factors include, but are not limited to, the following:

- price and volume fluctuations in the overall stock market from time to time;
- actual or anticipated changes in our earnings or fluctuations in our operating results or changes in the expectations of securities analysts;
- our, or a competitor's, announcement of new products, services or technological innovations;
- departures of key personnel;
- general economic, political and market conditions and trends;
- risks associated with possible disruption in our operations due to terrorism; or
- other risks and uncertainties as may be detailed from time to time in our public announcements and SEC filings.

In addition, purchases or sales of large quantities of our stock could have an unusual effect on our market price. Anti-takeover provisions in our charter and by-laws may make it difficult for anyone to acquire us without approval of our board of directors. These measures may discourage offers to acquire us and may permit our board of directors to choose not to entertain offers to purchase us, even offers that are at a substantial premium to the market price of our stock. Our stockholders may therefore be deprived of opportunities to profit from a sale of our company.

The volatility of our stock price could affect the value of an investment in our common stock.

The market price of our stock has fluctuated widely over the last twelve months. Between November 1, 2004, and October 31, 2005, the closing sale price of our common stock ranged between a high of \$16.25 and a low of \$1.13, experiencing greater volatility over that time than most of the market did. The historic market price of our common stock may not be indicative of future market prices. We may not be able to sustain or increase the value of our common stock. Further declines in the market price of our stock could adversely affect our ability to retain personnel with stock incentives, to acquire businesses or assets in exchange for stock and/or to conduct future financing activities with or involving our common stock. In addition, we must maintain Nasdaq National Market continued listing standards, which includes a market price of at least \$1.00. In the event we are unable to maintain these listing standards, we may be subject to delisting.

Customer accommodations could materially and adversely affect our business, results of operations, financial condition, and liquidity.

When demand for our offerings falls below expectations, we may negotiate accommodations to retailers or distributors in order to maintain our relationships with our customers and access to our sales channels. These accommodations include negotiation of price discounts and credits against future orders commonly refer to as price protection. At the time of product shipment, we establish reserves for price protection and other similar allowances. These reserves are established according to our estimates of the potential for markdown allowances based upon historical rates, expected sales, retailer inventories of products and other factors. We cannot predict with certainty whether existing reserves will be sufficient to offset any accommodations we will provide, nor can we predict the amount or nature of accommodations that we will provide in the future. If actual accommodations exceed our reserves, our earnings would be reduced, possibly materially. Any such reduction may have an adverse effect on our business, financial condition or results of operations. The granting of price protection and other allowance reduces our ability to collect receivables and impact availabilities for advances from our factor. The continue granting of substantial price protection and other allowances may require additional funding sources to fund operations but there can no assurance that such funds will be available to us on acceptable terms, if at all.

Increased competition for limited shelf space and promotional support from retailers could affect the success of our business and require us to incur greater expenses to market our products.

Retailers typically have limited shelf space and promotional resources, such as circulars and in-store advertising, to support any one product among an increasing number of newly introduced entertainment offerings.

Competition for retail support and shelf space is expected to increase, which may require us to increase our marketing expenditures or reduce prices to retailers. Competitors with more extensive lines, popular products and financial resources frequently have greater bargaining power with retailers. Accordingly, we may not be able to achieve or maintain the levels of support and shelf space that our competitors receive. As a result, sales of our products may be less than expected, which would have a material and adverse effect on our business, financial condition and results of operations.

The loss of any of our key customers could adversely affect our sales.

Our sales to Wal-Mart and Toys ‘‘R’’ Us accounted for approximately 34%, and 23% of our net revenue for the fiscal year 2005, respectively. Although we seek to broaden our customer base, we anticipate that a small number of customers will continue to account for a large concentration of our

sales given the consolidation of the retail industry. We do not have written agreements in place with several of our major customers. Consequently, our relationship with these retailers could change at any time. Our business, results of operations and financial condition could be adversely affected if:

- We lose any of our significant customers;
- Any of these customers purchase fewer of our offerings; or
- We experience any other adverse change in our relationship with any of these customers.

Significant competition in our industry could continue to adversely affect our business.

We cannot assure you that we will be able to successfully compete against our current or future competitors or that competitive pressures will not have a material adverse effect on our business, results of operations or financial condition. The market for interactive entertainment products is highly competitive and relatively few products achieve significant market acceptance. We face significant competition with respect to our products, which may also result in price reductions, reduced gross margins and loss of market share. Many of our competitors have significantly greater financial, marketing and product development resources than we do. As a result, current and future competitors may be able to:

- respond more quickly to new or emerging technologies or changes in customer preferences;

- undertake more extensive marketing campaigns;
- devote greater resources to secure rights to valuable licenses and relationships with leading software developers;
- gain access to wider distribution channels; and
- have better access to prime shelf space.

With respect to our video game products, we compete with many other third party publishers in both our value and frontline market segments. In addition, console and handheld manufacturers, such as Microsoft, Nintendo and Sony, publish software for their respective platforms, and media companies and film studios are increasing their focus on the video game software market and may become significant competitors. We expect competition to increase as more competitors enter the video game market. We cannot assure you that competitors will not be able to also secure strong relationships with content providers on terms equal to or more favorable than we have.

We are the subject of securities class action lawsuits which may result in substantial expenditures, and divert management's attention

In July 2005, four purported class action complaints were filed against the Company and several current and former directors and officers of the Company in the United States District Court for the District of New Jersey. On September 12, 2005, a fifth purported class action complaint was filed in the same court on behalf of a class of individuals who purchased shares of Majesco common stock in our January 26, 2005 offering of six million shares of common stock (the "Offering"). The complaint named as defendants Majesco, several current and former directors and officers of Majesco, and certain financial institutions who served as underwriters with respect to the Offering and our auditors.

On October 11, 2005, the court consolidated the five cases and appointed a lead plaintiff. On December 14, 2005, Lead Plaintiff filed an amended consolidated complaint, which is now the operative complaint.

The complaint alleges that the registration statement and prospectus filed with the SEC in connection with our Offering and certain of our press releases and other public filings contained material misstatements and omissions about our financial condition and prospects as well as our products. The lead plaintiff asserts a claim under Section 11 of the Securities Act against all the defendants on behalf of investors who purchased in the Offering. It asserts a Section 12(a) (2) claim against us and certain defendants. The lead plaintiff also asserts a claim under Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder against us and certain defendants and a claim

under Section 20(a) of the Exchange Act against these defendants. The operative complaint seeks damages in an unspecified amount. The proposed class period for the Exchange Act claims is December 8, 2004 through September 12, 2005.

If we fail to maintain an effective system of internal controls, we may not be able to accurately report our financial results. As a result, current and potential stockholders could lose confidence in our financial reporting, which could have a negative market reaction.

Section 404 of the Sarbanes-Oxley Act of 2002 requires our management to report on, and our independent registered public accounting firm to attest to, the effectiveness of our internal control over financial reporting. The deadline for us to become compliant with Section 404 was October 31, 2005. As of such date, we were compliant and have implemented an ongoing program to perform the system and process evaluation and testing necessary to continue to comply with these requirements. Accordingly, we must continue to incur expenses and will devote management resources to Section 404 compliance as necessary. Further, effective internal controls and procedures are necessary for us to provide reliable financial reports. If our internal controls and procedures become ineffective, we may not be able to provide reliable financial reports, and our business and operating results could be harmed.

We may be unable to develop and publish new products if we are unable to secure or maintain relationships with third party video game software developers.

We utilize the services of independent software developers to develop our video games. Consequently, our success in the video game market depends on our continued ability to obtain or renew product development agreements with quality independent video game software developers. However, we cannot assure you that we will be able to obtain or renew these product development agreements on favorable terms, or at all, nor can we assure you that we will be able to obtain the rights to sequels of successful products which were originally developed for us by independent video game software developers.

Many of our competitors have greater financial resources and access to capital than we do, which puts us at a competitive disadvantage when bidding to attract independent video game software developers to enter into

publishing agreements with us. We may be unable to secure or maintain relationships with quality independent video game software developers if our competitors can offer them better shelf access, better marketing support, more development funding, higher royalty rates, more creative control or other advantages. Usually, our agreements with independent software developers are easily terminable if either party declares bankruptcy, becomes insolvent, ceases operations or materially breaches its agreement and fails to cure that breach within a designated time frame. In addition, many independent video game software developers have limited financial resources. Many are small companies with a few key individuals without whom a project may be difficult or impossible to complete.

Consequently, we are exposed to the risk that these developers will go out of business before completing a project, lose key personnel or simply cease work on a project for which we have hired them.

If we are unable to maintain or acquire licenses to intellectual property, we may publish fewer titles and our revenue may decline.

Many of our video game titles, and all of our GBA Video titles are based on or incorporate intellectual property and other character or story rights acquired or licensed from third parties. We expect that many of our future products will also be based on intellectual property owned by others. The cost of acquiring these licenses is often high, and competition for these licenses is intense. Many of our competitors have greater resources to capitalize on licensing opportunities. Our licenses are generally limited in scope to specific platform and/or geographic territories and generally last for two to three years. We may not be able to obtain new licenses, renew licenses when they expire or include new offerings under existing licenses. If we are unable to obtain new licenses or maintain existing

licenses that have significant commercial value, at reasonable costs, we may be unable to sustain our revenue growth in the future other than through sales or licensing of our independently created material.

If we are unable to successfully introduce new products on a timely basis, or anticipate and adapt to rapidly changing technology, including new hardware platform technology, our business may suffer.

A significant component of our strategy is to continue to bring new and innovative products to market, and we expect to incur significant development, licensing and marketing costs in connection with this strategy.

The process of introducing new products or product enhancements is extremely complex, time consuming and expensive, and will become more complex as new platforms and technologies emerge. In the event we are not successful in developing new titles and other products that gain wide acceptance in the marketplace, we may not recoup our investment costs in these new products, and our business, financial condition and results of operations could be materially negatively affected.

Furthermore, interactive entertainment platforms are characterized by rapidly changing technology. We must continually anticipate the emergence of, and adapt our products to, new interactive entertainment platforms and technologies. The introduction of new technologies, including new console and handheld technology, software media formats and delivery channels, could render our previously released products obsolete, unmarketable or unnecessary. In addition, if we incur significant expense developing products for a new system that is ultimately unpopular, sales of these products may be less than expected and we may not be able to recoup our investment. Conversely, if we choose not to publish products for a new system that becomes popular, our revenue growth, reputation and competitive position may be adversely affected. Even if we are able to accurately predict which video game platforms will be most successful, we must deliver and market offerings that are accepted in our extremely competitive marketplace.

We intend to increase our revenues from our international operations, which may subject us to economic, political, regulatory and other risks.

Historically, we have not devoted significant resources to our international operations. However, a component of our strategy is to expand our international operations in order to increase our revenues. Expanding our international operations, however, may subject us to many risks, including:

- economic and political instability;
- compliance with foreign and domestic laws and regulations;
- changes in foreign and domestic legal and regulatory requirements or policies resulting in burdensome government controls, tariffs, restrictions, embargoes or export license requirements;
- currency fluctuations;
- difficulties in staffing and managing our international operations;
- less favorable foreign intellectual property laws making it more difficult to protect our properties from appropriation by competitors;

- potentially adverse tax treatment;
- difficulties with distributors; and
- difficulties collecting our accounts receivable.

Termination or modification of our agreements with hardware manufacturers, who are also competitors and frequently control the manufacturing of our titles, may adversely affect our business.

We are required to obtain a license in order to develop and distribute software for each of the manufacturers of video game hardware. We currently have licenses from Sony to develop products for PlayStation, PlayStation 2 and PSP, from Nintendo to develop products for the GBA, GameCube, the Gameboy DS and Micro and from Microsoft to develop products for the Xbox and Xbox 360. These

licenses are non-exclusive, and as a result, many of our competitors also have licenses to develop and distribute video game software for these systems. These licenses must be periodically renewed, and if they are not, or if any of our licenses are terminated or adversely modified, we may not be able to publish games for such platforms or we may be required to do so on less attractive terms.

Our contracts with these manufacturers grant them approval rights over new products and often also grant them control over the manufacturing of our products. While we believe our relationships with these manufacturers are good, the potential for delay or refusal to approve or support our products exists, particularly since these manufacturers are also video game publishers and hence are also our competitors. We may suffer an adverse effect on our business if these manufacturers:

- do not approve a project for which we have expended significant resources;
- refuse or are unable to manufacture or ship our products;
- increase manufacturing lead times or delay the manufacturing of our products; or
- require us to take significant risks in prepaying and holding an inventory of products.

Intellectual property claims may increase our product costs or require us to cease selling affected products which could adversely affect our earnings and sales.

Development of original content, including publication and distribution, sometimes results in claims of intellectual property infringement. Although we make efforts to ensure our products do not violate the intellectual property rights of others, it is possible that third parties still may allege infringement. These claims and any litigation resulting from these claims, could prevent us from selling the affected product, or require us to redesign the affected product to avoid infringement or obtain a license for future sales of the affected product. Any of the foregoing could have a material adverse effect on our business, financial condition, results of operations and future business prospects. Any litigation resulting from these claims could require us to incur substantial costs and divert significant resources, including the efforts of our technical and management personnel.

If our products contain defects, our business could be harmed significantly.

The software products, and digital media products that employ software in their operations, that we publish and distribute are complex and may contain undetected errors when first introduced or when new versions are released. Despite extensive testing prior to release, we cannot be certain that errors will not be found in new products or releases after shipment, which could result in loss of or delay in market acceptance. This loss or delay could significantly harm our business and financial results.

Our intellectual property is vulnerable to misappropriation and the effects of competitive, non-infringing technology, any of which could adversely affect our business prospects.

Our business relies heavily on proprietary intellectual property, whether our own or licensed from third parties. We own or have rights to use proprietary technology that we believe affords us a current competitive advantage. This technology is not, however, fully protected from infringement by competitors or from the introduction of non-infringing technologies.

Despite our efforts to protect our proprietary rights, unauthorized parties may try to copy our products, or obtain and use information that we regard as proprietary. In addition, the laws of some foreign countries may not protect our proprietary rights to as great an extent as U.S. law. Furthermore, our pending patent applications are provisional, and our pending and future patent and trademark applications may not issue as patents or trademarks, as the case may be, and even if they do issue, such patents or trademarks may not be of such sufficient scope or strength to provide meaningful economic or competitive value. Our rights and the additional steps we have taken to protect our intellectual property may not be adequate to deter misappropriation, particularly given the difficulty of effectively policing unauthorized use of our properties, and our proprietary position remains subject to the risk

technologies substantially equivalent or superior to our technologies. If we are unable to protect our intellectual property, or if we are sued for infringing on another party's intellectual property, our business, financial condition or results of operation could be materially adversely affected.

Rating systems for digital entertainment software, potential legislation and consumer opposition could inhibit sales of our products.

Trade organizations within the video game industry require digital entertainment software publishers to provide consumers with information relating to graphic violence, profanity or sexually explicit material contained in software titles, and impose penalties for noncompliance. Certain countries have also established similar rating systems as prerequisites for sales of digital entertainment software in such countries. In some instances, we may be required to modify our products to comply with the requirements of these rating systems, which could delay the release of those products in these countries. Some of our existing and proposed new titles have and will receive an "M" rating, meaning it is not recommended for children under 17. We believe that we comply with such rating systems and properly display the ratings and content descriptions received for our titles. Several proposals have been made for legislation to regulate the digital entertainment software, broadcasting and recording industries, including a proposal to adopt a common rating system for digital entertainment software, television and music containing violence or sexually explicit material, and the Federal Trade Commission has issued reports with respect to the marketing of such material to minors. Consumer advocacy groups have also opposed sales of digital entertainment software containing graphic violence or sexually explicit material by pressing for legislation in these areas, including legislation prohibiting the sale of certain "M" rated video games to minors, and by engaging in public demonstrations and media campaigns. Retailers may decline to sell digital entertainment software containing graphic violence or sexually explicit material, which may limit the potential market for our "M" rated products, and adversely affect our operating results. If any groups, whether governmental entities, hardware manufacturers or advocacy groups, were to target our "M" rated titles, we might be required to significantly change or discontinue a particular title, which in the case of one of our popular titles, could materially affect our business.

Item 1B. Unresolved Staff Comments.

Not applicable.

Item 2. Properties.

We lease 21,250 square feet of office, development and storage space located at 160 Raritan Center Parkway, Edison, New Jersey 08837. The lease, which costs approximately \$28,510 per month, plus taxes, insurance and operating costs, expires on October 31, 2009.

We lease 900 square feet of office space in Europe, located at City Point, 2 Pearce Close, Bristol, UK. This lease which costs approximately \$6,900 per month and expires on July 3, 2006.

Item 3. Legal Proceedings.

On December 2, 2005, a vendor filed a complaint against us in the Supreme Court of the State of New York, County of New York, alleging breach of contract and failure to pay in connection with services rendered. The complaint seeks approximately \$2.6 million in damages plus interest and costs, including attorney's fees. We intend to vigorously defend this action.

In July 2005, four purported class action complaints were filed against the Company and several current and former directors and officers of the Company in the United States District Court for the District of New Jersey. On September 12, 2005, a fifth purported class action complaint was filed in the same court on behalf of a class of individuals who purchased shares of the Company common stock in the Company's January 26, 2005 offering of six million shares of common stock (the "Offering"). The complaint named as defendants the Company, several current and former directors and officers of the Company, and certain financial institutions who served as underwriters with respect to the Offering.

On October 11, 2005, the Court consolidated the five cases and appointed a Lead Plaintiff. On December 14, 2005, Lead Plaintiff filed an Amended Consolidated Complaint, which is now the operative Complaint. The Complaint names the following as defendants: the Company, Carl Yankowski, Jan E. Chason, Jesse Sutton, Joseph Sutton, Morris Sutton, Laurence Aronson, F. Peter Cuneo, James Halpin, Louis Lipschitz, Marc Weisman, RBC Capital Markets Corporation, JMP Securities LLC, Harris Nesbitt & Corp., Wedbush Morgan Securities

Inc., and Goldstein Golub Kessler LLP.

The Complaint alleges that the Registration Statement and Prospectus filed with the SEC in connection with the Company's Offering and certain of the Company's press releases and other public filings contained material misstatements and omissions about the Company's financial condition and prospects as well as its products. Lead Plaintiff asserts a claim under Section 11 of the Securities Act against all the defendants on behalf of investors who purchased in the Offering. It asserts a Section 12(a)(2) claim against the Company and the financial institutions who served as underwriters in connection with the Offering, and a Section 15 control person claim against defendants Carl Yankowski, Jan Chason, Jesse Sutton, Joseph Sutton, and Morris Sutton (the "Defendants").

Lead Plaintiff also asserts a claim under Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder against the Company and the Defendants and a claim under Section 20(a) of the Exchange Act against the Defendants. The Complaint seeks damages in an unspecified amount. The proposed class period for the Exchange Act claims is December 8, 2004 through September 12, 2005. We will vigorously contest the action.

We are party to other routine claims and suits brought by us and against us in the ordinary course of business, including disputes arising over contractual claims and collection matters. In the opinion of management, after consultation with legal counsel, the outcome of such routine claims will not have a material adverse effect on our business, financial condition, and results of operations or liquidity. In addition, the costs and other effects of pending or future litigation, governmental investigations, legal and administrative cases and proceedings (whether civil or criminal), settlements, judgments and investigations, claims and changes in those matters (including those matters described above), and developments or assertions by or against the Company relating to intellectual property rights and intellectual property licenses, could have a material adverse effect on the Company's business, financial condition, and results of operations or liquidity.

Item 4. Submission of Matters to a Vote of Security Holders.

Not applicable.

PART II

Item 5. Market For Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities.

Our common stock is listed for trading on the Nasdaq National Market under the symbol "COOL." Prior to January 26, 2005, our common stock was quoted on the OTC Bulletin Board. The market for our common stock has often been sporadic, volatile and limited.

The following table shows the high and low bid quotations for our common stock as reported by the OTC Bulletin Board for 2004 and Nasdaq National Market for our current fiscal year. The amounts below have been adjusted to reflect our 1-for-7 reverse stock split effectuated on December 31, 2004. The prices reflect inter-dealer quotations, without retail markup, markdown or commissions and may not represent actual transactions.

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Fiscal Year 2004	High	Low
First Quarter	\$ 14.56	\$ 7.07
Second Quarter	\$ 31.36	\$ 9.73
Third Quarter	\$ 34.30	\$ 17.50
Fourth Quarter	\$ 23.66	\$ 12.39
Fiscal Year 2005		
First Quarter	\$ 16.25	\$ 1.57
Second Quarter	\$ 13.10	\$ 8.90
Third Quarter	\$ 9.23	\$ 3.10
Fourth Quarter	\$ 3.30	\$ 1.13

Holdings of Common Stock. On January 31, 2006, we had approximately 108 registered holders of record of our common stock. On January 31, 2006, the closing sales price of our common stock as reported on the Nasdaq National Market was \$1.19 per share.

Dividends and dividend policy. We have never declared or paid any dividends on our common stock and we do not anticipate paying dividends on the common stock at the present time. We currently intend to retain earnings, if any, for use in our business. We do not anticipate paying dividends in the foreseeable future.

Securities authorized for issuance under equity compensation plans. The information called for by this item is incorporated by reference from our definitive proxy statement relating to the 2005 Annual Meeting of Stockholders, which we will file with the SEC within 120 days after our October 31, 2005 fiscal year end.

Recent Sales of Unregistered Securities.

Item 6. Selected Financial Data.

The following tables summarize certain selected consolidated financial data, which should be read in conjunction with our audited consolidated financial statements and the notes thereto and with management's discussion and analysis of financial condition and results of operations included elsewhere in this report. The Company's merger on December 5, 2003 was treated for accounting purposes as a reverse acquisition of a public shell, and the transaction has been accounted for as a recapitalization, rather than a business combination. In addition all financial information presented reflects as appropriate the one-for-seven reverse stock split of our common stock, which occurred on December 31, 2004.

	Year Ended October 31				
	2005	2004	2003	2002	2001
	(in thousands, except share data)				
Consolidated Statement Of Operations Data:					
Net revenues	\$ 59,716	\$ 120,984	\$ 46,608	\$ 49,688	\$ 60,566
Cost of sales (1)	61,101	86,242	30,803	31,992	40,923
Gross (loss) profit	(1,385)	34,742	15,805	17,696	19,643
Operating expenses (2)	68,805	22,630	24,545	16,153	15,619
Operating (loss) income	(70,190)	12,112	(8,740)	1,543	4,024
Interest and financing costs, net	1,869	2,806	2,077	2,093	2,702
Other non-operating expense (3)	48	19,068	24	201	1,215
(Loss) income before income taxes	(72,107)	(9,762)	(10,841)	(751)	107
(Benefit) provision for income taxes	(1,207)	1,424	—	—	—
Net (loss) income	\$ (70,900)	\$ (11,186)	\$ (10,841)	\$ (751)	\$ 107
Net (loss) income attributable to common stockholders (4)	\$ (72,000)	\$ (15,388)	\$ (10,841)	\$ (751)	\$ 107
Net (loss) income attributable to common stockholders per share:					
Basic and Diluted	\$ (3.48)	\$ (1.84)	\$ (4.95)	\$ (0.34)	\$ 0.05
Weighted average shares outstanding:					
Basic and Diluted	20,686,863	8,385,657	2,189,285	2,189,285	2,189,285

	October 31				
	2005	2004	2003	2002	2001
	in thousands				
Consolidated Balance Sheet Data:					
Cash and cash equivalents	\$ 2,407	\$ 4,170	\$ 314	\$ 692	\$ 671
Working capital (deficit)	3,757	8,915	(10,927)	1,404	1,570
Total assets	30,081	43,952	17,611	14,215	13,825
Non-current liabilities	—	—	—	3,962	3,787
Dividend payable in common stock..	—	1,261	—	—	—
Stockholders' equity (deficiency)	4,761	13,785	(15,730)	(4,871)	(3,746)

(1) Cost of sales, in 2005, includes, (i) charges of \$10.5 million in for write off of capitalized software development costs and prepaid license costs related to products released and (ii) \$5.1 million for reserves for slow moving inventory. Cost of sales in 2004 includes charges of \$500,000 to recognized impairments to the carrying value of products released in 2004.

(2) Operating expenses include (i) for 2005, a charge for an accounts receivable write-off of \$322,000 and \$1.4 million related to a non-cash compensation charge, \$26.3 million to write-off capitalized costs related to video games for which development was stopped or impaired, a provision for severance of \$1.4 million, and a loss of \$1.4 million related to settlement; (ii) for 2004, charges for an accounts receivable write-off of \$577,000, and \$342,000 related to a non-cash compensation, and a gain of \$1.2 million related to the renegotiation of our 2003 litigation settlement; (iii) for 2003, provisions for loss on impairment of software development costs of \$3.7 million for which

development was stopped and litigation and settlement costs of \$4.9 million; and (iv) for 2001, a provision for severance of \$1.5 million to former employees.

- (3) Other non-operating expense includes (i) for 2005, expenses related to interest and financing costs of \$1.8 million and a realized loss on foreign exchange of \$48,000; (ii) for 2004, expenses related to interest and financing costs of \$2.8 million, expenses related to the merger of \$342,000, an unrealized loss on foreign exchange contract of \$267,000 and a non-cash charge of \$18.5 million related to the change in fair value of warrants issued in connection with the private placement; (iii) for 2003, expenses related to interest and financing costs \$2.1 million, an unrealized loss on a foreign exchange contract of \$24,000; (iv) for 2002, a loss on an abandoned equity offering of \$201,000; and (v) for 2001, a provision for loss on an affiliate indebtedness of \$1.2 million.
- (4) Net (loss) attributable to common stockholders includes (i) for 2005, a \$1.1 million non-cash charge related to warrants exercised at a discount; and (ii) for 2004, a non-cash charge of \$759,000 related to a deemed dividend, a preferred stock dividend requirement of \$1.3 million payable in common stock and a \$2.2 million non-cash charge related to the fair value of warrants issued in connection with lock-up agreements by certain stockholders.

Item 7. Management's Discussion and Analysis of Financial Condition and Results Of Operations.

You should read the following discussion and analysis of our financial condition and results of operations together with "Selected Consolidated Financial Data" and our consolidated financial statements and related notes appearing elsewhere in this annual report on Form 10-K. This discussion and analysis contains forward-looking statements that involve risks, uncertainties and assumptions. The actual results may differ materially from those anticipated in these forward-looking statements as a result of certain factors, including, but not limited to, those set forth under "Risk Factors" and elsewhere in this annual report on Form 10-K.

Overview

We are a provider of interactive entertainment products. Our products allow us to capitalize on the large and growing installed base of interactive entertainment platforms and an increasing number of interactive entertainment enthusiasts. We sell our products primarily to large retail chains, specialty retail stores, video game rental outlets and distributors. We also sell our products internationally through distribution agreements with international publishers although international revenue through October 2005 has not been significant. We have developed our retail and distribution network relationships over our 19-year history.

We publish software games for most major current generation interactive entertainment hardware platforms, including Nintendo's Game Boy Advance, or GBA, DS, Micro and GameCube, Sony's PlayStation 2, or PS2, and PlayStation Portable, or PSP™, Microsoft's Xbox and the personal computer, or PC.

Our video game titles are targeted at various demographics at a range of price points, from lower-priced "value" titles to more expensive "premium" titles. In some instances, these titles are based on licenses of well known properties, and in other cases based on original properties. We collaborate and enter into agreements with content providers and video game development studios for the creation of our video games.

Majesco Sales Inc. was incorporated in 1986 under the laws of the State of New Jersey. On December 5, 2003, Majesco Sales Inc. completed a reverse merger with Majesco Holding Inc (formerly, ConnectivCorp) then a publicly traded company with no active operations. Majesco Holding Inc. was incorporated in 1998 under the laws of the State of Delaware. As a result of the merger, Majesco Sales Inc. became a wholly-owned subsidiary and the sole operating business of the public company. On April 4, 2005, Majesco Sales Inc. was merged into Majesco Holdings Inc., and in connection with the merger Majesco Holdings Inc. changed its name to Majesco Entertainment Company.

While throughout most of our history we focused on value-priced games, in the past few years, we began to grow our presence in the premium console games market. These premium products require larger budgets for development and marketing and require higher unit sales to generate a profit.

During the second half of fiscal 2005, we had several major developments that ultimately led us to revise our business model and shift our product strategy away from capital intensive premium console games to a focus on value products and lower-cost games for handheld systems. In conjunction with our shift in strategy, we evaluated our existing portfolio of premium console titles in development and decided to sell our rights or cancel a number of these titles. Although there can be no assurance, these actions may improve the financial position of the company by significantly reducing our future obligations and in some instances generating cash.

Going forward, we will look to offer a greater number of value titles and try to capitalize on our history and expertise in this market. In addition, we will continue to publish titles for popular handheld systems such as the GBA, DS and PSP, as well as look for opportunistic titles for home consoles and personal computers. We believe that a decreased emphasis on premium titles, along with a renewed focus on value and handheld titles, although there can be no assurance, will allow us to capitalize on our strengths and expertise while reducing some of the cost and risk associated with publishing a large number of premium titles.

We believe this revised business model, although there can be no assurance, is a more sustainable one, which will provide us a greater opportunity for success in the interactive entertainment market.

During the second half of fiscal 2005, we had several major developments that ultimately led us to revise our business model and shift our product strategy away from capital intensive premium console games to a focus on value products and lower-cost games for handheld systems. During the latter half of the year the interactive entertainment industry experienced softness related to the hardware transition which was compounded by increased competition for consumers' discretionary spending. In the third quarter, we announced key management changes, including the resignation of our CEO. In addition, the factor, our principal source of financing, imposed a limitation on cash advances and letters of credit which was subsequently partially restored.

Net revenues for 2005 were \$59.7 million compared to \$121.0 million for the prior year. The decrease reflects weak sales across all of our product lines. As a result of this weakness, we increased provisions for price protection to stimulate retail sales. Our negative gross profit of \$1.4 million, in 2005, versus a gross profit of \$34.7 million for the prior year reflects our inability to recoup the software development costs for premium products and the reserves related to slow moving inventory. We have revised our business model and shifted our product strategy away from capital intensive premium console games to a focus on value products and lower-cost games for handheld systems. As a result of our change in strategy, our operating expenses include provisions for impairment of capitalized software costs and license fees related to products for which we have terminated development, severance costs. As a result, we sustained an operating loss of \$70.2 million for 2005, versus operating income of \$12.1 million for the prior year. Accordingly, our working capital and net worth were materially reduced.

In September 2005, the factor, our principal source of financing, imposed a limitation on cash advances and letters of credit to \$7.5 million and \$2.0 million for letters of credit. Previously, advances under our factoring arrangement, including letters of credit could not exceed \$30 to \$35 million in the aggregate. We subsequently negotiated with the factor to increase the availability to \$16 million in cash advances including \$10 million for letters of credit. Management is in the process of evaluating alternatives to the current factoring arrangement, including additional sales of our intellectual property rights, issuance of additional equity, or debt financing and/or loans from financial institutions.

Although management believes that alternative forms of financing may be available, there can be no assurance that funds will be available on acceptable terms, if at all. While management has already significantly reduced expenditure levels, in the event that we are unable to negotiate alternative financing, or negotiate terms that are acceptable to us, we may be forced to further materially modify

our business plan, including making further reductions in expenditures. Management believes it can make additional cuts if necessary, and that it can operate under the existing level of financing for at least one year. However, if the current level of financing was reduced and the company was unable to obtain alternative financing, it could create a material adverse change in the business.

Net Revenues. Our revenues are derived from the following types of offerings:

- *Games.* In 2005, our video games consisted of "premium" titles and "value" titles for console and handheld video game systems. Premium titles are higher-priced video games that typically involve significant development and marketing costs. We work with third-party development studios to develop our own proprietary titles and we also license rights to well-known properties from third parties. Value titles are typically sold at suggested retail prices below \$20 and typically involve comparatively lower development and marketing costs than our premium titles; and
- *Other digital entertainment products.* Our GBA Video titles utilize compression technology that enables users to view up to 90 minutes of color video content with stereo audio on their GBA or DS, using a standard GBA cartridge and with no additional hardware required. We enter into licensing agreements with entertainment industry leaders for GBA Video content. In addition, we develop, manufacture and market a variety of digital media peripherals and applications including a stand-alone TV Arcade "plug-and-play" video game system which consists of a firmware-enabled joystick that connects directly to a user's television and plays pre-installed video games without the need for a dedicated console.

Our revenues are recognized net of reserves for price protection and other allowances. See "Critical Accounting Policies" below.

Cost of Sales. Cost of sales consists of product costs and amortization of software development costs and license fees. A significant component of our cost of sales is product costs. These are comprised primarily of manufacturing and packaging costs of the disc or cartridge media, royalties to the platform manufacturer and manufacturing and packaging costs of peripherals. Commencing upon the related product's release, capitalized software development and intellectual property license costs are amortized to cost of sales. Cost of sales also includes provisions for inventory reserves for slow moving products of \$5.1 million in 2005. The increase in the amortization of capitalized software costs and pre-paid license fees in 2005 reflects the provisions for impairment

of \$10.5 million for released titles.

Gross (loss) Profit. Our gross profit is directly affected by the mix of revenues from our premium versus value titles. Gross profit margins have the potential to be substantially higher from publishing our premium titles given the relatively lower manufacturing costs and higher sales prices. If a premium title is a highly successful “hit” and manufacturing and licensing costs are recouped, economies of scale occur as the incremental sales of a premium-priced game produce greater profitability. Our value titles are generally characterized as having lower gross profit margin potential than premium titles as a result of their lower sales price. The 2005 gross loss is a result of weak sales across all product lines, increased provisions for price protection and the aforementioned impairment reserves for inventory and capitalized costs related to products released.

Product Research and Development Expenses. Product research and development expenses relate principally to our cost of supervision of the third-party developers of our new video games and other products, testing new products and conducting quality evaluations during the development cycle. Costs incurred are employee-related, may include equipment and are not allocated to cost of sales. Although there can be no assurance, we anticipate that, with our focus now on low-cost handheld game and value products, expenditures for product research and development will decrease.

Selling and Marketing Expenses. Selling and marketing expenses consist of marketing and promotion expenses, the cost of shipping products to customers and related employee costs. A large component of this expense relates to marketing and promotion expenses, which includes certain customer marketing allowances. We anticipate, although there can be no assurance, with our focus now on low-cost handheld game and value products, that expenditure for selling and marketing will decrease.

General and Administrative Expenses. General and administrative expenses primarily represent employee related costs, including corporate executive and support staff, general office expenses, professional fees and various other overhead charges. Professional fees, including legal and accounting expenses, typically represent the second largest component of our general and administrative expenses. These fees are partially attributable to our required activities as a publicly traded company, such as SEC filings. We expect to continue to incur increased costs for litigation related to the class action lawsuit as well as consultants in connection with our required compliance as a public company with new regulations regarding corporate governance and accounting. Under our revised business plan we expect a decrease in certain general and administrative expenses as a result of decreased headcount and related expenses.

Interest and Financing Costs. Interest and financing costs are directly attributable to our factoring and our purchase-order financing arrangements.

Warrant Accounting and Other Non-Cash Compensation. In accordance with Emerging Issues Task Force Issue 00-19, referred to as EITF 00-19, “Accounting for Derivative Financial Instruments Indexed To, and Potentially Settled in, a Company's Own Stock,” we initially accounted for the fair value of \$21 million for the warrants issued in connection with our February 2004 private placement as a liability since we would have incurred substantial penalties if we had not complied on a timely basis with the warrant holders' registration rights. We subsequently recorded changes in the fair value of the warrants as non-cash charges or gains on a quarterly basis. The fair value of the warrants was calculated utilizing the Black-Scholes option-pricing model. As a result of changes in the market value of our common stock from the closing date through October 29, 2004, the effective date of the registration statement relating to the resale of the shares of common stock underlying the warrants, we recorded a non-cash charge of \$18.5 million for fiscal year 2004 to reflect the associated change in fair value of the warrants during this period. At the effective date of the resale registration statement, the fair value of \$39.2 million for the warrants was reclassified to equity. During December 2004, a portion of these warrants were exercised at a reduced exercise price. Accordingly, we recorded a non-cash charge of \$1.1 million to recognize the exercise of warrants during the first quarter of 2005.

During the year ended October 31, 2004, we also recorded a deemed dividend of \$759,000 relating to the beneficial conversion feature attributable to the 7% preferred stock issued in our February 2004 private placement, after deducting the value of the warrants issued. The deemed dividend increased the loss attributable to common stockholders in the calculation of basic and diluted net loss per common share.

In addition, in September 2004, we issued warrants to several stockholders in consideration for their agreement not to dispose of our common stock for a certain period of time. An amount equal to the fair value of such warrants, \$2.2 million, was charged to equity in the fourth quarter of fiscal 2004 and increased the loss attributable to common stockholders in the calculation of basic and diluted net loss per common share.

We also granted options to purchase 992,856 shares of common stock to Carl Yankowski in connection with his employment as our Chief Executive Officer in August 2004. A portion of the option grant for 297,857 shares was granted at \$7.00, a 64% discount to the market price of our common stock on the date of grant (the balance of the options were granted at or above the then market price). As a result of this issuance, we incurred non-cash compensation expense of \$1.3 million through the date of his termination of employment in July 2005 when all of his options expired unexercised.

(Benefit) Provision for Income Taxes. Effective November 1, 2003, we revoked our election to be treated as an S Corporation and we are therefore subject to federal income taxes. For the year ended 2005, we incurred, a

loss and recognized the availability for income tax purposes a carryback of such losses to the prior year. Utilization of our net operating loss carryforwards may be subject to a substantial annual limitation due to the “change in ownership” provisions of the Internal Revenue Code. The annual limitation may result in the expiration of net operating loss carryforwards before utilization. Since the Company has a history of losses, a full valuation allowance has been established

under the provisions of SFAS No. 109 and that the company intends to maintain a valuation allowance for its net operating loss carryforwards until sufficient positive evidence exists to support its reversal.

Critical Accounting Policies

Our discussion and analysis of the financial condition and results of operations is based upon our consolidated financial statements, which have been prepared in accordance with accounting principles generally accepted in the United States.

The preparation of these consolidated financial statements requires us to make estimates and judgments that affect the reported amounts of assets, liabilities, revenues and expenses, and related disclosure of contingent assets and liabilities. We base our estimates on historical experience and on various other assumptions that are believed to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources.

Actual results could differ materially from these estimates under different assumptions or conditions.

We have identified the policies below as critical to our business operations and the understanding of our financial results. The impact and any associated risks related to these policies on our business operations is discussed throughout management's discussion and analysis of financial condition and results of operations where such policies affect our reported and expected financial results.

Revenue Recognition. The Company recognizes revenue upon shipment of its product when title, risk of loss are transferred and persuasive evidence of an arrangement exists. In order to recognize revenue, the Company must not have any continuing obligations and it must also be probable that the Company will collect the accounts receivable. Revenues, including sales to resellers and distributors, are recognized when these conditions are met.

For those agreements, which provide customers with the right to multiple copies in exchange for guaranteed minimum royalty amounts, revenue is recognized at delivery of the product master or the first copy since the Company has no continuing obligations including requirements for duplication. Royalties on sales that exceed the guaranteed minimum are recognized as earned.

The Company generally sells its products on a no-return basis, although in certain instances, the Company may provide price protection or other allowances on certain unsold products. Price protection, when granted and applicable, allows customers a partial credit against amounts they owe the Company with respect to merchandise unsold by them. Revenue is recognized net of estimates of these allowances.

Inventory. Inventory, which consists of finished goods, is stated at the lower of cost as determined by the first-in, first-out method, or market. The Company estimates the net realizable value of slow-moving inventory on a title-by-title basis and charges the excess of cost over net realizable value to cost of sales.

Reserves for Price Protection and Other Allowances. We derive revenue from the sale of packaged video game software designed for play on consoles such as PlayStation 2, Xbox and GameCube, and hand-held game devices, including the GBA, DS and PSP. We generally sell our products on a no-return basis, although in certain instances, we may provide price protection or other allowances on certain unsold products in accordance with industry practices. Price protection, when granted and applicable, allows customers a partial credit with respect to merchandise unsold by them. Revenue is recognized net of estimates of these allowances. Sales incentives and other consideration that represent costs incurred by us for assets or services received, such as the appearance of our products in a customer's national circular advertisement, are reflected as selling and marketing expenses. We estimate potential future product price protection and other discounts related to current period product revenue. Generally our price protection for premium-priced titles is higher than that needed for our value titles. Our reserves for price protection and other allowances fluctuate over

periods as a result of a number of factors including analysis of historical experience, current sell-through of retailer inventory of our products, current trends in the interactive entertainment market, the overall economy, changes in customer demand and acceptance of our products and other related factors. However, actual allowances granted could materially exceed our estimates as unsold products in the distribution channels are

exposed to rapid changes in consumer preferences, market conditions or technological obsolescence due to new platforms, product updates or competing products. For example, the risk of requests for allowances may increase as consoles pass the midpoint of their lifecycle and an increasing number of competitive products heighten pricing and competitive pressures. While management believes it can make reliable estimates regarding these matters, these estimates are inherently subjective. Accordingly, if our estimates change, this will result in a change in our reserves, which would impact the net revenues and/or selling and marketing expenses we report. For the year ended October 31, 2005, 2004 and 2003, we provided allowances for future price protection and other allowances of \$15.1 million, \$6.7 million and \$5.2 million respectively. The fluctuations in the provisions reflected our estimates of future price protection based on the factors discussed above. We do not have significant exposure to credit risk as the factor generally buys our receivables without recourse; however, for the year ended October 31, 2005 and 2004, we recorded charges for accounts receivable write-off of \$322,000 and \$577,000 respectively as a result of customer bankruptcies.

Software development costs and prepaid license fees. Software development costs include development fees, most often in the form of milestone payments made to independent software developers for development services. Software development costs are capitalized once technological feasibility of a product is established and it is determined that such costs should be recoverable against future revenues. For products where proven game engine technology exists, this may occur early in the development cycle. Technological feasibility is evaluated on a product-by-product basis. Amounts related to software development that are not capitalized are charged immediately to product research and development costs. Prepaid license fees represent license fees to holders for the use of their intellectual property rights in the development of our products. Minimum guaranteed royalty payments for intellectual property licenses are initially recorded as an asset (prepaid license fees) and a current liability (accrued royalties payable) at the contractual amount upon execution of the contract when no significant performance remains with the licensor. Capitalized software development costs classified as non-current relate to titles for which we estimate the release date to be more than one year from the balance sheet date.

Commencing upon a related product's release, capitalized software development costs and prepaid license fees are amortized to cost of sales based upon the higher of (i) the ratio of current revenue to total projected revenue or (ii) the straight-line method. The amortization period is usually no longer than one year from the initial release of the product. The recoverability of capitalized software development costs and prepaid license fees is evaluated based on the expected performance of the specific products to which the costs relate. The following criteria are used to evaluate expected product performance: historical performance of comparable products using comparable technology; orders for the product prior to its release; and estimated performance of a sequel product based on the performance of the product on which the sequel is based. As of October 31, 2005 and 2003, we charged operations \$26.3 million and \$3.2 million, respectively, to write-off all capitalized costs related to video games and intellectual property rights for which development was stopped. We also charged \$10.5 million to cost of sales, in 2005, to recognize impairments in the carrying value for games already released by October 31, 2005.

Accounting for Stock-Based Compensation. In December 2004, the FASB issued SFAS No. 123 (revised 2004), "Share Based Payment" ("SFAS 123(R)"). SFAS 123(R) requires all share-based payments to employees, including grants of employee stock options, to be recognized in the financial statements based on their fair values. We adopted SFAS 123(R) on November 1, 2005. SFAS 123(R) permits public companies to adopt its requirements using either the modified prospective or modified retrospective transition method. We have decided to use the modified prospective transition method, which require that compensation cost is recognized for all awards granted, modified or settled after the effective date as well as for all awards granted to employees prior to the effective date that remain

unvested as of the effective date. We expect that our adoption of SFAS 123(R) will have a material adverse impact on our consolidated financial statements. However, uncertainties such as stock price volatility, estimated forfeitures and employee stock option exercise behavior, make it difficult to determine whether future stock-based compensation expenses will be similar to the pro forma expenses disclosed in Note 1 to the Consolidated Financial statements.

Results of Operations

The following table sets forth our results of operations expressed as a percentage of total revenues:

	Year Ended October 31,		
	2005	2004	2003
Net revenues	100.0%	100.0%	100.0%
Cost of sales			
Product costs	64.3	55.5	54.0
Software development costs and license fees	38.0	15.8	12.1
Gross (loss) profit	(2.3)	28.7	33.9
Operating expenses			
Product research and development	5.7	2.5	5.5

Selling and marketing	40.5	11.3	21.3
General and administrative	16.0	4.8	6.7
Depreciation and amortization	1.5	0.4	0.8
Loss on impairments and other expenses (income)	51.5	(0.3)	18.4
Operating (loss) income	(117.5)	10.0	(18.8)
Interest and financing costs and other non-operating expenses	3.2	18.1	4.5
Loss before income taxes	(120.7)	(8.1)	(23.3)
(Benefit) provision for income taxes	(2.0)	1.1	—
Net loss	(118.7)%	(9.2)%	(23.3)%

Year ended October 31, 2005 versus year ended October 31, 2004

Net revenues. Net revenues for the year ended October 31, 2005 decreased to \$59.7 million from \$121.0 million in the comparable period last year. The decrease is reflective of weak sales across all our product lines as compared to the strong sales associated with the introduction of GBA Video product in the prior year. The decrease is also attributable to provisions for price protection and other allowances as well as changes in market conditions and soft demand for our products.

Cost of Sales. Cost of sales decreased 29% to \$61.1 million for 2005 from \$86.2 million in the comparable period. Product costs in 2005 decreased due to lower sales, however included therein are \$5.1 million of provisions for inventory reserves for slow moving products. The increase in the amortization of capitalized software costs and pre-paid license fees in 2005 reflects provisions for impairment of \$10.5 million for released titles.

Gross (loss) profit. Gross loss for the year ended October 31, 2005 was \$1.4 million as compared to a gross profit of \$34.7 million in 2004. The 2005 gross loss is a result of weak sales across all product lines, increased provisions for price protection and the aforementioned impairment reserves for inventory and capitalized costs related to products released.

Product research and development expenses. For 2005, product research and development expenses increased 13% to \$3.4 million from \$3.0 million for the prior year. As a percentage of net revenue, product research and development expenses increased to 6% in 2005 from 3% in 2004. The increase in expense over the prior year is principally attributed to employee-related costs which include an increase in the number of quality control staff to support the higher number of products in development during the year.

Selling and marketing expenses. For the twelve months ended October 31, 2005, selling and marketing expenses increased 76.6% to \$24.2 million from \$13.7 million for the prior year. Our

marketing expenditures grew as a result of an increase in media campaigns and promotions to support the launch of our premium game products. As a percentage of net revenue, selling and marketing expenses increased to 40% in 2005 from 11% in 2004, due to the combined effect of increased spending and lower net revenue in 2005.

General and administrative expenses. For 2005 general and administrative expenses increased 65.5% to \$9.6 million from \$5.8 million for the same period in the prior year. As a percentage of net revenue, general and administrative expenses increased to 16% for 2005 from 5% for 2004. The increase is attributable to additional employee related costs, professional fees, insurance and other costs incurred as a result of being a public company, including compliance costs associated with the Sarbanes Oxley Act and costs for litigation and claims including costs related to the class action lawsuit. During the year ended October 31, 2005 we recorded non-cash compensation charges of \$1.4 million and \$342,000, respectively, primarily related to a below market stock option grant to our former CEO. The options were forfeited in connection with his severance arrangement.

Depreciation and amortization expenses. For 2005 depreciation and amortization expenses increased to \$893,000 compared to \$439,000 for the prior year and related primarily to office equipment purchases, tooling costs and the amortization of a non-compete agreement.

Loss on impairment and other operating expenses (income). For the quarter ended October 31, 2005, we recorded a charge of \$26.3 million to write-off all capitalized costs related to video games for which development was stopped or impaired. During 2005, we recorded a provision for a loss of \$1.4 million in connection with a settlement with one of our distributors and in the comparable prior year periods we recorded a gain of \$1.2 million on the renegotiation of litigation settlement. During 2005 and 2004, we recorded charges of accounts receivable write-offs of \$322,000 and \$577,000, respectively, related to customer bankruptcies. In addition, during 2005 we recorded \$1.4 million of expense related to severance agreements.

Operating (loss) income. For 2005, the operating loss was \$70.2 million versus an operating income of \$12.1 million in the prior year. The decrease in operating income was principally due to lower sales volumes, increased allowances for price protection and higher marketing costs related to our premium game releases which were not recovered as a result of weaker than planned sales of those products. In addition, as result our shift in strategy, we evaluated our existing portfolio of premium titles in development and determined to sell certain rights or cancel a number of these titles and consequently recorded impairments of \$26.3 million.

Interest and financing costs, net. For 2005, interest and financing costs decreased to \$1.8 million from \$2.8 million for the prior year. This resulted from the decrease in advances from the factor during the year due to the availability of funds as a result of the secondary offering and warrants exercised in January and February 2005.

Other non-operating expenses. During the year ended October 31, 2005, we recorded a realized loss of \$48,000 compared to unrealized loss of \$267,000 for 2004. Additionally, for 2004 we recorded a non-cash charge of \$18.5 million to reflect the change in fair value of warrants and merger costs of \$342,000.

Income taxes. As a result of the year of our loss for the year, we have recorded a tax benefit of \$1.2 million compared to a provision of \$1.4 million in 2004. Utilization of the net operating loss carryforwards may be subject to a substantial annual limitation due to the "change in ownership" provisions of the Internal Revenue Code. The annual limitation may result in the expiration of net operating loss before utilization.

Net loss. For the year ended October 31, 2005, we generated a net loss of \$70.9 million versus a net loss of \$11.2 million in 2004. The increase in net loss is attributable to weak sales across all of our product lines, primarily our premium game releases, which resulted in significant reserves relating to capitalized costs, increased provisions in price protection and other allowances. The net loss attributable to common stockholders for 2005 of \$72.0 million includes a \$1.1 million charge related to warrants exercised at a reduced price as compared to a net loss attributable to common stockholders for 2004 of \$15.4 million.

Year ended October 31, 2004 versus year ended October 31, 2003

Net Revenues. For 2004 net revenues increased to \$121 million from \$46.6 million in the prior year. The significant increase in net revenues is primarily due to the successful launch of our GBA Video titles and an increase in sales of GBA value games as a result of new titles and increased demand.

Gross Profit. For 2004 gross profit increased to \$34.7 million from \$15.8 million for the prior year while the gross profit margin decreased to 28.7% from 33.9% for the prior year. This decrease is largely attributable to the higher sales mix of GBA value games and GBA Video titles, both of which are sold at price points significantly lower than frontline games while having higher product costs. Also contributing to the lower profit margin are the higher content acquisition costs associated with GBA Video.

Product Research and Development Expenses. For 2004 product research and development expenses increased to \$3 million from \$2.6 million for the prior year. The increase over the prior year is due primarily to higher employee costs related to quality assurance in connection with the launch of GBA Video and evaluation of the increased number of video games and other products currently in development. Product research and development expenses as a percentage of net revenues decreased to 2.5% for 2004 from 5.5% for the prior year principally as a result of the increased net revenues in 2004.

Selling and Marketing Expenses. For 2004 selling and marketing expenses increased 37.5% to \$13.7 million from \$9.9 million for the prior year. This increase is partially due to higher variable costs, principally freight, fulfillment and sales commissions, which increase proportionately as sales volume increases. These variable expenses increased 78% or \$1.4 million to \$3.2 million in 2004 from \$1.8 million for the prior year. Marketing expenditures also increased 40% to \$6.3 million in 2004, from \$4.5 million in 2003. Our marketing expenditures exclude the direct advertising campaign paid for by Nintendo in support of the GBA Video products in 2004. We intend to continue to significantly increase our marketing expenditures in fiscal year 2005 in order to supplement Nintendo's holiday television advertising program in support of GBA Video products, to promote the launch of new frontline video games and to build awareness of our new digital media peripherals and applications products. Selling and marketing expenses as a percentage of net revenues decreased from 21.3% for the prior year to 11.3% in the current year, principally as a result of the increased net revenues in the current year.

General and Administrative Expenses. For 2004 general and administrative expenses increased to \$5.8 million from \$3.1 million for the same period in the prior year. This increase is attributable primarily to additional employee related costs, professional fees, insurance and other costs incurred as a result of being a public company. General and administrative expenses as a percentage of net revenues decreased to 4.8% for 2004 from 6.7% for the same period in the prior year principally as a result of the increased net revenues in the current year.

Depreciation and Amortization Expenses. For 2004 depreciation and amortization expenses remained relatively stable at \$439,000 compared to \$356,000 for the prior year and relates primarily to office equipment purchases.

Other Operating Expenses (Income). For 2004 we recorded other income of \$1.2 million as a result of the renegotiation of a litigation settlement (see Note 8 to consolidated financial statements), an accounts receivable write-off of \$577,000 related to the Kay-Bee Toys bankruptcy, and non-cash compensation charges of \$316,000 related to a below market stock option grant in connection with an employment agreement. For 2003 we recorded charges of \$4.9 million and \$3.7 million related to litigation and settlement expenses and impairment of capitalized development costs, respectively.

Operating (loss) Income. For 2004 operating income was \$12.1 million versus an operating loss of \$8.8 million in the prior year. The increase in operating income is principally due to the release of our GBA Video

titles and increased sales of the GBA video game value titles. For 2004 operating income as a percentage of net revenue was 10% compared to a loss for the prior year.

Interest and Financing Costs. For 2004 interest and financing costs increased to \$2.8 million from \$2.1 million for the prior year due to increased volumes subject to purchase order financing as well as

an increase in factoring costs related to the higher level of sales. The increased level of borrowings as well as the increased volumes of purchase order financing was partially offset by the reduction in interest rates negotiated during the year with the factor.

Other Non-Operating Expenses. In February 2004, we completed a private placement of units consisting of preferred stock and warrants. In accordance with EITF 00-19, we initially accounted for the fair value of \$21 million for the warrants as a liability since we would have incurred substantial penalties if we did not timely comply with the warrant holders' registration rights. The fair value of the warrants was calculated utilizing the Black-Scholes option-pricing model.

As a result of changes in the market value of our common stock from the closing date through October 29, 2004, the effective date of the registration statement relating to the resale of the shares of common stock underlying the warrants, we recorded a non-cash charge of \$18.5 million to reflect the associated change in fair value of the warrants during the period. At the effective date of the resale registration statement, the fair value of the warrants of \$39.2 million was reclassified to equity pursuant to paragraph 10 of EITF 00-19.

For 2004 we recorded an unrealized loss of \$267,000 relating to a foreign exchange contract (see Note 15 to consolidated financial statements). A similar charge of \$24,000 was recorded in the prior year. Merger costs of \$342,000 were incurred by us in the first quarter of 2004 and consist primarily of professional fees and are non-recurring and there was no corresponding charge in the prior year.

Income Taxes. Effective November 1, 2003, we revoked our election to be treated as an S corporation and we are therefore subject to federal income taxes. Although we have reported a loss for financial reporting purposes for 2004, for income tax purposes we will report taxable income. Accordingly, the Company has provided a provision for taxes for 2004. A reconciliation between the statutory and effective tax rates is included in Note 11 of the audited consolidated financial statements.

Net Loss. For 2004 we generated a net loss of \$11.2 million principally as a result of the \$18.5 million charge related to the change in fair value of warrants issued in the private placement, as compared to a net loss of \$10.8 million last year. The 2004 net loss attributable to common stockholders of \$15.4 million includes the net loss after taxes of \$11.2 million, a \$759,000 non-cash charge related to a deemed dividend to the holders of the 7% convertible preferred stock issued in connection with our February 2004 private placement, a preferred stock dividend requirement of \$1.2 million which is payable in common stock and a \$2.2 million charge to reflect the fair value of the warrants issued in connection with the lock-up agreement. The deemed dividend represents the fair value of the beneficial conversion feature of the 7% preferred stock less the fair value of the warrants issued.

Liquidity and Capital Resources

Historically, we have met our capital needs through our factoring and purchase order financing arrangements, loans from related persons and advances from customers. In addition, as a result of a series of transactions during fiscal 2004 and 2005 related to, a private placement and secondary public offering, in which we sold equity securities including issuances upon the exercise of warrants, we received net proceeds of approximately \$81.6 million. These proceeds were used to fund the 2005 operating loss, to fund the development of video games and the acquisition of intellectual property rights, to reduce indebtedness, and to satisfy certain settlements.

During the second half of fiscal 2005, we had several major developments that ultimately led us to revise our business model and shift our product strategy away from capital intensive premium console games to a focus on value products and lower-cost games for handheld systems. In conjunction with our shift in strategy, we evaluated our existing portfolio of premium console titles in development and decided to sell our rights or cancel a number of these titles. Although there can be no assurance, these actions improve the financial position of the company by significantly reducing our future obligations and in some instances generating cash.

Going forward, we will look to offer a greater number of value titles and try to capitalize on our history and expertise in this market. In addition, we will continue to publish titles for popular

handheld systems such as the GBA, DS and PSP, as well as look for opportunistic titles for home consoles and personal computers. We believe that a decreased emphasis on premium titles, along with a renewed focus on

value and handheld titles, will allow us to capitalize on our strengths and expertise and although there can be no assurance, lessen the level of required working capital to support the plan.

While our cash and cash equivalents balance was \$2.4 million as of October 31, 2005, we expect continued volatility in the use and availability of cash due to the seasonality of our business, timing of receivables collections and working capital needs necessary to finance our business and growth objectives. To satisfy our liquidity needs, we factor our receivables. We also utilize purchase order financing through the factor and through a finance company to provide funding for the manufacture of our products. In connection with these arrangements, the finance company and the factor have a security interest in substantially all of our assets. In September 2005, the factor, our principal source of financing imposed a limitation on cash advances and letters of credit to \$7.5 million and \$2.0 million for letters of credit. Previously, advances under our factoring arrangement, including letters of credit were limited to \$30 to \$35 million in the aggregate.

In October 2005, the factor agreed to increase the availability to \$16 million in cash advances including \$10 million for letters of credit. The factor also waived our covenant requirements as of October 31, 2005. However, the factor, in his sole discretion, can reduce the availability of financing at anytime. Management is continuing to negotiate with the factor to restore previous levels of availability; however, there can be no assurance that we will be successful in our negotiations. Management is also in the process of evaluating alternatives to the current factoring arrangement, including issuance of additional equity or debt financing and/or loans from financial institutions. Although management believes that alternative financing may be available, there can be no assurance that funds will be available on acceptable terms, if at all. While management has already significantly reduced expenditure levels, in the event that we are unable to negotiate alternative financing, or negotiate terms that are acceptable to us, we may be forced to further materially modify our business plan, including making additional reductions in our expenditures. Management believes it can make additional cuts if necessary, and that it can operate under the existing level of financing for at least one year. However, if the current level of financing was reduced and the company was unable to obtain alternative financing, it could create a material effect on future operating prospects.

Factoring and Purchase Order Financing.

We do not have any bank debt. As mentioned above, to provide liquidity, we take advances from our factor and utilized purchase order financing to fund the manufacturing of our products.

Under the terms of our factoring agreement, we assign our accounts receivable to the factor. The factor, in its sole discretion, determines whether or not it will accept a receivable based on its assessment of its credit risk. Once a receivable is accepted by the factor, the factor assumes substantially all of the credit risk associated with the receivable. The factor is required to remit payments to us for the assigned accounts receivable in accordance with the terms of the assigned invoice, regardless of whether the factor receives payment on the receivable, so long as the customer does not have a valid dispute related to the invoice. The amount remitted to us by the factor equals the invoiced amount adjusted for allowances and discounts we have provided to the customer less factor charges of 0.5% of invoiced amounts for these credit and collection services.

We utilize purchase order financing arrangements in order to enable us to provide letters of credit necessary for the manufacture of our products. Manufacturers require us to present a letter of credit in order to manufacture the products required under a purchase order. Currently, we utilize letters of credit from a finance company which charges 3.3% of the purchase order amount for each transaction for 60 days. Our factor also provides purchase order financing at a cost of 0.5% of the purchase order amount for each transaction for 30 days. Additional charges are incurred if letters of credit remain outstanding in excess of the original time period and/or the financing company is not paid at the time the products are received.

In addition, we may request that the factor provide us with cash advances based on our accounts receivable and inventory. The factor may either accept or reject our request for advances at its

discretion. Amounts to be paid to us by the factor for any assigned receivable are offset by any amounts previously advanced by the factor. As our needs require, we may request that the factor advance 70% of the eligible receivables and advance 50% of inventory up to a maximum of \$1.5 million. The interest rate is prime plus 1.5% on 50% of advances and the rate on the balance is the greater of (i) 18% per annum, or (ii) the lesser of (a) the prime rate plus 11.25% per annum or (b) 20% per annum.

Advances From Customers. On a case by case basis, distributors and other customers have agreed to provide us with cash advances on their orders. These advances are then applied against future sales to these customers. In exchange for these advances, we offer these customers beneficial pricing or other considerations.

Commitments and Contingencies. The following table summarizes our minimum guarantees and other contractual obligations as of October 31, 2005:

Total of payments	Payments due by period	
	Less than one year	1 - 3 Years
	(in thousands)	

Contractual Obligations

Operating leases	\$	1,576	\$	528	\$	1,048
Software development (1)		<u>7,457</u>		<u>7,457</u>		<u>—</u>
		9,033		7,985		1,048
Commercial Obligations						
Letters of credit (2)		<u>805</u>		<u>805</u>		
Total Obligations	\$	<u>9,838</u>	\$	<u>8,790</u>	\$	<u>1,048</u>

- (1) Payable only upon achievement of milestones.
(2) Arising under purchase order assignments for inventory purchases.

On December 2, 2005, a vendor filed a complaint against us in the Supreme Court of the State of New York, County of New York, alleging breach of contract and failure to pay in connection with services rendered. The complaint seeks approximately \$2.6 million in damages plus interest and costs, including attorney's fees. We intend to vigorously defend this action.

In July 2005, four purported class action complaints were filed against the Company and several current and former directors and officers of the Company in the United States District Court for the District of New Jersey. On September 12, 2005, a fifth purported class action complaint was filed in the same court on behalf of a class of individuals who purchased shares of the Company common stock in the Company's January 26, 2005 offering of six million shares of common stock (the "Offering"). The complaint named as defendants the Company, current and former officers of the Company, and certain financial institutions who served as underwriters with respect to the Offering.

On October 11, 2005, the Court consolidated the five cases and appointed a Lead Plaintiff. On December 14, 2005, Lead Plaintiff filed an Amended Consolidated Complaint, which is now the operative Complaint. The Complaint names the following as defendants: the Company, Carl Yankowski, Jan E. Chason, Jesse Sutton, Joseph Sutton, Morris Sutton, Laurence Aronson, F. Peter Cuneo, James Halpin, Louis Lipschitz, Marc Weisman, RBC Capital Markets Corporation, JMP Securities LLC, Harris Nesbitt & Corp., Wedbush Morgan Securities Inc., and Goldstein Golub Kessler LLP.

The Complaint alleges that the Registration Statement and Prospectus filed with the SEC in connection with the Company's Offering and certain of the Company's press releases and other public filings contained material misstatements and omissions about the Company's financial condition and prospects as well as its products. Lead Plaintiff asserts a claim under Section 11 of the Securities Act against all the defendants on behalf of investors who purchased in the Offering. It asserts a Section 12(a)(2) claim against the Company and the financial institutions who served as underwriters in connection with the Offering, and a Section 15 control person claim against defendants Carl

Yankowski, Jan Chason, Jesse Sutton, Joseph Sutton, and Morris Sutton (the "Defendants"). Lead Plaintiff also asserts a claim under Section 10(b) of the Exchange Act and Rule 10b-5 promulgated there under against the Company and the Defendants and a claim under Section 20(a) of the Exchange Act against the Defendants. The Complaint seeks damages in an unspecified amount. The proposed class period for the Exchange Act claims is December 8, 2004 through September 12, 2005. We will vigorously contest the action.

We are party to other routine claims and suits brought by us and against us in the ordinary course of business, including disputes arising over contractual claims and collection matters. In the opinion of management, after consultation with legal counsel, the outcome of such routine claims will not have a material adverse effect on our business, financial condition, and results of operations or liquidity. In addition, the costs and other effects of pending or future litigation, governmental investigations, legal and administrative cases and proceedings (whether civil or criminal), settlements, judgments and investigations, claims and changes in those matters (including those matters described above), and developments or assertions by or against the Company relating to intellectual property rights and intellectual property licenses, could have a material adverse effect on the Company's business, financial condition, and results of operations or liquidity.

Cash Flows

Cash and cash equivalents were \$2.4 million as of October 31, 2005 compared to \$4.2 million at October 31, 2004. Working capital as of October 31, 2005 was \$3.8 million compared to \$8.9 million at October 31, 2004.

Operating Cash Flows. Our principal operating source of cash is from the sales of our interactive entertainment products. Our principal operating uses of cash are for payments associated with third-party developers of our software, costs incurred to manufacture, sell and market our video games and general and administrative expenses. For the year ended October 31, 2005, we used cash of \$55.0 million in operating activities principally to fund the loss of \$17.9 million, excluding non cash items of \$53.0 million and the acquisition of capitalized software and intellectual property rights of \$52.9 million. Cash from operations was principally provided by the net reduction in due from factor of \$15.8 million, and as a result of availability of excess cash from the secondary offering and lower sales volume in the second half of fiscal 2005, both of which

reduced our need to borrow from the factor.

For the year ended October 31, 2004, we used \$18.9 million of cash in operating activities. Our net loss attributable to common stockholders of \$11.2 million was principally attributable to the \$18.5 million charge for the change in fair value of the warrants less a gain of \$1.2 million from the renegotiation of a litigation settlement, which were both non-cash items. Our cash usage was attributable to (i) the increase in due from factor of \$9.5 million reflecting higher receivables from customers net of advances from the factor, (ii) an increase in inventory of \$1.8 million, (iii) a decrease in advances from customers for prepayments of \$9.5 million as a result of our fulfillment of their related orders in the first quarter, (iv) increased expenditures for capitalized software development and prepaid license costs of \$30.8 million for video games in development net of amortization of \$19.1 million, as well as royalty advances to content providers for GBA Video, net of amounts expensed during the period and (v) payments of \$5.5 million related to a settlement obligation. This was partially offset by increases in cash attributable to an increase in accounts payable and accrued expenses of \$11.8 million, reflecting the significant increased level of operations in the fiscal 2004 fourth quarter.

During the year ended October 31, 2003, cash of \$2.9 million was used by operating activities. Our net loss of \$10.8 million was principally attributable to litigation settlements of \$4.9 million and a loss on impairment of capitalized software development costs of \$3.7 million, which are non-cash charges. Our cash usage was primarily attributable to an increase in inventory of \$8.3 million consisting primarily of new titles to be launched in the first quarter of fiscal 2004, and an increase in capitalized software development costs of \$2.3 million net of software amortization related to first quarter 2004 releases as well as video games already in development for future release. This usage of

cash was partially offset by the increase in advances from customers of \$7.5 million and a decrease in the amounts due from factor during the period due to lower sales volume in the fourth quarter of 2003 versus the prior year, which generated \$2.9 million of cash.

Investing Cash Flows. Cash used in investing activities for the year ended October 31, 2005, 2004 and 2003 are primarily related to purchases of computer equipment and leasehold improvements of \$451,000, \$319,000, and \$152,000, respectively.

Financing Cash Flows. Net cash generated from financing activities for the year ended October 31, 2005 was \$53.7 million which consisted of: (i) net proceeds of \$41.9 million from the sale of stock in our secondary public offering; (ii) net proceeds from the exercise of stockholder and placement agent warrants, issued in the February 2004 private placement of \$12.1 million; and (iii) net proceeds of \$6.5 million from the exercise of warrants at reduced exercise price. Financing cash was used to repay \$6.7 million of inventory financing.

Net cash generated from financing activities for the year ended October 31, 2004 was \$23.1 million. The increase is attributed to the \$21.2 million in net proceeds from the February 2004 private placement, \$3.7 million in additional inventory financing and a loan from a related party of \$1 million, which were partially offset by the repayment of \$2.8 in loans from stockholders and an officer.

During the year ended October 31, 2003, \$2.7 million was provided by financing activities primarily as a result of loan proceeds from inventory financings and from stockholders of \$2.6 million and \$2.3 million, respectively, partially offset by the repayment of a bank loan of \$2.4 million.

Item 7a. Quantitative and Qualitative Disclosures About Market Risk

We are exposed to various market risks, including the changes in foreign currency exchange rates and interest rates. Market risk is the potential loss arising from changes in market rates and prices. Foreign exchange contracts used to hedge foreign currency exposure are subject to market risk. We do not enter into derivatives or other financial instruments for trading or speculative purposes. For the year ended October 31, 2005 we recorded a \$48,000 loss related to a foreign currency forward exchange contract which expired on March 31, 2005.

Item 8. Financial Statements and Supplementary Data.

The financial statements required by this item are submitted in a separate section beginning on Page F-1 of this report.

Item 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure.

Not applicable.

Item 9a. Controls and Procedures.

As of October 31, 2005, with the participation of our management, our President and Chief Financial Officer carried out an evaluation of the effectiveness of the design and operation of our disclosure controls and procedures (as defined in the Securities Exchange Act of 1934 Rules 13a-15(e) and 15d-15(e)). Because of their inherent limitations, disclosure controls and procedures may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate. In designing and evaluating our disclosure controls and procedures, management recognized that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance

of achieving the desired control objectives. Based on this evaluation, our President and Chief Financial Officer concluded that, as of October 31, 2005, our disclosure controls and procedures were (1) designed to ensure that material information relating to the Company, including its consolidated subsidiary, is made known to our President and Chief Financial Officer by others within those entities, particularly during the period in which this report was being prepared and (2) were effective, in that they provide

reasonable assurance that information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms.

Management's Report on Internal Control Over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting. Our internal control system is a process designed to provide reasonable assurance to our management and board of directors regarding the preparation and fair presentation of published financial statements.

Our internal control over financial reporting includes policies and procedures that pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect transactions and dispositions of assets; provide reasonable assurances that transactions are recorded as necessary to permit preparation of financial statements in accordance with accounting principles generally accepted in the United States of America, and that receipts and expenditures are being made only in accordance with authorizations of our management and directors; and provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of our assets that could have a material effect on our financial statements.

All internal control systems, no matter how well designed, have inherent limitations. Therefore, even those systems determined to be effective can provide only reasonable assurance with respect to financial statement preparation and presentation. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

Our management assessed the effectiveness of Majesco Entertainment Company's internal control over financial reporting as of October 31, 2005. In making this assessment, we used the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission in *Internal Control—Integrated Framework*. Based on our assessment we believe that, as of October 31, 2005, Majesco Entertainment Company's internal control over financial reporting is effective based on those criteria.

Our independent registered public accounting firm that audited the consolidated financial statements has issued an audit report on our assessment of, and the effective operation of, Majesco Entertainment Company's internal control over financial reporting as of October 31, 2005.

Report of Independent Registered Public Accounting Firm

The Board of Directors
Majesco Entertainment Company

We have audited management's assessment, included in the accompanying Management Report on Internal Control over Financial Reporting, that Majesco Entertainment Company and Subsidiary maintained effective internal control over financial reporting as of October 31, 2005, based on *criteria established in Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO)*. Majesco Entertainment Company and Subsidiaries' management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting. Our responsibility is to express an opinion on management's assessment and an opinion on the effectiveness of the company's internal control over financial reporting based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, evaluating management's assessment, testing and evaluating the design and operating effectiveness of internal control, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

In our opinion, management's assessment that Majesco Entertainment Company maintained effective internal control over financial reporting as of October 31, 2005 is fairly stated, in all material respects, based on *"criteria established in Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO)*. Also in our opinion, Majesco Entertainment Company and Subsidiary maintained, in all material respects, effective internal control over financial reporting as of October 31, 2005, based on *criteria established in Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO)*.

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated financial statements of Majesco Entertainment Company and our report dated January 10, 2006 expressed an unqualified opinion on those financial statements.

GOLDSTEIN GOLUB KESSLER LLP

New York, New York
January 10, 2006

Changes in Internal Control Over Financial Reporting

As previously reported in its quarterly report on Form 10 Q for the quarter ended July 31, 2005, the company recognized that improvements in the company's financial statement controls were necessary in certain specified areas. During the fourth quarter ending October 31, 2005, the company implemented the following remediation steps in those areas as follows:

- Certain key personnel with technical accounting expertise were added.
- Responsibility for performance of certain key duties was reassigned in order to maintain adequate segregation of duties in key functions, and where necessary, additional mitigating controls were instituted.
- Controls were instituted to effect adequate controls over spreadsheets used in the company's financial reporting process.
- Where necessary, the documentation of transactions and manual journal entries was enhanced, and
- A policy of adhering to a comprehensive closing calendar was instituted.

As of October 31, 2005 management believes that it has taken the necessary measures to specifically address the areas noted above and concluded that these areas have been remediated.

Item 9b. Other Information.

Not applicable.

PART III

The information required by Part III of Form 10-K under
o Item 10 — Directors and Executive Officers of the Registrant

- o Item 11 — Executive Compensation
- o Item 12 — Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters
- o Item 13 — Certain Relationships and Related Transactions
- o Item 14 — Principal Accountant Fees and Services

is incorporated by reference from our definitive proxy statement relating to the 2005 Annual Meeting of Stockholders, which we will file with the SEC within 120 days after our October 31, 2005 fiscal year end.

PART IV

Item 15. Exhibits and Financial Statement Schedules.

(a) (1) Financial Statements.

The financial statements required by this item are submitted in a separate section beginning on Page F-1 of this report.

(2) Financial Statement Schedules.

Schedules have been omitted because of the absence of conditions under which they are required or because the required information is included in the financial statements or notes thereto.

(3) Exhibits.

The following exhibits are filed with this report, or incorporated by reference as noted.

- 2.1 Agreement and Plan of Merger, dated as of November 10, 2003, by and among ConnectivCorp, CTTV Merger Corp. and Majesco Sales Inc. (incorporated by reference to Exhibit 2.1 to an Amendment to our Current Report on Form 8-K filed on December 22, 2003).
- 2.2 Amendment to Agreement and Plan of Merger, dated December 3, 2003, by and among ConnectivCorp, CTTV Merger Corp. and Majesco Sales Inc. (incorporated by reference to Exhibit 2.2 to our Current Report on Form 8-K filed on December 22, 2003).
- 3.1 Certificate of Incorporation of Majesco Holdings Inc. (incorporated by reference to Exhibit 3.1 to our Annual Report on Form 10-KSB filed on April 16, 2002).
- 3.2 Amendment to Certificate of Incorporation, dated September 11, 2000 (incorporated by reference to Exhibit 3.1 to our Current Report on Form 8-K filed on September 13, 2000).
- 3.3 Amendment to the Amended and Restated Certificate of Incorporation (incorporated by reference to Exhibit 3.1 to our Current Report on Form 8-K filed on April 27, 2004).
- 3.4 Bylaws of Majesco Holdings Inc., as amended (incorporated by reference to Exhibit 3.1 to our Quarterly Report on Form 10-Q filed on September 14, 2004).
- 3.5 Amendment to Certificate of Incorporation, dated December 29, 2004 (incorporated by reference to Exhibit 3.5 to our Annual Report on Form 10-K filed on January 31, 2005).
- 4.1 Certificate of Designations, Preferences and Rights of 7% Cumulative Convertible Preferred Stock, filed with the Secretary of State of the State of Delaware on February 20, 2004 (incorporated by reference to Exhibit 4.1 to our Current Report on Form 8-K filed on March 1, 2004).
- 4.2 Form of investor Subscription Agreement (incorporated by reference to Exhibit 4.2 to our Current Report on Form 8-K filed on March 1, 2004).
- 4.3 Form of warrant issued to investors (incorporated by reference to Exhibit 4.3 to our Current Report on Form 8-K filed on March 1, 2004).
- 4.4 Form of placement agent warrant (incorporated by reference to Exhibit 4.4 to our Current Report on Form 8-K filed on March 1, 2004).
- 10.1 Lease Agreement, dated as of February 2, 1999, by and between 160 Raritan Center Parkway, L.L.C. and Majesco Sales Inc. (incorporated by reference to Exhibit 10.1 to our Current Report on Form 8-K filed on August 11, 2004).

- 10.2 Xbox Publisher License Agreement, dated January 31, 2001, by and between Microsoft Corporation and Majesco Sales Inc. (incorporated by reference to Exhibit 10.3 to an Amendment to our Current Report on Form 8-K filed on October 22, 2004).

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- 10.3 Amendment to the Xbox Publisher Licensing Agreement, dated April 4, 2002, by and between Microsoft Corporation and Majesco Sales Inc. (incorporated by reference to Exhibit 10.2 to our Current Report on Form 8-K filed on September 3, 2004).
- 10.4 Amendment to the Xbox Publisher Licensing Agreement (Xbox Live Distribution) dated March 17, 2003, by and between Microsoft Corporation and Majesco Sales Inc. (incorporated by reference to Exhibit 10.4 to an Amendment to our Current Report on Form 8-K filed on October 22, 2004).
- 10.5 Amendment to the Xbox Publisher License Agreement (Tiered Royalty Rate Structure and Xbox Platinum Hits Program), dated January 31, 2003, by and between Microsoft Corporation and Majesco Sales Inc. (incorporated by reference to Exhibit 10.4 to our Current Report on Form 8-K filed on September 3, 2004).
- 10.6 PlayStation 2 Licensed Publisher Agreement, dated April 1, 2000, by and between Sony Computer Entertainment America, Inc. and Majesco Sales Inc. (incorporated by reference to Exhibit 10.5 to our Current Report on Form 8-K filed on September 3, 2004).
- 10.7 License Agreement for Game Boy Advance (Western Hemisphere), dated May 10, 2001, by and between Nintendo of America, Inc. and Majesco Sales Inc. (incorporated by reference to Exhibit 10.1 to an Amendment to our Current Report on Form 8-K filed on October 22, 2004).
- 10.8 License Agreement for Gamecube, (Western Hemisphere), dated January 11, 2001, by and between Nintendo of America, Inc. and Majesco Sales Inc. (incorporated by reference to Exhibit 10.2 to an Amendment to our Current Report on Form 8-K filed on October 22, 2004).
- 10.9 Software Distribution Agreement, dated April 8, 2002, by and between Konami of America, Inc. and Majesco Sales Inc. (incorporated by reference to Exhibit 10.5 to an Amendment to our Current Report on Form 8-K filed on October 22, 2004).
- 10.10 Amendment to Software Distribution Agreement, dated April 25, 2002, by and between Konami of America, Inc. and Majesco Sales Inc. (incorporated by reference to Exhibit 10.6 to a Current Report on Form 8-K filed on September 22, 2004).
- 10.11 License Agreement, dated April 30, 2002, by and between Namco Hometek Inc. and Majesco Sales Inc. (incorporated by reference to Exhibit 10.6 to an Amendment to our Current Report on Form 8-K filed on October 22, 2004).
- 10.12 First Amendment, dated January 7, 2003, to License Agreement, dated July 2, 2002, by and between NAMCO Hometek Inc. and Majesco Sales Inc. (incorporated by reference to Exhibit 10.1 to our Current Report on Form 8-K filed on October 15, 2004).
- 10.13 Second Amendment, dated May 7, 2003, to License Agreement, dated July 2, 2002, by and between NAMCO Hometek Inc. and Majesco Sales Inc. (incorporated by reference to Exhibit 10.2 to our Current Report on Form 8-K filed on October 15, 2004).
- 10.14 Third Amendment, dated July 2, 2002, to License Agreement, dated December 18, 2003, by and between NAMCO Hometek Inc. and Majesco Sales Inc. (incorporated by reference to Exhibit 10.8 to our Current Report on Form 8-K filed on September 22, 2004).
- 10.15 License Agreement, dated June 30, 2000, by and between Activision Publishing, Inc. and Majesco Sales Inc. (incorporated by reference to Exhibit 10.1 to our Current Report on Form 8-K filed on September 22, 2004).
- 10.16 Third Amendment, dated June 30, 2000, to License Agreement, dated September 22, 2002, by and between Majesco Sales Inc. and Activision Publishing, Inc. (incorporated by reference to Exhibit 10.4 to our Current Report on Form 8-K filed on September 22, 2004).

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- 10.17 Escrow Agreement, dated February 19, 2004, by and among Majesco Holdings Inc., Jesse Sutton, Joseph Sutton, Adam Sutton, Morris Sutton, on behalf of Sarah Sutton and American Stock Transfer and Trust Company (incorporated by reference to Exhibit 10.17 to an Amendment to our Registration Statement on Form S-1 filed on October 19, 2004).
 - 10.18 Employment Agreement, dated August 24, 2004, by and among Majesco Holdings Inc., Majesco Sales Inc. and Carl Yankowski (incorporated by reference to Exhibit 10.1 to an Amendment to our Current Report on Form 8-K filed on August 31, 2004).
 - 10.19 Factoring Agreement, dated April 24, 1989, between Majesco Sales Inc. and Rosenthal & Rosenthal, Inc. (incorporated by reference to Exhibit 10.1 to our Current Report on Form 8-K filed on October 22, 2004).
 - 10.20 Amendment to Factoring Agreement, dated March 18, 1999, between Majesco Sales Inc. and Rosenthal & Rosenthal, Inc. (incorporated by reference to Exhibit 10.2 to our Current Report on Form 8-K filed on October 22, 2004).
 - 10.21 Amendment to Factoring Agreement, dated September 30, 2004, between Majesco Sales Inc. and Rosenthal & Rosenthal, Inc. (incorporated by reference to Exhibit 10.3 to our Current Report on Form 8-K filed on October 22, 2004).
 - 10.22 Assignment of Monies Due Under Factoring Agreement, dated July 21, 2000, by and among Majesco Sales Inc., Rosenthal & Rosenthal, Inc. and Transcap Trade Finance (incorporated by reference to Exhibit 10.4 to our Current Report on Form 8-K filed on October 22, 2004).
 - 10.23 Master Purchase Order Assignment Agreement, dated July 21, 2000, between Majesco Sales Inc. and Transcap Trade Finance (incorporated by reference to Exhibit 10.5 to our Current Report on Form 8-K filed on October 22, 2004).
 - 10.24 Sixth Amendment to Master Purchase Order Assignment Agreement, dated September 12, 2003, by and between Transcap Trade Finance and Majesco Sales Inc. (incorporated by reference to Exhibit 10.6 to our Current Report on Form 8-K filed on October 22, 2004).
 - 10.25 Seventh Amendment to Master Purchase Order Assignment Agreement, dated October 16, 2003, by and between Transcap Trade Finance and Majesco Sales Inc. (incorporated by reference to Exhibit 10.7 to our Current Report on Form 8-K filed on October 22, 2004).
 - 10.26 Eighth Amendment to Master Purchase Order Assignment Agreement, dated April 14, 2004, by and between Transcap Trade Finance and Majesco Sales Inc. (incorporated by reference to Exhibit 10.8 to our Current Report on Form 8-K filed on October 22, 2004).
 - 10.27 Guaranty and Pledge Agreement, dated July 21, 2000, by and among Jesse Sutton, Joseph Sutton, Morris Sutton, Adam Sutton and Transcap Trade Finance (incorporated by reference to Exhibit 10.9 to our Current Report on Form 8-K filed on October 22, 2004).
 - 10.28 Security Agreement and Financing Statement, dated July 21, 2000, by and among Majesco Sales Inc. and Transcap Trade Finance (incorporated by reference to Exhibit 10.10 to our Current Report on Form 8-K filed on October 22, 2004).
 - 10.29 Employment Agreement, dated October 5, 2004, by and between Majesco Sales Inc., Majesco Holdings Inc. and Patrick Flaherty (incorporated by reference to Exhibit 10.01 to our Current Report on Form 8-K filed on October 8, 2004).
 - 10.30 Form of Warrant Exercise Agreement, dated December 17, 2004 (incorporated by reference to Exhibit 10.1 to our Current Report on Form 8-K filed on January 7, 2004).

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- 10.31 Amendment to the Amended and Restated Certificate of Incorporation (incorporated by reference to Exhibit 3.5 to our Annual Report on Form 10-K filed on January 31, 2005).
 - 10.32 Employment Agreement, dated October 5, 2004, by and between Majesco Holdings Inc. and Patrick Flaherty (incorporated by reference to Exhibit 10.01 to our Current Report on Form 8-K

filed on October 8, 2004).

- 10.33 Employment Agreement, dated February 2, 2005 by and between Majesco Holdings Inc., Majesco Sales Inc. and Lester E. Greenman (incorporated by reference to Exhibit 10.1 to our Quarterly Report on Form 10-Q filed on March 17, 2005).
- 10.34 Certificate of Ownership Merging Majesco Sales Inc. with and into Majesco Holdings Inc. (incorporated by reference to Exhibit 3.1 to our Current Report on Form 8-K filed on April 14, 2005).
- 10.35 Restated Certificate of Incorporation (incorporated by reference to Exhibit 3.1 to our Quarterly Report on Form 10-Q filed on June 14, 2005).
- 10.36 Restated Bylaws (incorporated by reference to Exhibit 3.1 to our Quarterly Report on Form 10-Q filed on June 14, 2005).
- 10.37 Amended and Restated 2004 Employee, Director and Consultant Incentive Plan (incorporated by reference to Exhibit 10.1 to our Quarterly Report on Form 10-Q filed on June 14, 2005).
- 10.38 Form of Non-Qualified Stock Option Agreement (incorporated by reference to Exhibit 10.2 to our Quarterly Report on Form 10-Q filed on June 14, 2005).
- 10.39 Form of Incentive Stock Option Agreement (incorporated by reference to Exhibit 10.3 to our Quarterly Report on Form 10-Q filed on June 14, 2005).
- 10.40 Director Compensation Policy (incorporated by reference to Exhibit 10.4 to our Quarterly Report on Form 10-Q filed on June 14, 2005).
- 10.41 Restated Bylaws (incorporated by reference to Exhibit 3.1 to our Current Report on Form 8-K filed on June 17, 2005).
- 10.42 Employment Agreement, dated June 27, 2005, by and between Majesco Entertainment Company and John Gross (incorporated by reference to Exhibit 10.1 to our Quarterly Report on Form 10-Q filed on September 14, 2005).
- 10.43 Severance Agreement, dated July 8, 2005, by Majesco Entertainment Company and Carl Yankowski (incorporated by reference to Exhibit 10.2 to our Quarterly Report on Form 10-Q filed on September 14, 2005).
- 10.44 Separation Agreement, dated August 2, 2005, by Majesco Entertainment Company and Lester E. Greenman (incorporated by reference to Exhibit 10.3 to our Quarterly Report on Form 10-Q filed on September 14, 2005).
- 10.45 Revised Director Compensation Policy (incorporated by reference to Exhibit 10.4 to our Quarterly Report on Form 10-Q filed on September 14, 2005).
- *10.46 Amendment to Factoring Agreement, dated October 18, 2005.
- *10.47 Publisher License Agreement, for the Xbox 360 game system, dated September 13, 2005, by and between Microsoft Licensing, GP and Majesco Entertainment Company. (We have requested confidential treatment of certain provisions contained in this exhibit. The copy filed as an exhibit omits the information subject to the confidentiality request.)
- *21.1 Subsidiaries.
- *23.1 Consent of Goldstein Golub Kessler LLP.
- *31.1 Certification of Principal Executive Officer

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- *31.2 Certification of Principal Financial Officer.
 - *32.1 Section 1350 Certificate of President and Chief Financial Officer.

* Filed herewith.

(b) Exhibits. See (a)(3) above.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

MAJESCO ENTERTAINMENT COMPANY AND SUBSIDIARY

By: /s/ Jesse Sutton

Date: January 24, 2006

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

<u>SIGNATURE</u>	<u>TITLE</u>	<u>DATE</u>
<u>/s/ John Gross</u> John Gross	Chief Financial Officer (principal financial and accounting officer)	February 1, 2006
<u>/s/ Morris Sutton</u> Morris Sutton	Chairman Emeritus	February 1, 2006
<u>/s/ Laurence Aronson</u> Laurence Aronson	Director	February 1, 2006
<u>/s/ Jim Halpin</u> Jim Halpin	Director	February 1, 2006
<u>/s/ Louis Lipschitz</u> Louis Lipschitz	Director	February 1, 2006
<u>/s/ Jesse Sutton</u> Jesse Sutton	President and Director	February 1, 2006
<u>/s/ Joseph Sutton</u> Joseph Sutton	Executive Vice President of Research and Development and Director	February 1, 2006
<u>/s/ Marc Weisman</u> Marc Weisman	Director	February 1, 2006

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REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

The Board of Directors
Majesco Entertainment Company.

We have audited the accompanying consolidated balance sheets of Majesco Entertainment company (formerly Majesco Holdings, Inc.) and subsidiary as of October 31, 2005 and 2004, and the related consolidated statements of operations, stockholders' equity and cash flows for each of the three years in the period ended October 31, 2005. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of Majesco Entertainment Company and subsidiary as of October 31, 2005 and 2004, and the results of its operations and its cash flows for each of the three years in the period ended October 31, 2005, in conformity with United States generally accepted accounting principles.

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the effectiveness of the Company's internal control over financial reporting as of October 31, 2005, based on criteria established in Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO), and our report dated January 10, 2006 expressed an unqualified opinion thereon.

The accompanying financial statements have been prepared assuming that the Company will continue as a going concern. As discussed in Note 1 to the financial statements, the Company has suffered losses that raise substantial doubt about its ability to continue as a going concern. Management's plan in regard to these matters is also described in Note 1. The financial statements do not include any adjustments that might result from the outcome of this uncertainty.

GOLDSTEIN GOLUB KESSLER LLP

New York, New York
January 10, 2006

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MAJESCO ENTERTAINMENT COMPANY AND SUBSIDIARY CONSOLIDATED BALANCE SHEET (dollars in thousands)

	October 31,	
	2005	2004
ASSETS		
Current assets:		
Cash and cash equivalents	\$ 2,407	\$ 4,170
Due from factor	—	9,491
Income taxes receivable	826	—
Inventory	8,058	12,755
Capitalized software development costs and prepaid license fees current portion	17,278	10,574
Prepaid expenses	508	831
Total current assets	29,077	37,821
Property and equipment — net	862	798
Capitalized software development costs and prepaid license fees	—	4,952
Other assets	142	381
Total assets	\$ 30,081	\$ 43,952
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable and accrued expenses	\$ 18,493	\$ 19,985

Due to factor	6,343	—
Inventory financing payables	—	6,750
Advances from customers	484	2,171
Total current liabilities	25,320	28,906
Dividend payable in common stock	—	1,261
Stockholders' equity:		
Common stock — \$.001 par value; 250,000,000 shares authorized; 22,242,476 and 15,403,704		
Issued and outstanding at October 31, 2005 and October 31, 2004 respectively	22	15
Additional paid in capital	92,158	29,194
Accumulated deficit	(87,388)	(15,388)
Accumulated other comprehensive loss	(31)	(36)
Total stockholders' equity	4,761	13,785
Total liabilities and stockholders' equity	\$ 30,081	\$ 43,952

See accompanying notes

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MAJESCO ENTERTAINMENT COMPANY AND SUBSIDIARY
CONSOLIDATED STATEMENT OF OPERATIONS
(dollars in thousands, except share amounts)

	Year Ended October 31,		
	2005	2004	2003
Net revenues	\$ 59,716	\$ 120,984	\$ 46,608
Cost of sales			
Product costs	38,384	67,151	25,172
Software development costs and license fees	22,717	19,091	5,631
	<u>61,101</u>	<u>86,242</u>	<u>30,803</u>
Gross (loss) profit	(1,385)	34,742	15,805
Operating costs and expenses			
Product research and development	3,415	2,994	2,554
Selling and marketing	24,160	13,664	9,931
General and administrative	9,561	5,814	3,140
Depreciation and amortization	893	439	356
Non-cash compensation charges	1,376	342	—
Write-off of accounts receivable	322	577	—
Loss (gain) on settlements	1,437	(1,200)	4,908
Loss on impairment of software development costs	26,281	—	3,656
Severance	1,360	—	—
	<u>68,805</u>	<u>22,630</u>	<u>24,545</u>
Operating (loss) income	(70,190)	12,112	(8,740)
Other expenses			
Interest and financing costs, net	1,869	2,806	2,077
Realized (2005)/unrealized loss on foreign exchange contract	48	267	24
Change in fair value of warrants	—	18,459	—
Merger costs	—	342	—
Loss before income taxes	(72,107)	(9,762)	(10,841)
(Benefit) provision for income taxes	(1,207)	1,424	—
Net loss	(70,900)	(11,186)	(10,841)
Fair value charge for warrants exercised at a discount	1,100		
Deemed dividend to preferred stockholders	—	759	—
Preferred stock dividend	—	1,261	—
Fair value of warrants issued in connection with lock-up agreements	—	2,182	—
Net loss attributable to common stockholders	<u>\$ (72,000)</u>	<u>\$ (15,388)</u>	<u>\$ (10,841)</u>
Net loss attributable to common stockholders per share:			
Basic and diluted	<u>\$ (3.48)</u>	<u>\$ (1.84)</u>	<u>\$ (4.95)</u>
Weighted average shares outstanding:			

See accompanying notes

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**MAJESCO ENTERTAINMENT COMPANY AND SUBSIDIARY
CONSOLIDATED STATEMENT OF STOCKHOLDERS' EQUITY
(in thousands, except share amounts)**

	Common Stock —\$.001 par value		Sales A Preferred Stock —\$.001 par value		7% Preferred Stock —\$.001 par value		Additional Paid In Capital	Accumulated Deficit	Accumulated Other Comprehensive Loss	Total Stockholders' Equity
	Number	Amount	Number	Amount	Number	Amount				
Balance — October 31, 2002	2,189,285	\$ 2	132,142	\$ —	—	\$ —	298	\$ (5,171)	\$ —	\$ (4,871)
Net loss	—	—	—	—	—	—	—	(10,841)	—	(10,841)
Foreign currency translation adjustment	—	—	—	—	—	—	—	—	(18)	(18)
Total comprehensive loss	—	—	—	—	—	—	—	—	—	(10,859)
Balance — October 31, 2003	2,189,285	2	132,142	—	—	—	298	(16,012)	(18)	(15,730)
Reclassification of accumulated deficit as a result of revocation of S Corporation election	—	—	—	—	—	—	(16,012)	16,012	—	—
Effect of recapitalization — reverse merger	3,264,805	3	—	—	—	—	(3)	—	—	—
Issuance of units pursuant to private placement memorandum, net of initial classification of \$20,730 warrant liability and net of related expenses of \$4,653	—	—	—	—	369	—	449	—	—	449
Issuance of units in connection with settlement of loans payable — stockholders	—	—	—	—	14	—	1,000	—	—	1,000
Deemed dividend — beneficial conversion charge	—	—	—	—	—	—	759	(759)	—	—
Surrender of Series A preferred stock	—	—	(50,301)	—	—	—	—	—	—	—
Issuance of common stock upon conversion of:										
Series A preferred stock	5,810,721	6	(81,841)	—	—	—	(6)	—	—	—
Loan payable — related party	285,714	—	—	—	—	—	1,000	—	—	1,000
Warrants	20,355	—	—	—	—	—	—	—	—	—
7% convertible preferred stock	3,832,824	4	—	—	(383)	—	(4)	—	—	—

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**MAJESCO ENTERTAINMENT COMPANY AND SUBSIDIARY
CONSOLIDATED STATEMENT OF STOCKHOLDERS' EQUITY (continued)
(in thousands, except share amounts)**

	Common Stock —\$.001 par value		Sales A Preferred Stock —\$.001 par value		7% Preferred Stock —\$.001 par value		Additional Paid In Capital	Accumulated Deficit	Accumulated Other Comprehensive Loss	Total Stockholders' Equity
	Number	Amount	Number	Amount	Number	Amount				
Reclassification of warrant liability	—	—	—	—	—	—	39,189	—	—	39,189
Issuance of stock options for services rendered	—	—	—	—	—	—	26	—	—	26
Value of warrants issued to investors	—	—	—	—	—	—	2,182	(2,182)	—	—
Non-cash stock option compensation	—	—	—	—	—	—	316	—	—	316
Preferred dividend payable in common stock	—	—	—	—	—	—	—	(1,261)	—	(1,261)

Net loss							(11,186)	—	(11,186)	
Foreign currency translation adjustment	—	—	—	—	—	—	—	(18)	(18)	
Total comprehensive loss	—	—	—	—	—	—	—	—	11,204	
Balance — October 31, 2004	15,403,704	15	—	—	—	—	29,194	(15,388)	(36)	13,785
Issuance of common stock in connection with:										
Secondary offering (net of underwriting discounts, commissions and expenses of \$4,148)	3,682,176	4	—	—	—	—	41,875	—	—	41,879
Exercise of warrants at \$5.95 (net of expenses of \$488)	1,171,418	1	—	—	—	—	7,581	(1,100)	—	6,482
Exercise of warrants at \$7.00 (net of expenses of \$1,111)	1,889,985	2	—	—	—	—	12,106	—	—	12,108
Issuance of common stock as dividend on preferred stock	78,283	—	—	—	—	—	1,261	—	—	1,261
Non-cash director compensation	16,246	—	—	—	—	—	80	—	—	80
Settlement obligation related to predecessor company	664	—	—	—	—	—	(1,235)	—	—	(1,235)
Non-cash compensation charges	—	—	—	—	—	—	1,296	—	—	1,296
Net loss	—	—	—	—	—	—	—	(70,900)	—	(70,900)
Foreign currency translation adjustment	—	—	—	—	—	—	—	—	5	5
Total comprehensive loss	—	—	—	—	—	—	—	—	—	(70,895)
Balance — October 31, 2005	22,242,476	\$ 22	—	\$ —	—	\$ —	\$92,158	\$ (87,388)	\$ (31)	\$ 4,761

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MAJESCO ENTERTAINMENT COMPANY AND SUBSIDIARY
CONSOLIDATED STATEMENT OF CASH FLOWS
(dollars in thousands,)

	Year Ended October 31,		
	2005	2004	2003
CASH FLOWS FROM OPERATING ACTIVITIES			
Net loss	\$ (70,900)	\$ (11,186)	\$(10,841)
Adjustments to reconcile net loss to net cash used in operating activities:			
Change in fair value of warrants	—	18,459	—
Depreciation and amortization	893	439	356
Amortization of capitalized software development costs and prepaid licenses fees	22,717	19,091	5,631
Non-cash compensation expense	1,376	342	—
Write-off of accounts receivable.	322	577	—
Loss (gain) on settlements	1,437	(1,200)	4,908
Loss on impairment of software development costs	26,281	—	3,656
Changes in operating assets and liabilities			
Decrease (increase) in due to/from factor – net	15,834	(9,472)	2,914
Decrease (increase) in inventory	4,696	(1,760)	(8,286)
Increase in capitalized software development costs and prepaid license fees	(52,879)	(30,823)	(7,938)
Increase in income tax receivable	(826)	—	—
Decrease in prepaid expenses	323	150	120
Decrease (increase) in other assets	114	(368)	(76)
(Decrease) increase in accounts payable and accrued expenses	(1,492)	11,847	(821)
(Decrease) increase in advances from customers	(1,687)	(9,453)	7,503
Payment of settlement obligations	(1,235)	(5,510)	—
Net cash used in operating activities	(55,026)	(18,867)	(2,874)
CASH FLOWS FROM INVESTING ACTIVITIES			
Purchases of property and equipment	(451)	(319)	(152)
Net cash used in investing activities	(451)	(319)	(152)
CASH FLOWS FROM FINANCING ACTIVITIES			
Net proceeds from secondary offering	41,879	—	—
Net proceeds from exercise of warrants at discount	6,482	—	—
Net proceeds from exercise of warrants	12,108	—	—
Repayments on loan -- bank – net	—	—	(2,360)
Inventory financing	(6,750)	3,684	2,601
(Repayments) borrowings -- loans from stockholders – net	—	(2,562)	2,295
Principal payments on capital lease obligations	—	(41)	(44)
(Repayment to) advances from officer – net	—	(200)	200

Proceeds from private placement, net of expenses	—	21,179	—
Convertible loan from related party	—	1,000	—
Net cash provided by investing activities	53,719	23,060	2,692
Effect of exchange rates on cash and cash equivalents	(5)	(18)	(44)
Net (decrease) increase in cash	(1,763)	3,856	(378)
Cash and cash equivalents -- beginning of year	4,170	314	692
Cash and cash equivalents -- end of year	\$ 2,407	\$ 4,170	\$ 314
SUPPLEMENTAL CASH FLOW INFORMATION			
Cash paid during the year for interest	\$ 1,869	\$ 2,806	\$ 1,892
Cash paid during the year for income taxes	\$ 1,325	\$ 240	—
SUPPLEMENTAL SCHEDULE OF NON CASH INVESTING AND FINANCING ACTIVITIES			
Issuance of 100 units of the 7% preferred stock and warrants in connection with			
Settlement of loans from stockholders	—	\$ 1,000	—
Fair value charge for warrants exercised at discount	\$ 1,100	—	—
Issuance common stock as repayment of loan from related party	—	\$ 1,000	—
Issuance of common stock as a dividend on the preferred stock	\$ 1,261	—	—
Deemed dividend arising from beneficial conversion feature of the preferred stock	—	\$ 759	—
Dividend declared on preferred stock payable in common stock	—	\$ 1,261	—
Fair value of warrants issued in connection with lock-up agreement	—	\$ 2,182	—

See accompanying notes

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MAJESCO ENTERTAINMENT COMPANY AND SUBSIDIARY NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

1. BASIS OF PRESENTATION

On December 3, 2003, the Company consummated a merger (the “Merger”) with Majesco Sales Inc. (“MSI”). Pursuant to the Merger, MSI became a wholly-owned subsidiary. As a result of the Merger, the former stockholders of MSI were the controlling stockholders of the Company. Prior to the Merger, the Company had no substantial assets. Accordingly, the transaction was treated for accounting purposes as a reverse acquisition of a public shell, and the transaction has been accounted for as a recapitalization of MSI, rather than a business combination. Therefore, the historical financial statements of MSI are the historical financial statements of the Company and historical stockholders' equity of MSI has been restated to reflect the recapitalization. Pro forma information has not been presented since the transaction is not a business combination.

On April 4, 2005, the Company and its principal subsidiary merged and in connection with this merger, changed its name to Majesco Entertainment Company.

The Company's net revenues for 2005 were \$59.7 million compared to \$121.0 million for the prior year. The decrease reflects weak sales across all of the Company product lines. As a result of this weakness in the sales environment, the Company increased its provision for price protection. The Company's gross loss of \$1.4 million in 2005 versus a gross profit of \$34.7 million in the prior year reflects its inability to recoup the software development costs for premium products and the reserves related to slow moving inventory. Management has revised the Company's business model and shifted its product strategy away from capital intensive premium console games to a focus on value products and lower-cost games for handheld systems. In connection with our shift in strategy, Management evaluated the Company's existing portfolio of premium console title in development and decided to sell certain rights or to cancel a number of these games. Accordingly, operating expenses includes provisions for impairment of capitalized software costs and license fees related to products terminated as well as severance costs and a loss on a settlement. As a result, the Company sustained an operating loss of \$70.2 million for 2005, versus operating income of \$12.1 million for the prior year and the Company's working capital and net worth were materially reduced.

In September 2005, the factor, the Company's principal source of financing, imposed a limitation on cash advances and letters of credit to \$7.5 million and \$2.0 million for letters of credit. Previously, advances under our factoring arrangement, including letters of credit were limited to \$30 to \$35 million in the aggregate. The Company subsequently negotiated with the factor to increase the availability to \$16 million in cash advances including \$10 million for letters of credit. Management is also in the process of evaluating alternatives to the current factoring arrangement, including additional sales of rights, issuance of additional equity or debt financing and/or loans from financial institutions.

Although, management believes that alternative forms of financing may be available, there can be no assurance that funds will be available on acceptable terms, if at all. While management has already significantly reduced expenditure levels, in the event that we are unable to maintain our current factoring arrangement or negotiate alternative financing, or negotiate terms that are acceptable to us, we may be forced to further materially modify our business plan, including making further reductions in expenditures. Management believes

it can make additional cuts if necessary, and that it can operate under the existing level of financing for at least one year. However, if the current level of financing was reduced and the Company was unable to obtain alternative financing, it could create a material effect on future operating prospects.

2. PRINCIPAL BUSINESS ACTIVITY

Majesco Entertainment Company and subsidiary (“Majesco” or “Company”) is a provider of interactive entertainment products. The Company’s offerings include video game software, videos and peripherals.

Majesco’s products provide it with opportunities to capitalize on the large and growing installed base of interactive entertainment platforms and an increasing number of interactive entertainment

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MAJESCO ENTERTAINMENT COMPANY AND SUBSIDIARY NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

enthusiasts. The Company sells its products directly and through resellers primarily to U.S. retail chains, including Best Buy, Electronics Boutique, GameStop, Kmart, Target, Toys “R” Us and Wal-Mart. Majesco also sells products internationally through partnerships with international publishers. The Company has developed retail and distribution network relationships over a 19-year history.

Majesco provides offerings for all major current generation interactive entertainment hardware platforms, including Nintendo’s Game Boy Advance, or GBA, DS, Micro and GameCube, Sony’s PlayStation 2, or PS2, and PlayStation Portable, or PSP, Microsoft’s Xbox and the personal computer, or PC.

3. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Principles of Consolidation. The accompanying consolidated financial statements include the accounts of the Company and its wholly owned subsidiary. Significant intercompany accounts and transactions have been eliminated in consolidation.

Revenue Recognition. The Company recognizes revenue upon shipment of its product when title, risk of loss are transferred and persuasive evidence of an arrangement exists. In order to recognize revenue, the Company must not have any continuing obligations and it must also be probable that the Company will collect the accounts receivable. Revenues, including sales to resellers and distributors, are recognized when these conditions are met.

For those agreements, which provide customers with the right to multiple copies in exchange for guaranteed minimum royalty amounts, revenue is recognized at delivery of the product master or the first copy since the Company has no continuing obligations including requirements for duplication. Royalties on sales that exceed the guaranteed minimum are recognized as earned.

The Company generally sells its products on a no-return basis, although in certain instances, the Company may provide price protection or other allowances on certain unsold products. Price protection, when granted and applicable, allows customers a partial credit against amounts they owe the Company with respect to merchandise unsold by them. Revenue is recognized net of estimates of these allowances.

The Company estimates potential future product price protection and other allowances related to current period product revenue. The Company analyzes historical experience, current sell through of retailer inventory of the Company’s products, current trends in the video game market, the overall economy, changes in customer demand and acceptance of the Company’s products and other related factors when evaluating the adequacy of price protection and other allowances.

Sales incentives or other consideration given by the Company to customers that are considered adjustments of the selling price of its products, such as rebates and product placement fees, are reflected as reductions of revenue. Sales incentives and other consideration that represent costs incurred by the Company for assets or services received, such as the appearance of the Company’s products in a customer’s national circular ad, are reflected as selling and marketing expenses.

Shipping and handling, which consist principally of packaging and transportation charges incurred to move finished goods to customers, amounted to \$1.1 million, \$1.7 million and \$811,000, and are included in selling expenses for the years ended October 31, 2005, 2004 and 2003, respectively.

Software Development Costs and Intellectual Property Licenses. Software development costs include milestone payments made to independent software developers under development arrangements. Software development costs are capitalized once technological feasibility of a product is established and it is determined that such costs should be recoverable against future revenues. For products where proven game engine technology exists, this may occur early in the development cycle. Technological feasibility is evaluated on a product-by-product basis. Amounts related to software

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MAJESCO ENTERTAINMENT COMPANY AND SUBSIDIARY
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

development that are not capitalized are charged immediately to product research and development costs. Prepaid license fees represent license fees to holders for the use of their intellectual property rights in the development of our products. Minimum guaranteed royalty payments for intellectual property licenses are initially recorded as an asset (prepaid license fees) and a current liability (accrued royalties payable) at the contractual amount upon execution of the contract when no significant performance remains with the licensor. Capitalized software development costs classified as non-current relate to titles for which we estimate the release date to be more than one year from the balance sheet date.

Commencing upon the related product's release, capitalized software development and prepaid license fees are amortized to cost of sales based upon the higher of (i) the ratio of current revenue to total projected revenue or (ii) the straight-line method. The amortization period is usually no longer than one year from the initial release of the product. The recoverability of capitalized software development costs and prepaid license fees is evaluated based on the expected performance of the specific products for which the costs relate. The following criteria are used to evaluate expected product performance: historical performance of comparable products using comparable technology; orders for the product prior to its release; and estimated performance of a sequel product based on the performance of the product on which the sequel is based.

Significant management judgments and estimates are utilized in the assessment of when technological feasibility is established, as well as in the ongoing assessment of the recoverability of capitalized costs. If revised forecasted or actual product sales are less than and/or revised forecasted or actual costs are greater than the original forecasted amount utilized in the initial recoverability analysis, the net realizable value may be lower than originally estimated in any given quarter, which could result in an impairment charge.

As of October 31, 2005, we charged operations \$26.3 million to write-off all capitalized costs related to video games for which development was stopped. We also charged \$10.5 million to cost of sales to recognize impairments in the carrying value for games released for which sales were significantly below expectations.

Advertising Expenses. The Company generally expenses advertising costs as incurred except for production costs associated with media campaigns which are deferred and charged to expense at the first run of the ad. Advertising costs charged to operations were \$7.1 million, \$3.6 million and \$2.9 million for the years ended October 31, 2005, 2004, and 2003, respectively.

Income taxes. The Company accounts for income taxes under the asset and liability method using Statement of Financial Accounting Standards ("SFAS") No. 109, "Accounting for Income Taxes." Deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases and operating loss and tax credit carryforwards. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in income in the period that includes the enactment date.

Prior to November 1, 2003, the Company elected to be treated as an S Corporation under the provisions of the Internal Revenue Code. Accordingly, there is no provision for federal income taxes fiscal year 2003 because such liability was the responsibility of the individual stockholders. Effective November 1, 2003, the Company revoked its S Corporation election. On that date the Company became subject to federal income taxes and accordingly, the Company reclassified \$16 million of undistributed losses from "accumulated deficit" to "additional paid in capital". No pro forma provision for income taxes has been provided in the accompanying consolidated statement of operations for 2003 due to the Company's history of operating losses.

MAJESCO ENTERTAINMENT COMPANY AND SUBSIDIARY
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

For year ended October 31, 2005, the Company recorded a benefit for net operating loss carrybacks, net of a full valuation allowance against net deferred tax assets. Based upon the Company's current operating results, management has concluded that it is more likely than not that such assets will not be realized.

Stock Based Compensation. The Company follows the provisions of SFAS No. 123, "Accounting for Stock-Based Compensation" ("SFAS 123") and SFAS No. 148, "Accounting for Stock-Based Compensation, Transition and Disclosure" ("SFAS 148"). The provisions of SFAS 123 allow companies either to expense the estimated fair value of stock options or to continue to follow the intrinsic value method set forth in Accounting Principles Board Opinion No. 25, "Accounting for Stock Issued to Employees" ("APB 25"), but disclose the pro forma effects on net income (loss) had the fair value of the options been expensed. The Company has elected to apply APB 25 in accounting for its stock option incentive plans. The provisions of SFAS 148 require that

disclosures of the pro forma effect of using the fair value method of accounting for stock-based employee compensation be displayed prominently and in a tabular format. See the table below and Note 12 for the disclosures required by SFAS 123 and SFAS 148.

In accordance with APB 25 and related interpretations, compensation expense for stock options is recognized in income based on the excess, if any, of the quoted market price of the stock at the grant date of the award or other measurement date over the amount an employee must pay to acquire the stock. Generally, the exercise price for stock options granted to the Company's employees equals or exceeds the fair market value of the Company's common stock at the date of grant, thereby resulting in no recognition of compensation expense. For awards that generate compensation expense as defined under APB 25, the Company calculates the amount of compensation expense and recognizes the expense over the vesting period of the award.

Had compensation cost for the Company's stock option plan been determined based on the fair value method set forth in SFAS 123, the Company's net loss and per share amounts for the years ended October 31, 2005 and 2004 would approximate the pro forma amounts indicated below:

	(in thousands except per share amounts)	
	2005	2004
Net loss — as reported	\$ (70,900)	\$ (11,186)
Less: Intrinsic value of stock based compensation included in net loss as reported	1,376	190
Add: Stock based employee compensation determined under fair value based method net of income tax effect	(2,339)	(2,053)
Net loss — pro forma	\$ 71,863	\$ (13,049)
Net loss attributable to common stockholders per share:		
Basic and diluted-as reported	\$ (3.44)	\$ (1.84)
Basic and diluted-pro forma	\$ (3.49)	\$ (2.06)

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**MAJESCO ENTERTAINMENT COMPANY AND SUBSIDIARY
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

The fair value of each option grant is estimated on the date of grant using the Black-Scholes option-pricing model with the following assumptions:

Risk free interest rate (annual)	Various rates ranging from 2.71% to 3.85% at date of grant
Expected volatility	30% and 90%
Expected life	5 years
Assumed dividends	None

Cash and cash equivalents. Cash equivalents consist of highly liquid investments with insignificant rate risk and with maturities of three months or less at the date of purchase.

At various times, the Company had deposits in excess of the Federal Deposit Insurance Corporation limit. The Company has not experienced any losses on these accounts.

Inventory. Inventory, which consists of finished goods, is stated at the lower of cost as determined by the first-in, first-out method, or market. The Company estimates the net realizable value of slow-moving inventory on a title-by-title basis and charges the excess of cost over net realizable value to cost of sales.

Property and equipment. Property and equipment is stated at cost. Depreciation and amortization is being provided for by the straight-line method over the estimated useful lives of the assets. Amortization of leasehold improvements is provided for over the shorter of the term of the lease or the life of the asset.

Estimates. The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities or the disclosure of gain or loss contingencies at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Among the more significant estimates included in these financial statements are the estimated customer allowances, the valuation of inventory and the recoverability of advance payments for software development costs and intellectual property licenses. Actual results could differ from those estimates.

Foreign Currency Translation. The functional currency of the Company's foreign subsidiary is its local currency. All assets and liabilities of the Company's foreign subsidiary are translated into U.S. dollars at the exchange rate in effect at the end of the year, and revenue and operating expenses are translated at weighted average exchange rates during the year. The resulting translation adjustments are included in accumulated other comprehensive loss in the statement of stockholders' equity.

Loss per share. Basic loss per common share is computed by dividing net loss applicable to common stockholders by the weighted-average number of shares of common stock outstanding for the period. Diluted loss per common share has not been presented for the periods because the impact of the conversion or exercise, as applicable, of the following warrants, stock options, placement agent warrants and lock-up warrants would be antidilutive.

	October 31,	
	2005	2004
Warrants	871,429	3,832,857
Stock options	1,820,550	1,646,893
Placement agent warrants	665,739	765,714
Lock-up warrants	526,377	526,377

In addition, as appropriate, all financial information presented reflects the one-for-seven reverse stock split of our common stock, which occurred on December 31, 2004.

Recent accounting pronouncements. The Financial Accounting Standards Board (“FASB”) issued SFAS 123(R), “Share-Based payment,” which will require all companies to measure compensation

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**MAJESCO ENTERTAINMENT COMPANY AND SUBSIDIARY
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

costs for all share-based payments, including employee stock options, at fair value. This statement will be effective for the Company with the quarter beginning November 1, 2005. We adopted SFAS 123(R) on November 1, 2005. Statement 123R permits public companies to adopt its requirements using either the modified prospective or modified retrospective transition method. We have decided to use the modified prospective transition method, which require that compensation cost is recognized for all awards granted, modified or settled after the effective date as well as for all awards granted to employees prior to the effective date that remain unvested as of the effective date. We expect that our adoption of SFAS 123(R) will have a material adverse impact on our consolidated financial statements. However, uncertainties such as stock price volatility, estimated forfeitures and employee stock option exercise behavior, make it difficult to determine whether future stock-based compensation expenses will be similar to the pro forma expenses disclosed in Note 3 to the Consolidated Financial statements.

In June of 2005, the FASB issued Statement of Financial Accounting Standards No. 154, (“SFAS 154”), “Accounting Changes and Error Corrections, a replacement of APB Opinion No. 20, “Accounting Changes” and FASB Statement No. 3, “Reporting Accounting Changes in Interim Financial Statements.” SFAS 154 applies to all voluntary changes in accounting principle and changes the requirements for accounting for and reporting a change in accounting principle. SFAS 154 requires the retrospective application to prior periods’ financial statements of the direct effect of a voluntary change in accounting principle unless it is impracticable. APB No. 20 required that most voluntary changes in accounting principle be recognized by including in net income of the period of the change the cumulative effect of changing to the new accounting principle. The Company does not believe that the adoption of SFAS 154 will have a material effect on its results of operations or financial position.

The Company does not believe that any other recently issued, but not yet effective accounting standards will have a material effect on the Company's consolidated financial position, results of operations or cash flows.

4. FACTORED RECEIVABLES

The Company uses a factor to approve credit and to collect the proceeds from a substantial portion of its sales. The Company also utilizes purchase order financing through the factor to provide funding for the manufacture of its products (see Note 6). In connection with these arrangements, the factor has a security interest in substantially all of the Company's assets. In addition, certain officers of the Company provide limited personal guarantees in connection with these arrangements.

Under the terms of the agreement, the Company assigns to the factor and the factor purchases from the Company eligible accounts receivable.

The factor, in its sole discretion, determines whether or not it will accept a receivable based on its assessment of credit risk. Once a receivable is accepted by the factor, the factor assumes substantially all of the credit risk associated with the receivable. The factor is required to remit payments to the Company for the assigned accounts receivable in accordance with the terms of the assigned invoice, regardless of whether the factor receives payment on the receivable, so long as the customer does not have a valid dispute related to the invoice. The amount remitted to the Company by the factor equals the invoiced amount adjusted for allowances and discounts the Company has provided to the customer. The factor charges 0.5% of invoiced amounts for these credit and collection services.

In addition, the Company may request that the factor provide cash advances based upon the Company's accounts receivable and inventory. The factor may either accept or reject the request for advances in its discretion. Amounts to be advanced to the Company by the factor for any assigned receivable are offset by any amounts previously advanced by the factor. As of October 31, 2005, the factor was advancing approximately 70% of the eligible accounts receivable and also is advancing approximately 25% of inventory, up to a maximum of \$1.5 million. Total advances under the factoring arrangement include letters of credit for purchase order financing (see Note 6) and is limited to

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MAJESCO ENTERTAINMENT COMPANY AND SUBSIDIARY
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

\$16 million in cash advances including \$10 million for letters of credits. The interest rate is prime plus 1.5% on 50% of advances and the rate on the balance is the greater of (i) 18% per annum, or (ii) the lesser of (a) the prime rate plus 11.25% per annum or (b) 20% per annum. The factor's charges and interest expense on the advances are included in "interest and financing costs" in the accompanying consolidated statement of operations.

Due from (to) factor consists of the following:

	October 31, (in thousands)	
	2005	2004
Accounts receivable sold to factor	\$ 4,842	\$ 36,654
Less: allowances	(9,551)	(4,860)
advances from factor	(1,634)	(22,303)
	\$ (6,343)	\$ 9,491

The following table sets forth the adjustments to the price protection and other customer sales incentive allowances included as a reduction of the amounts due from factor:

	Year Ended October 31, (in thousands)		
	2005	2004	2003
Balance — beginning of year	\$ (4,860)	\$ (2,173)	\$ (4,666)
Add: provisions	(15,091)	(6,664)	(5,175)
Less: amounts charged against allowance	10,400	3,977	7,668
Balance — end of year	\$ (9,551)	\$ (4,860)	\$ (2,173)

5. ACCOUNTS PAYABLE AND ACCRUED EXPENSES

The following table represents the major components of accounts payable and accrued expenses:

	October 31, (in thousands)	
	2005	2004
Accounts payable-trade	\$ 9,563	\$ 9,373
Royalties	5,634	5,777
Income taxes	—	1,271
Sales commissions	467	1,255
Salaries and other compensation	1,481	1,154
Other accruals	1,348	1,155
	\$ 18,493	\$ 19,985

6. INVENTORY FINANCING PAYABLE

The Company has arrangements with its factor and a finance company for purchase order financing in order to provide letters of credit necessary for the manufacture of our products. Manufacturers require the Company to present letters of credit in order to manufacture the products required under purchase orders from the Company's customers. The Company utilizes letters of credit from a finance company, which charges 3.3% of the purchase order amount for each transaction for 60 days. The Company's factor also provides letters of credit for which the factor charges 0.5% of the purchase order amount for 30 days. Additional charges are incurred if the letters of credit remain outstanding in excess of the original time period and/or the financing company is not paid at the time the products are received.

**MAJESCO ENTERTAINMENT COMPANY AND SUBSIDIARY
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

7. ADVANCES FROM CUSTOMERS

In certain instances, customers and distributors have agreed to provide the Company with cash advances on their orders. These advances (\$484,000 and \$2.2 million at October 31, 2005 and 2004, respectively) are then applied against future sales to these customers.

8. SETTLEMENT OBLIGATION

In August 2003, the U.S. District Court of Massachusetts, in *Infogrames Interactive, Inc. v. Majesco Sales Inc.*, entered judgment against MSI in the approximate amount of \$6.7 million pursuant to a breach of contract action. In December 2003, the Company settled the case by agreeing to pay Atari Interactive, Inc. (Infogrames Interactive, Inc.) ("Atari") \$6.7 million as follows: (a) \$1 million no later than two weeks after signing of the settlement agreement (the "Effective Date"); (b) \$2.5 million upon the first to occur of (1) the Company receiving a total of \$15 million or more in third party financing (subject to various terms and conditions) (the "Financing Date") or (2) June 30, 2004; (c) \$1 million on the earlier of one year from the Financing Date or June 30, 2005, with interest at 5% per annum; and (d) \$2.2 million on a date which was to be 42 months from the Effective Date, such payment accruing interest at the rate of 5% per annum from the earlier of the Financing Date or June 30, 2004. The Company borrowed \$1 million to make the initial payment, and, as a result of the private placement (See Note 9) the Company paid \$2.5 million and \$500,000 all in accordance with the terms of the settlement.

In May 2004, in exchange for a one-time payment of \$1.5 million by the Company in settlement of the remaining obligations (resulting in a \$1.2 million gain), Atari agreed to release the Company from (i) any further obligations; (ii) all restrictions contained in the settlement agreement; and (iii) all obligations of any nature whatsoever with regard to the judgment.

9. PRIVATE PLACEMENT AND SECONDARY OFFERING

On February 26, 2004, the Company completed a private placement of securities in which the Company raised \$25.8 million in gross proceeds from a group of institutional and accredited investors. The private placement resulted in net proceeds of \$21.2 million after deducting the placement agent fees and other related expenses. In addition, the placement agent received warrants to purchase up to 268 of similar units, exercisable for five years from the date of issuance.

Pursuant to the terms of the private placement, the Company issued 2,583 units, each unit consisting of (i) one share of 7% convertible preferred stock, convertible into 1,428 shares of common stock and (ii) a three year warrant to purchase 1,428 shares of common stock at an exercise price of \$7.00 per share.

The Company used \$3.3 million of the net proceeds to pay certain creditors, including \$2.5 million for a previously negotiated settlement amount to Atari and \$2.5 million to repay portions of loans previously made to the Company by two of the Company's executive officers. In order to satisfy the remaining balance of the aforementioned loan, the Company agreed to issue to the executive officers, in the aggregate, 100 units. The Company used the remaining balance of the proceeds for working capital purposes.

The Company recorded a deemed dividend of \$759,000 for the year ended October 31, 2004, relating to the beneficial conversion feature attributable to the 7% preferred stock, after deducting the fair value of the warrants issued. The deemed dividend increased the loss attributable to common stockholders in the calculation of basic and diluted net loss per common share.

Each share of 7% preferred stock automatically converted into common stock at a conversion price of \$7.00 per share as of October 29, 2004, the effective date of a registration statement as to the resale of the common stock underlying the 7% preferred stock and the warrants. Each share of 7%

**MAJESCO ENTERTAINMENT COMPANY AND SUBSIDIARY
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

preferred stock entitled the holder to receive a 7% cumulative dividend payable solely in shares of common stock, on an annual basis. As of October 31, 2004, the Company recorded a liability of \$1.3 million for the 78,283 shares of common stock to be issued for the dividend accrued during the period prior to the conversion of the preferred stock. The dividend was paid on November 15, 2004.

In connection with the private placement, the holders of the Series A preferred stock surrendered an aggregate of 50,301 shares of their Series A convertible preferred stock, which were convertible into 3,571,421 shares of common stock. On April 13, 2004, the Company amended its Certificate of Incorporation to increase its authorized common stock to 250,000,000 shares and the holders of the Series A preferred stock converted their remaining 81,841 shares into 5,810,721 shares of common stock. Effective February 17, 2004, in order to assist the Company in its financing efforts, the former holders of the Series A Preferred Stock agreed to place an aggregate of 142,857 shares (35,714 each) of common stock received in the Merger into escrow for five years to satisfy certain claims that may arise in the future as a result of the merger.

In accordance with Emerging Issues Task Force Issue 00-19, referred to as EITF 00-19, "Accounting for Derivative Financial Instruments Indexed To, and Potentially Settled in, a Company's Own Stock," the Company initially accounted for the fair value of \$21 million for the warrants as a liability since the Company would have incurred substantial penalties if it had not complied on a timely basis with the warrant holders' registration rights. The fair value of the warrants was calculated utilizing the Black-Scholes option-pricing model.

As a result of changes in the market value of the Company's common stock from the closing date through October 29, 2004, the effective date of the registration statement relating to the resale of the shares of common stock underlying the warrants, the Company recorded a non-cash charge of \$18.5 million to reflect the associated change in value of the warrants during the period. As of the effective date of the resale registration statement, the fair value of \$39.2 million for the warrants was reclassified to equity pursuant to paragraph 10 of EITF 00-19. Accordingly, the company recorded a non-cash charge of \$1.1 million to recognize the exercise of warrants. The charge reduced net income attributable to common stockholders.

The Company has the right to call the warrants issued in the private placement for \$.007 per share of common stock underlying the warrants. In September 2004, in exchange for new warrants to purchase an aggregate of 263,520 shares of common stock, exercisable at \$21.00 per share and expiring on September 15, 2007, the holders' agreed to restrict the disposition of their shares of the Company's common stock underlying the units ("lock-up"), the Company agreed with the holders to not call the warrants until the lock-up was no longer in effect. The lock-up expired January 31, 2005. The Company entered into similar lock-up agreements with the holders of 1,368,348 shares of common stock and a holder of 262,857 shares underlying warrants and convertible securities.

Warrants issued to these holders are exercisable for an aggregate of 163,120 shares. The Company recorded in the year ended October 31, 2004, a \$2.2 million charge to reflect the fair value of the warrants issued in lock-up agreements. This charge increased the loss attributable to common stockholders in the calculation of basic and diluted net loss per common share.

The warrants issued in connection with the lock-up are callable at the Company's option if the price of common stock is at least \$35.00 per share for 60 consecutive days, the average daily trading volume for such period is at least 10,714 shares and the sale of the underlying common stock is registered.

In December 2004, the Company offered certain holders who were eligible, in accordance with rules promulgated by the Securities and Exchange Commission, the right to exercise warrants to purchase 1,171,418 shares of common stock at a reduced exercise price of \$5.95 per share. The warrants were initially issued in the February 2004 private placement and exercisable at \$7.00 per share. The Company received proceeds from the exercise of \$6.5 million. As a result of this

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**MAJESCO ENTERTAINMENT COMPANY AND SUBSIDIARY
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

transaction, the Company recorded a non-cash charge to "Additional Paid in Capital" of \$1.1 million to recognize the exercise of warrants at a reduced exercise price. This charge is also reflected in net loss attributable to common stockholders in the calculation of earnings (loss) per share.

On January 31, 2005, the Company completed a \$75 million secondary offering, resulting in approximately \$41.9 million in net proceeds to the Company through the sale of 3,682,176 shares of common stock. In addition, certain existing stockholders sold an aggregate of 2,317,824 shares in the offering for which the Company did not receive the proceeds. However, the Company received approximately \$11.3 million of net proceeds from the exercise of 1,768,559 warrants by the selling stockholders at an exercise price of \$7 per share, which were previously issued in the Company's February 2004 private placement. In April 2005, the Company's common stock began trading on the NASDAQ National Market System under the ticker symbol "COOL".

During the three months ended April 30, 2005 the Company received \$790,000 from the exercise of 121,426 warrants which were issued in the private placement.

10. INCOME TAXES

The provision for income (loss) before taxes for the year ended October 31, 2005 consists of:

(000's omitted)

	2005	2004
Current:		
Federal	\$ 578	\$ 1,251
State	—	299
Deferred:		
Federal	(22,943)	(126)
State	(4,626)	—
Less: valuation allowance	25,784	—
	<u>\$ (1,207)</u>	<u>\$ 1,424</u>

The difference between income taxes computed at the statutory federal rate and the provision for income taxes for 2005 and 2004, relates to the following

	2005		2004	
	(000's omitted) Amount	Percent of Pretax income	(000's omitted) Amount	Percent of Pretax income
Tax benefit at federal statutory rate	\$ (24,516)	(34)%	\$ (3,319)	(34)%
State income taxes, net of federal income taxes	(4,625)	(7)%	102	1
Non-deductible charge for change in fair value of warrants	—	—	6,276	65
Net operating loss carry forwards	—	—	(289)	(3)
Change in valuation allowance	25,783	36%	(1,243)	(13)
Other	2,151	3%	(103)	(1)
	<u>\$ (1,207)</u>	<u>(2)%</u>	<u>\$ 1,424</u>	<u>15%</u>

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**MAJESCO ENTERTAINMENT COMPANY AND SUBSIDIARY
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

The tax effects of temporary differences and the valuation allowance that give rise to deferred income tax assets were as follows:

	October 31, (000's omitted)	
	2005	2004
Impairment of capitalized software development costs and prepaid license fees not currently deductible	\$ 12,584	\$ —
Impairment of inventory	1,734	—
Compensation expense not deductible until options are exercised	—	126
Net operating loss carry forward	11,466	—
Less valuation allowance	(25,784)	—
Deferred tax asset	<u>\$ —</u>	<u>\$ 126</u>

Realization of deferred tax assets, including those related to net operating loss carryforwards, are dependent upon future earnings, if any, of which the timing and amount are uncertain. Accordingly, the net deferred tax assets have been fully offset by a valuation allowance.

Utilization of the net operating loss carryforwards may be subject to a substantial annual limitation due to the "change in ownership" provisions of the Internal Revenue Code. The annual limitation may result in the expiration of net operating loss carryforwards before utilization. The net operating loss carryforwards for income tax purposes at October 31, 2005 amounts to approximately \$25.8 million and expires in 2025. In addition, expenses of approximately \$31 million for financial reporting will not be deductible for income tax purposes until future periods.

11. STOCK-BASED COMPENSATION ARRANGEMENTS

On February 13, 2004, the stockholders approved a stock option plan that provides for the granting of options to purchase the Company's common stock. The plan covers employees, directors and consultants and provides for among other things, the issuance of non-qualified options and incentive stock options. As of October 31, 2004, the Company has reserved 15 million shares of common stock for issuance under the plan.

A summary of the status of the Company's options as of October 31, 2005 and changes during the year then ended is presented below:

	2005		2004	
	Number Of Shares	Weighted Average Exercise Price	Number Of Shares	Weighted Average Exercise Price
Outstanding at beginning of year	1,646,893	\$ 17.57	—	—
Granted	1,427,364	5.36	1,692,533	\$ 17.50
Canceled	(1,253,707)	18.38	(45,640)	13.30
Outstanding at end of year	1,820,550	\$ 8.45	1,646,893	\$ 17.57
Options exercisable at year-end	239,290	\$ 18.69	440,318	\$ 18.69
Weighted-average fair value of options granted during the year		\$5.36		\$6.37

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**MAJESCO ENTERTAINMENT COMPANY AND SUBSIDIARY
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

The following table summarizes information about stock options at October 31, 2005:

Range Of Exercise Prices	Options Outstanding			Options Exercisable	
	Number Outstanding	Weighted-Average Remaining Contractual Life (Years)	Weighted-Average Exercise Price	Number Exercisable	Weighted-Average Exercise Price
\$1.43 and \$2.80	92,850	9.9	\$ 1.87	15,000	\$ 2.80
\$3.20	932,662	9.9	3.20	—	—
\$7.23 to \$8.16	215,500	9.5	7.64	31,111	7.73
\$12.67 and \$13.30	486,686	8.5	13.28	171,752	13.25
\$14.00 to \$28.00	92,852	8.5	19.44	21,427	21.31
\$1.43 to \$28.00	1,820,550	9.5	\$ 7.11	239,290	\$ 5.10

On June 8, 2005, our stockholders and Board of Directors approved the amendment and restatement to our 2004 Employee, Director and Consultant Stock Plan (renamed 2004 Employee, Director and Consultant Incentive Plan) to: (a) increase the number of shares of common stock reserved for issuance under the Plan by 4 million; (b) add a share counting formula to the Plan pursuant to which each share issued under awards other than options or stock appreciation rights counts against the number of total shares available under the Plan as 1.3 shares, and each share issued as options or stock appreciation rights counts against the total shares available under the Plan as one share; (c) increase the share limitation on the number of awards that may be granted to any participant in any fiscal year to 1,000,000; (d) add provisions for the grant of cash awards and other types of equity based awards; and (e) delete a provision allowing for the repricing of awards.

12. EMPLOYEE RETIREMENT PLAN

The Company has a defined contribution 401(k) plan covering all eligible employees.

The Company charged to operations \$50,000, \$69,000 and \$162,000 for contributions to the retirement plan for the year ended October 31, 2005, 2004 and 2003 respectively.

Certain stockholders and key employees of the Company serve as trustees of the plan.

13. MAJOR CUSTOMERS

Sales to Wal-Mart, Inc. represented 34% and 27% of net revenues in 2005 and 2004, respectively. Sales to Toys ‘‘R’’ Us Inc. represented 23%, 25% and 32% of net revenues in 2005, 2004 and 2003, respectively. Sales to Jack of All Games, Inc. a subsidiary of Take-Two interactive Software, Inc. represented 16% of net revenues in both 2004.

14. CONTINGENCIES AND COMMITMENTS

Commitments

At February 1, 2006 the Company was committed under agreements with certain developers for future milestone payments aggregating \$7.5 million excluding games sold in December 2005. Milestone payments represent scheduled installments due to the Company's developers based upon the developers providing the Company certain deliverables, as predetermined in the Company's contracts. In addition, the Company may have to pay royalties for products sold. These payments will be used to reduce future royalties due to the developers

from sales of the Company's videogames.

The Company is obligated under noncancelable operating leases for administrative offices, automobiles, and equipment expiring at various dates through 2009. The future aggregate minimum

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MAJESCO ENTERTAINMENT COMPANY AND SUBSIDIARY
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

rental commitments exclusive of required payments for operating expenses are as follows (in thousands):

<u>Year ending October 31,</u>	<u>(000's omitted)</u>
2006	\$ 528
2007	364
2008	342
2009	342
	<u>\$ 1,576</u>

Total rent expense amounted to \$545,000, \$461,000 and \$536,000 for the years ended October 31, 2005, 2004 and 2003, respectively.

At October 31, 2005, the Company had open letters of credit aggregating \$805,000 under the Company's purchase order assignment arrangements for inventory to be delivered during the subsequent year.

The Company has entered into "at will" employment agreements with several key executives. These employment agreements include provisions for, among other things, annual compensation, bonus arrangements and stock option grants. These agreements also contain provisions related to severance terms and change of control provisions.

Contingencies

On December 2, 2005, a vendor filed a complaint against us in the Supreme Court of the State of New York, County of New York, alleging breach of contract and failure to pay in connection with services render. The complaint seeks approximately \$2.6 million in damages plus interest and costs, including attorney's fees. We intend to vigorously defend this action.

In July 2005, four purported class action complaints were filed against the Company and several current and former directors and officers of the Company in the United States District Court for the District of New Jersey. On September 12, 2005, a fifth purported class action complaint was filed in the same court on behalf of a class of individuals who purchased shares of the Company common stock in the Company's January 26, 2005 offering of six million shares of common stock (the "Offering"). The complaint named as defendants the Company, current and former officers of the Company, and certain financial institutions who served as underwriters with respect to the Offering.

On October 11, 2005, the Court consolidated the five cases and appointed a Lead Plaintiff. On December 14, 2005, Lead Plaintiff filed an Amended Consolidated Complaint, which is now the operative Complaint. The Complaint names the following as defendants: the Company, Carl Yankowski, Jan E. Chason, Jesse Sutton, Joseph Sutton, Morris Sutton, Laurence Aronson, F. Peter Cuneo, James Halpin, Louis Lipschitz, Marc Weisman, RBC Capital Markets Corporation, JMP Securities LLC, Harris Nesbitt & Corp., Wedbush Morgan Securities Inc., and Goldstein Golub Kessler LLP.

The Complaint alleges that the Registration Statement and Prospectus filed with the SEC in connection with the Company's Offering and certain of the Company's press releases and other public filings contained material misstatements and omissions about the Company's financial condition and prospects as well as its products. Lead Plaintiff asserts a claim under Section 11 of the Securities Act against all the defendants on behalf of investors who purchased in the Offering. It asserts a Section 12(a)(2) claim against the Company and the financial institutions who served as underwriters in connection with the Offering, and a Section 15 control person claim against defendants Carl Yankowski, Jan Chason, Jesse Sutton, Joseph Sutton, and Morris Sutton (the "Defendants"). Lead Plaintiff also asserts a claim under Section 10(b) of the Exchange Act and Rule 10b-5 promulgated

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expenses:									
Product research and development	574	689	696	1,035	814	982	721	898	
Selling and marketing	2,798	2,239	2,929	5,698	5,276	3,839	8,479	6,566	
General and administrative	1,108	1,280	1,436	1,990	2,153	2,017	3,389	2,002	
Depreciation and amortization	90	97	124	128	287	290	188	128	
Non-cash compensation	—	—	26	316	465	465	433	13	
Other Operating Costs (1)	577	—	(1,200)	—	—	—	9,236	20,164	
Operating income (loss)	2,349	1,131	3,068	5,564	1,970	821	(38,631)	(34,350)	
Other expenses (2)	1,292	49,639	(18,216)	(10,841)	803	506	241	367	
Income (loss) before income taxes	1,057	(48,508)	21,284	16,405	1,167	315	(38,872)	(34,717)	
Provision for income taxes	—	489	759	176	467	126	(1,329)	(471)	
Net income (loss)	\$ 1,057	\$ (48,997)	\$ 20,525	\$ 16,229	\$ 700	\$ 189	\$ (37,543)	\$ (34,246)	
Net income (loss) attributable to common stockholders (3)	\$ 1,057	\$ (50,095)	\$ 20,055	\$ 13,595	\$ (400)	\$ 189	\$ (37,543)	\$ (34,246)	
Net income (loss) attributable to common stockholders per share:									
Basic	\$ 0.25	\$ (8.35)	\$ 1.74	\$ 1.16	\$ (0.02)	\$ 0.01	\$ (1.69)	\$ (1.54)	
Diluted	\$ 0.10	\$ (8.35)	\$ 1.06	\$ 0.74	\$ (0.02)	\$ 0.01	\$ (1.69)	\$ (1.54)	
Weighted average shares Outstanding									
Basic	4,247,510	5,995,961	11,551,376	11,695,832	16,175,243	22,146,616	22,231,075	22,242,118	
Diluted	10,162,339	5,995,961	18,842,607	18,321,150	16,175,243	22,957,439	22,231,075	22,242,118	

(1) Other operating costs include write off of accounts receivables of \$577,000 and \$322,000 for the three month periods ended January 31, 2004 and July 31, 2005 respectively; a loss on settlements of \$1.2 million for the three months ended July 31, 2004 and a gain on settlements of \$1.4 million for the three months ended July 31, 2005; severance expense of \$1.4 million in the three months ended July 31, 2005; and loss on impairment of capitalized software development costs of \$6.1 million and \$20.1 million for the three month periods ended July 31, 2005 and October 31, 2005.

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**MAJESCO ENTERTAINMENT COMPANY AND SUBSIDIARY
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

(2) Other expenses (income) include:

	For the Three Months Ended							
	Jan. 31, 2004	Apr. 30, 2004	July 31, 2004	Oct. 31, 2004	Jan. 31, 2005	Apr. 30, 2005	July 31, 2005	Oct. 31, 2005
	(in thousands, except per share data)							
Unrealized (gain) loss on foreign exchange	\$ 315	\$ (233)	\$ 13	\$ 172	\$ 69	\$ (21)	—	—
Merger costs	342	—	—	—	—	—	—	—
Interest and financing costs, net	635	667	625	879	734	527	241	367
Change in fair value of warrants	—	49,205	(18,854)	(11,892)	—	—	—	—
	<u>\$ 1,292</u>	<u>\$ 49,639</u>	<u>\$ (18,216)</u>	<u>\$ (10,841)</u>	<u>\$ 803</u>	<u>\$ 506</u>	<u>\$ 241</u>	<u>\$ 367</u>

(3) Net income (loss) attributable to common stockholders includes a preferred stock dividend requirement payable in common stock of \$.3 million for the three month periods ended April 30, July 31, and October 31, 2004, respectively, a \$759,000 thousand non-cash charge related to a deemed dividend to the holders of the 7% convertible preferred stock issued in connection with our private placement and a \$2.2 million and \$1.1 million non-cash charge related to the fair value of warrants issued in connection with a lock-up agreement in the three month periods ended October 31, 2004 and January 31, 2005 respectively.

[ROSENTHAL & ROSENTHAL INC. LETTERHEAD]

October 12, 2005

Majesco Entertainment Company
160 Raritan Center Parkway
Edison, NJ 08837

Gentlemen:

Reference is made to the Factoring Agreement entered into between us dated April 24, 1989, as amended and/or supplemented (the "Factoring Agreement"). This will confirm that the Factoring Agreement is hereby amended, effective 10/17/05, as follows:

Paragraphs 7(a)(b) and (c) are deleted in their entirety and the following are substituted in their place and stead:

7. (a) The purchase price for each receivable shall be the invoice amount of the receivable, less returns (whenever made), less all selling discounts (at our option, calculated on shortest terms) and credits or deductions of any kind allowed or granted to or taken by the customer at any time, and less our commission provided for herein. No discount, credit or allowance with respect to the receivables shall be granted by you to any customer, and no return of goods shall be accepted by you without our prior written consent. A discount, credit or allowance may be claimed only by the customer. All amounts collected against the receivables shall be credited to your account adding four (4) banking days for collection and clearance of remittances.

(b) If you require funds from time to time, we will advance to you, at our discretion, up to eighty percent (80%) of the net amount of receivables purchased by us and not as yet collected. You will be charged with interest on all sums paid, advanced or charged to you at a rate equal to eight and one quarter percent (8.25%) per annum upon the average daily debit cash balance in your account. The rates of interest and discount provided for in this paragraph 7 shall be increased or decreased by one quarter of one percent (1/4 of 1%) per annum for each increase or decrease respectively of one quarter of one percent (1/4 of 1%) per annum that is hereafter made in the prime rate of JPMorgan Chase Bank (the "Bank") as announced by the Bank from time to time ("Prime Rate"), such change to become effective when and as the Prime Rate shall change, provided that at no time shall such percentage interest or discount rate be less than 1.5% per annum above the Prime Rate. The Prime Rate may not be the lowest or best rate charged by the Bank. Notwithstanding the foregoing, in no event shall the rate of interest agreed to by or charged to you hereunder exceed the maximum rate of interest permitted to be so agreed or charged under the law of the jurisdiction whose laws are applicable to such rate of interest. We shall have the privilege of remitting to you at any time any amount standing to your credit on our books. Net credit cash balances arising from receivables and remaining in your favor shall earn interest at a rate equal to two and three quarters percent (2.75%) below the Prime Rate in effect from time to time, from the date such net cash credit balances arise until the dates of actual payment to you. The present Prime Rate is 6.75% per annum.

(c) About fifteen (15) days after the end of each month, we will render to you a statement with respect to the receivables purchased by us during the previous month, together with advances and charges made to your account under this Agreement. In addition to any other amounts chargeable to your account, your account shall be charged with our expenses consisting of postage on invoices, bank wire and similar charges and in addition all expenses and costs from time to time hereafter incurred by us during the course of periodic examinations of your books and records, and operations, plus a per diem charge at our then standard rate per person, per day, for our examiners in the field and office. Our current standard rate is \$850.00 per person, per day. We may, at

our discretion, charge your account with a fee for all trial balances and sales summaries we prepare at your request. All statements, reports or accountings rendered or issued by us to you, including such trial balances and sales summaries, shall be deemed accepted and be finally conclusive and binding upon you unless you notify us to the contrary by registered or certified mail within thirty (30) days after the date such statement, report or accounting is sent to you.

Except as hereinabove specifically set forth, the Factoring Agreement shall continue unmodified.

Very truly yours,

ROSENTHAL & ROSENTHAL, INC.

Agreed:

By: /s/ Jerry Sandak

Name: Jerry Sandak

MAJESCO ENTERTAINMENT COMPANY

Title: SR Exec VP

By: /s/ John Gross

Name: John Gross

Title: CFO

XBOX 360 PUBLISHER LICENSE AGREEMENT

This Xbox 360 Publisher License Agreement ("Agreement") is entered into and effective as of the later of the two signature dates below (the "Effective Date") by and between Microsoft Licensing, GP, a Nevada general partnership ("Microsoft"), and Majesco Entertainment Company, a Delaware corporation ("Publisher").

RECITALS

A. Microsoft and its affiliated companies develop and license a computer game system known as the Xbox 360 game system and a proprietary online service accessible via the Xbox 360 game system known as Xbox Live.

B. Publisher wishes to develop and/or publish one or more software products running on the Xbox 360 game system, which software products may also be made available to subscribers of Xbox Live, and to license proprietary materials from Microsoft on the terms and conditions set forth herein.

Accordingly, for and in consideration of the mutual covenants and conditions contained herein, and for other good and valuable consideration, receipt of which each party hereby acknowledges, Microsoft and Publisher agree as follows:

1. EXHIBITS

The following exhibits are hereby incorporated to this Agreement (some require completion and/or execution by one or both parties):

- Exhibit 1: Payments
- Exhibit 2: Xbox 360 Royalty Tier Selection Form
- Exhibit 3: Xbox 360 Publisher Enrollment Form
- Exhibit 4: Authorized Subsidiaries
- Exhibit 5: Non-Disclosure Agreement
- Exhibit 6: Japan/Asian Royalty Incentive Program
- Exhibit 7: Xbox Live Incentive Program

2. DEFINITIONS

As further described in this Agreement and the Xbox 360 Publisher Guide (defined below), the following terms have the following respective meanings:

2.1 "ASIAN MANUFACTURING REGION" means the region for manufacturing comprising Taiwan, Hong Kong, Singapore, Korea, Japan and any other countries that are included by Microsoft from time to time as set forth in the Xbox 360 Publisher Guide.

2.2 "ASIAN SALES TERRITORY" means the territory for sales distribution comprising Taiwan, Hong Kong, Singapore, Korea, and any other countries that are included by Microsoft from time to time as set forth in the Xbox 360 Publisher Guide. The Asian Sales Territory does not include Japan.

2.3 "AUTHORIZED REPLICATOR" means a software replicator certified and approved by Microsoft for replication of FPU's (defined below) that run on the Xbox 360.

2.4 "BRANDING SPECIFICATIONS" means the specifications as provided by Microsoft from time to time for using the Licensed Trademarks in connection with a Software Title and/or Online Content and on Marketing Materials as set forth in the Xbox 360 Publisher Guide.

2.5 "BTS" means a Microsoft designed break-the-seal sticker that will be issued to the Authorized Replicator for placement on the Packaging Materials (defined below) as specified in the Xbox 360 Publisher Guide.

2.6 "CERTIFICATION" means the final stage of the approval process by which Microsoft approves or disapproves of a Software Title or Online Content

for manufacture and/or distribution. Certification is further defined in this Agreement and the Xbox 360 Publisher Guide.

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2.7 "COMMERCIAL RELEASE" with respect to a Software Title means the first commercial distribution of an FPU that is not designated as a Demo Version. With respect to Online Content, Commercial Release means its first availability via Xbox Live to Xbox Live Users.

2.8 "CONCEPT" means the detailed description of Publisher's proposed Software Title and/or Online Content in each case including such information as may be requested by Microsoft.

2.9 "DEMO VERSIONS" means a small portion of an applicable Software Title that is provided to end users to advertise or promote a Software Title.

2.10 "EUROPEAN SALES TERRITORY" means the territory for sales distribution comprising the United Kingdom, France, Germany, Spain, Italy, Netherlands, Belgium, Sweden, Denmark, Norway, Finland, Austria, Switzerland, Ireland, Portugal, Greece, Australia, New Zealand and any other countries that are included by Microsoft from time to time as set forth in the Xbox 360 Publisher Guide

2.11 "EUROPEAN MANUFACTURING REGION" means the region for manufacturing comprising the United Kingdom, France, Germany, Spain, Italy, Netherlands, Belgium, Sweden, Denmark, Norway, Finland, Austria, Switzerland, Ireland, Portugal, Greece, Australia, New Zealand and any other countries that are included by Microsoft from time to time as set forth in the Xbox 360 Publisher Guide.

2.12 "FPU" or "FINISHED PRODUCT UNIT" means a copy of a Software Title in object code form that has passed Certification, has been affixed to a DVD disk and approved by Microsoft for release and manufacturing. Once the Packaging Materials have been added, and the BTS has been assigned or affixed to the FPU or its packaging, the FPU also includes its accompanying BTS and Packaging Materials.

2.13 "JAPAN SALES TERRITORY" means the territory for sales distribution comprising the country of Japan.

2.14 "LICENSED TRADEMARKS" means the Microsoft trademarks identified in the Xbox 360 Publisher Guide.

2.15 "MARKETING MATERIALS" collectively means the Packaging Materials and all press releases, marketing, advertising or promotional materials related to the Software Title, FPU(s) and/or Online Content (including without limitation Web advertising and Publisher's Web pages to the extent they refer to the Software Title(s), FPU(s) and/or Online Content) that will be used and distributed by Publisher in the marketing of the Software Title(s), FPU(s) and/or Online Content.

2.16 "MANUFACTURING REGION" means the Asian Manufacturing Region, European Manufacturing Region, and/or North American Manufacturing Region.

2.17 "NORTH AMERICAN SALES TERRITORY" means the territory for sales distribution comprising the United States, Canada, Mexico, Colombia and any other countries that may be included by Microsoft from time to time as set forth in the Xbox 360 Publisher Guide

2.18 "NORTH AMERICAN MANUFACTURING REGION" means the region for manufacturing comprising the United States, Canada, Mexico, Colombia and any other countries that may be included by Microsoft from time to time as set forth in the Xbox 360 Publisher Guide

2.19 "ONLINE CONTENT" means any content, feature, or access to software or online service that is distributed by Microsoft pursuant to this Agreement. Online Content includes, but is not limited to, Online Game Features, Title Updates, Demo Versions, trailers, "themes," "gamer pictures" or any other category of online content or service approved by Microsoft from time to time. Trailers, "themes," "gamer pictures" and any other approved Online Content will be further described in the Xbox 360 Publisher Guide.

2.20 "ONLINE GAME FEATURES" means a Software Title's content, features and/or services that are available to Xbox Live Users via Xbox Live, whether included in the Software Title's FPU or otherwise distributed via Xbox Live.

2.21 "PACKAGING MATERIALS" means art and mechanical formats for a Software Title including the retail packaging, end user instruction manual with end user license agreement and warranties, end user warnings, FPU media label, and any promotional inserts and other materials that are to be included in the retail packaging.

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2.22 "PRE-CERTIFICATION" means the first stage of the approval process wherein Microsoft tests to provide feedback and/or identify any issues that may prevent the Software Title from being approved during the Certification phase. Pre-Certification is further described in this Agreement and the Xbox 360 Publisher Guide.

2.23 "SALES TERRITORY" means the Asian Sales Territory, European Sales Territory, Japan Sales Territory, and/or North American Sales Territory.

2.24 "SOFTWARE TITLE" means the single software product as approved by Microsoft for use on Xbox 360, including any Title Updates thereto (if and to the extent approved by Microsoft) and all Online Game Features for such Software Title. If Microsoft approves one or more additional single software product(s) proposed by Publisher to run on Xbox 360, this Agreement, and the term "Software Title," will be broadened automatically to cover the respective new software product(s) as additional Software Title(s) under this Agreement.

2.25 "SUBSCRIBER" means an Xbox Live User that establishes an account with Xbox Live.

2.26 "SUB-PUBLISHER" means an entity that has a valid Xbox 360 publisher license agreement with Microsoft or a Microsoft affiliate and with whom Publisher has entered an agreement to allow such entity to publish a Software Title or Online Content in specific Sales Territories.

2.27 "SUGGESTED RETAIL PRICE" means the highest per unit price that Publisher or its agent recommends the FPU be made commercially available to end-users in a particular Sales Territory. If the Suggested Retail Price of a particular Software Title varies among the countries in a single Sales Territory, then the highest Suggested Retail Price established for any of the countries will be used to determine the appropriate royalty fees for the entire Sales Territory.

2.28 "TITLE UPDATE" means an update, upgrade, or technical fix to a Software Title that Xbox Live Users can automatically download to the Xbox Live User's Xbox 360.

2.29 "WHOLESALE PRICE" means the highest per unit price that Publisher charges retailers and/or distributors in bona fide third party transactions for the right to distribute and sell the Software Title within a Sales Territory, it being agreed that (i) any transactions involving affiliates of Publisher (entities controlling, controlled by or under common control of, Publisher) are not to be considered in determining the Wholesale Price; (ii) if Publisher enters into an agreement with a third party (such as a Sub-Publisher) providing the third party with the exclusive right to distribute the Software Title in a Sales Territory, the Wholesale Price is governed by the price charged by the third party rather than the terms of the exclusive distribution agreement between Publisher and such third party; and (iii) if the Wholesale Price varies among countries in a single Sales Territory, the highest Wholesale Price used in the Sales Territory will be used to determine the appropriate royalty fees for the entire Sales Territory.

2.30 "XBOX 360" means the second version of Microsoft's proprietary game system, successor to the Xbox game system, including operating system software and hardware design specifications.

2.31 "XBOX 360 PUBLISHER GUIDE" means a document (in physical, electronic or Web site form) created by Microsoft that supplements this Agreement and provides detailed requirements regarding the Pre-Certification and

Certification approval process, Branding Specifications, replication requirements, royalty payment process, marketing guidelines, technical specifications and certification requirements, Demo Version requirements, packaging requirements and other operational aspects of the Xbox 360 and Xbox Live. Microsoft may supplement, revise or update the Xbox 360 Publisher Guide from time to time in its reasonable discretion as set forth in this Agreement.

2.32 "XBOX LIVE" means the proprietary online service offered by Microsoft to Xbox Live Users.

2.33 "XBOX LIVE USER" means any individual that accesses and uses Xbox Live.

2.34 OTHER TERMS. All other capitalized terms have the definitions set forth with the first use of such term as described in this Agreement.

3. XBOX 360 DEVELOPMENT KIT LICENSE

Publisher shall enter into one or more development kit license(s) for the applicable territory(ies) to which Xbox 360 game development kits will be shipped for use by Publisher (each an "XDK License") pursuant to which Microsoft or its affiliate may license to Publisher software development tools and hardware to assist Publisher in the development and testing of

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Software Titles, including redistributable code that Publisher must incorporate into Software Titles pursuant to the terms and conditions contained in the XDK License.

4. APPROVAL PROCESS

4.1 STANDARD APPROVAL PROCESS. The standard approval process for a Software Title is divided into four phases comprised of Concept approval, Pre-Certification, Certification, and Marketing Materials approval. Unless Publisher elects the EU Approval Option for a European FPU (described below), Publisher is required to submit its Software Title to Microsoft for evaluation at all four phases. Each phase is identified below and further described in the Xbox 360 Publisher Guide. Additional or alternate approval processes for Online Content may be further described in the Xbox 360 Publisher Guide

4.1.1 CONCEPT. For each Software Title, Publisher shall deliver to Microsoft a completed Concept submission form (in the form provided by Microsoft to Publisher) that describes the Software Title. In the event that Publisher desires to host or have a third party host or provide to Xbox Live Users any of Publisher's Online Game Features, Publisher shall so indicate on the Concept submission form and must execute an addendum to this Agreement, which addendum is available upon request and will be incorporated into this Agreement upon execution. Following evaluation of Publisher's Concept submission, Microsoft will notify Publisher of whether the Concept is approved or rejected. If approved, the Concept submission form, in the form submitted and approved by Microsoft, is incorporated herein by reference and adherence to its terms is a requirement for Certification. Publisher may propose Online Content at any time after a Concept has been approved, in which case Publisher shall deliver to Microsoft a separate Concept submission for each proposed piece of Online Content.

4.1.2 PRE-CERTIFICATION. If the Concept is approved, Publisher shall deliver to Microsoft a code-complete version of the Software Title or Online Content that includes all current features of the Software Title and such other content as may be required under the Xbox 360 Publisher Guide. Upon receipt, Microsoft shall conduct technical screen and/or other testing of the Software Title or Online Content consistent with the Xbox 360 Publisher Guide and will subsequently provide Publisher with advisory feedback regarding such testing.

4.1.3 CERTIFICATION. Following Pre-Certification, Publisher shall deliver to Microsoft the proposed final release version of the applicable Software Title that is complete, ready for access via Xbox Live (if applicable), release, manufacture, and commercial distribution. Such version must include the final content rating certification required by Section 4.4, have identified program errors corrected, and have any and all changes previously required by Microsoft implemented. Microsoft shall conduct compliance, compatibility,

functional and other testing consistent with the Xbox 360 Publisher Guide ("Certification Testing") and shall subsequently provide Publisher with the results of such testing, including any required fixes required prior to achieving Certification. Release from Certification for a Software Title (and for Online Content as applicable) is based on (1) passing the Certification Testing; (2) conformance with the approved Concept and any required submission materials as stated in the Xbox 360 Publisher Guide; (3) Packaging Materials approval; (4) consistency with the goals and objectives of the Xbox 360 console platform and Xbox Live; and (5) continuing and ongoing compliance with all Certification requirements and other requirements as set forth in the Xbox 360 Publisher Guide and this Agreement.

4.1.4 **MARKETING MATERIALS APPROVAL.** Publisher shall submit all Marketing Materials to Microsoft and shall not distribute such Marketing Materials unless and until Microsoft has approved them in writing. Prior to use or publication of any Marketing Materials, Publisher agrees to incorporate all changes relating to use of the Licensed Trademarks that Microsoft may request and will use its commercially reasonable efforts to incorporate other changes reasonably suggested by Microsoft (provided, however, that in any event Publisher shall at all times comply with the Branding Specifications).

4.2 **EU APPROVAL OPTION.** For a Software Title that Publisher intends to distribute solely in the European Sales Territory (a "European FPU"), Publisher may choose to forego Concept approval (Section 4.1.1), Pre-Certification (Section 4.1.2) and/or Marketing Materials approval (Section 4.1.4) and submit such Software Title to Microsoft only for Certification approval. This option is referred to herein as the "EU Approval Option." The EU Approval Option applies solely to distribution of European FPUs, and is not available for Online Content intended to be available in the European Sales Territory. If Publisher chooses the EU Approval Option, Publisher shall not use the Licensed Trademarks on the European FPU and the license grant set forth in Section 12.1 is withdrawn as to such European FPU. In addition, Publisher shall make no statements in advertising, marketing materials, packaging, Web sites or otherwise that the European FPU is approved or otherwise sanctioned by Microsoft or is an official Xbox 360 Software Title. The European FPU may not be distributed outside the European Sales Territory without complying with all terms of this Agreement concerning approvals and the release of the FPU as deemed relevant by Microsoft. Microsoft may provide additional information in the Xbox 360

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Publisher Guide regarding the European Approval Option. Notwithstanding Publisher's choice of the EU Approval Option, all other portions of this Agreement other than those specifically identified above shall remain in effect.

4.3 **RESUBMISSIONS AND ADDITIONAL REVIEW.** If a Software Title or Online Content fails Certification, and if Publisher has made good faith efforts to address any issues raised by Microsoft, Microsoft will give Publisher the opportunity to resubmit such Software Title or Online Content for Certification. Microsoft may charge Publisher a reasonable fee designed to offset the costs associated with testing upon resubmission. Publisher may request the ability to submit versions of the Software Title or Online Content at stages of development other than as identified above for review and feedback by Microsoft. Such review is within the discretion of Microsoft and may require the payment of reasonable fees by Publisher to offset the costs associated with the review of such Software Titles or Online Content.

4.4 **CONTENT RATING.** For those Sales Territories that utilize a content rating system, Microsoft will not accept submission of a Software Title for Certification approval unless and until Publisher has obtained, at Publisher's sole cost, a rating not higher than "Mature (17+)" or its equivalent from the appropriate rating bodies and/or any and all other independent content rating authority/authorities for the applicable Sales Territory(ies) reasonably designated by Microsoft (such as ESRB, ELSPA, CERO, etc.). Publisher shall include the applicable rating(s) prominently on FPUs and Marketing Materials, in accordance with the applicable rating body guidelines, and shall include the applicable rating in a header file of the Software Title and in Online Content, as described in the Xbox 360 Publisher Guide. For those Sales Territories that do not utilize a content rating system, Microsoft will not approve any Software Title or Online Content that, in its opinion, contains excessive sexual content or violence, inappropriate language or other elements deemed unsuitable for the Xbox 360 platform. If, after Commercial Release, a Software Title is determined

as suitable for adults only or otherwise as indecent, obscene or otherwise prohibited by law, the Publisher shall at its own costs recall all FPU's. Publisher hereby represents and warrants that any Online Game Features and other game-related Online Content not included in the initial Software Title FPU will not be inconsistent with the content rating (or, in those countries that do not utilize a content rating system, with the overall nature of the content) of the underlying Software Title. Content rating information and requirements may be further described in the Xbox 360 Publisher Guide.

4.5 PUBLISHER TESTING. Publisher shall perform its own testing of the Software Title and FPU's and shall keep written or electronic records of such testing during the term of this Agreement and for no less than [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] thereafter ("Test Records"). Upon Microsoft's request, Publisher shall provide Microsoft with copies of, or reasonable access to inspect, the Test Records, FPU's and Software Title (either in pre-Commercial Release or Commercial Release versions, as Microsoft may request).

4.6 MUTUAL APPROVAL REQUIRED. Publisher shall not distribute the Software Title, nor manufacture any FPU intended for distribution, unless and until Microsoft has given its final approval and release from Certification version of the Software Title and both parties have approved the FPU in writing.

4.7 TITLE UPDATES

4.7.1 All Title Updates for Software Titles are subject to approval by Microsoft. Publisher may release one Title Update per Software Title free of charge. Any additional Title Updates proposed by Publisher may be subject to a reasonable charge.

4.7.2 Microsoft may require Publisher to develop and provide a Title Update if (a) a Software Title or Online Content adversely affects Xbox Live, (b) if a change to the Xbox 360 Publisher Guide requires a Title Update, (c) if Certification is revoked for Online Content, or (d) for any other reason at Microsoft's reasonable discretion. Microsoft will not charge Publisher for the Certification, hosting, and distribution of Title Updates to Xbox Live Users for the first Title Update (if any) per Software Title or Online Content required by a specific change in the Xbox 360 Publisher Guide or for any other reason at Microsoft's reasonable discretion. Microsoft reserves the right to charge Publisher a reasonable fee to offset the costs associated with the Certification, hosting, and distribution of Title Updates to Xbox Live Users that are required because of revocation of Certification or a Software Title or Online Content adversely affecting Xbox Live.

5. XBOX 360 PUBLISHER GUIDE

Publisher acknowledges that the Xbox 360 Publisher Guide is an evolving document and subject to change during the term of this Agreement. Publisher agrees to be bound by all provisions contained in the then-applicable version of the Xbox 360 Publisher Guide. Publisher agrees that upon Publisher's receipt of notice of availability of the applicable supplement, revision, or updated version of the Xbox 360 Publisher Guide (which may be via a publisher newsletter or other electronic

notification), Publisher automatically is bound by all provisions of the Xbox 360 Publisher Guide as supplemented, revised, or updated. Publisher's continued distribution of FPU's after a notice of supplement, revision or update is included in the Xbox 360 Publisher Guide or made available to Publisher constitutes Publisher's agreement to the then-current Xbox 360 Publisher Guide as supplemented, revised or updated. Microsoft will specify in each such supplement, revision or update a reasonable effective date of each change if such change is not required to be effective immediately. Only with respect to a Software Title that has passed Pre-Certification prior to the applicable revision or update, Publisher will not be obligated to comply with any changes made to the technical or content requirements for Software Titles in the Xbox 360 Publisher Guide, except in circumstances where such change is deemed by Microsoft to be vitally important to the success of the Xbox 360 platform (e.g. changes due to piracy, technical failure) or will not add significant expense to the Software Title's development. In addition, changes made in Branding Specifications or other Marketing Materials requirements will be effective as to

a Software Title that has passed Certification only on a "going forward" basis (i.e., only to such Marketing Materials and/or FPU's as are manufactured after Microsoft notifies Publisher of the change). Notwithstanding the foregoing, Publisher shall comply with such changes to the Xbox 360 Publisher Guide related to Branding Specifications or other Marketing Materials requirements retroactively if Microsoft agrees to pay for Publisher's direct, out-of-pocket expenses necessarily incurred as a result of its retrospective compliance with the change.

6. POST-RELEASE COMPLIANCE

6.1 CORRECTION OF BUGS OR ERRORS. Notwithstanding Microsoft's Certification, all Software Titles must remain in compliance with all Certification requirements and requirements set forth in the Xbox 360 Publisher Guide on a continuing and ongoing basis. Publisher must correct any material program bugs or errors in conformance with the Xbox 360 Publisher Guide whenever discovered and Publisher agrees to correct such material bugs and errors as soon as possible after discovery. With respect to bugs or errors discovered after Commercial Release of the applicable Software Title, Publisher will, at Microsoft's request or allowance, correct the bug or error in all FPU's manufactured after discovery and Microsoft may charge a reasonable amount to cover the costs of Certifying the Software Title again.

6.2 ONLINE CONTENT; MINIMUM COMMITMENT

6.2.1 Publisher agrees that each Online Game Feature of a Software Title will be made available via Xbox Live for at least [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] following the respective Commercial Release of the FPU's of the Software Title in each Sales Territory in which Xbox Live is available (the "Minimum Commitment"). Publisher is obligated to provide all necessary support for such Online Game Feature during its availability and for [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] after discontinuation. Following the Minimum Commitment period, Publisher may terminate Microsoft's license associated with such Online Game Feature upon [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] prior written notice to Microsoft; and/or Microsoft may discontinue the availability of any or all such Online Game Feature via Xbox Live upon [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] prior written notice to Publisher. Publisher is responsible for communicating the duration of Online Game Feature availability to Xbox Live Users, and for providing reasonable advance notice to Xbox Live Users of any discontinuation of such Online Game Feature.

6.2.2 Subject to Section 10.3, Publisher agrees that Microsoft has the right to make Online Content other than Online Games Features submitted by Publisher available to Xbox Live Users for the Term of this Agreement. Publisher agrees to provide all necessary support for such Online Content as long as such Online Content is made available to Xbox Live Users and for [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] thereafter.

6.2.3 ARCHIVE COPIES. Publisher agrees to maintain, and to possess the ability to support, copies in object code, source code and symbol format, of all Online Content available to Xbox Live Users during the term of this Agreement and for no less than [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] thereafter.

7. MANUFACTURING

7.1 AUTHORIZED REPLICATORS. Publisher will use only an Authorized Replicator to produce FPU's. Prior to placing an order with a replicator for FPU's, Publisher shall confirm with Microsoft that such entity is an Authorized Replicator. Microsoft will endeavor to keep an up-to-date list of Authorized Replicators in the Xbox 360 Publisher Guide. Publisher will notify Microsoft in writing of the identity of the applicable Authorized Replicator and the agreement for such

replication services shall be as negotiated by Publisher and the applicable Authorized Replicator, subject to the requirements in this Agreement. Publisher acknowledges that Microsoft may charge the Authorized Replicator fees for rights, services or products associated with the manufacture of FPU's and that

the agreement with the Authorized Replicator grants Microsoft the right to instruct the Authorized Replicator to cease the manufacture of FPU and/or prohibit the release of FPU to Publisher or its agents in the event Publisher is in breach of this Agreement or any credit arrangement entered into by Microsoft and Publisher or Publisher affiliates. Microsoft does not guarantee any level of performance by the Authorized Replicators, and Microsoft will have no liability to Publisher for any Authorized Replicator's failure to perform its obligations under any applicable agreement between Microsoft and such Authorized Replicator and/or between Publisher and such Authorized Replicator. Microsoft has no responsibility for ensuring that FPUs are free of all defects.

7.2 SUBMISSIONS TO THE AUTHORIZED REPLICATOR. Microsoft, and not Publisher, will provide to the applicable Authorized Replicator the final release version of the Software Title and all specifications required by Microsoft for the manufacture of the FPUs including, without limitation, the Security Technology (as defined in Section 7.9 below). Publisher is responsible for preparing and delivering to the Authorized Replicator all other items required for manufacturing FPUs including approved Packaging Materials associated with the FPUs. Subject to the approval of Publisher (which approval shall not be unreasonably withheld), Microsoft has the right to have included in the packaging of FPUs such promotional materials for Xbox, Xbox 360, Xbox Live, and/or other Xbox or Xbox 360 products or services as Microsoft may determine in its reasonable discretion. Microsoft will be responsible for delivering to the Authorized Replicator all such promotional materials as it desires to include with FPUs, and, unless otherwise agreed by the parties, any incremental insertion costs relating to such marketing materials will be borne by Microsoft.

7.3 VERIFICATION VERSIONS. Publisher shall cause the Authorized Replicator to create several test versions of each FPU ("Verification Version(s)") that will be provided to both Microsoft and Publisher for evaluation. Prior to full manufacture of a FPU by the Authorized Replicator, both Publisher and Microsoft must approve the applicable Verification Version. Throughout the manufacturing process and upon the request of Microsoft, Publisher shall cause the Authorized Replicator to provide additional Verification Versions of the FPU for evaluation by Microsoft. Microsoft's approval is a condition precedent to manufacture, however Publisher shall grant the final approval and shall work directly with the Authorized Replicator regarding the production run. Publisher agrees that all FPUs must be replicated in conformity with all of the quality standards and manufacturing specifications, policies and procedures that Microsoft requires of its Authorized Replicators, and that all Packaging Materials must be approved by Microsoft prior to packaging. Publisher shall cause the Authorized Replicator to include the BTS on each FPU.

7.4 SAMPLES. For each Software Title sku, at Publisher's cost, Publisher shall provide Microsoft with [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] FPUs and accompanying Marketing Materials per Sales Territory in which the FPU will be released. Such units may be used in marketing, as product samples, for customer support, testing and for archival purposes. Publisher will not have to pay a royalty fee for such samples nor will such samples count towards the Unit Discounts under Exhibit 1.

7.5 MINIMUM ORDER QUANTITIES

7.5.1 Within [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] after the date on which both Microsoft and Publisher have authorized the Authorized Replicator to begin replication of FPUs for distribution to a specified Sales Territory, (receipt of both approvals is referred to as "Release to Manufacture"), Publisher must place orders to manufacture the minimum order quantities ("MOQs") as described in the Xbox 360 Publisher Guide. Microsoft may update and revise the MOQs [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] which will be effective starting the following [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2]. Currently, the MOQs are as follows:

[INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2]

7.5.2 For the purposes of this section, a "Disc" shall mean an FPU that is signed for use on a certain defined range of Xbox 360 hardware, regardless of the number of languages or product skus contained thereon. The MOQs per Software Title are cumulative per Sales Territory. For example, if an FPU is released in both the North American Sales Territory and the European Sales Territory, the cumulative MOQ per Software Title would be [INFORMATION OMITTED AND FILED

SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2]. The MOQ per Software Title and the MOQ per Disc, however, are not cumulative. For example, a single Disc FPU released only in the North America Sales Territory will have a total minimum order quantity of [INFORMATION OMITTED AND FILED

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SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2], which would cover the [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] MOQ per Software Title and the [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24b-2] MOQ per Disc (rather than [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] which would have been the total minimum order quantity if the MOQ per Software Title and the MOQ per Disc had been cumulative).

7.5.3 If Publisher fails to place orders to meet any applicable minimum order quantity within [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] of Release to Manufacture, Publisher shall immediately pay Microsoft the applicable royalty fee for the number of FPU's represented by the difference between the applicable MOQ and the number of FPU's of the Software Title actually ordered by Publisher.

7.6 MANUFACTURING REPORTS. For purposes of assisting in the scheduling of manufacturing resources, on a [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] basis, or as otherwise requested by Microsoft in its reasonable discretion, Publisher shall provide Microsoft with forecasts showing manufacturing projections by Sales Territory [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] out for each Software Title. Publisher will use commercially reasonable efforts to cause the Authorized Replicator to deliver to Microsoft true and accurate [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] statements of FPU's manufactured in each [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2], on a Software Title-by-Software Title basis and in sufficient detail to satisfy Microsoft, within [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2]. Microsoft will have reasonable audit rights to examine the records of the Authorized Replicator regarding the number of FPU's manufactured.

7.7 NEW AUTHORIZED REPLICATOR. If Publisher requests that Microsoft certify and approve a third party replicator that is not then an Authorized Replicator, Microsoft will consider such request in good faith. Publisher acknowledges and agrees that Microsoft may condition certification and approval of such third party on the execution of an agreement in a form satisfactory to Microsoft pursuant to which such third party agrees to strict quality standards, non-disclosure requirements, license fees for use of Microsoft intellectual property and trade secrets, and procedures to protect Microsoft's intellectual property and trade secrets. Notwithstanding anything contained herein, Publisher acknowledges that Microsoft is not required to certify, maintain the certification or approve any particular third party as an Authorized Replicator, and that the certification and approval process may be time-consuming.

7.8 ALTERNATE MANUFACTURING IN EUROPE. Publisher may, solely with respect to FPU's manufactured for distribution in the European Sales Territory, utilize a different process or company for the combination of a FPU with Packaging Materials provided that such packaging process incorporates the BTS and otherwise complies with the Xbox 360 Publisher Guide. Publisher shall notify Microsoft regarding its use of such process or company so that the parties may properly coordinate their activities and approvals. To the extent that Microsoft is unable to accommodate such processes or company, Publisher shall modify its operations to comply with Microsoft's requirements.

7.9 SECURITY. Microsoft has the right to add to the final release version of the Software Title delivered by Publisher to Microsoft, and to all FPU's, such digital signature technology and other security technology and copyright management information (collectively, "Security Technology") as Microsoft may determine to be necessary, and/or Microsoft may modify the signature included in any Security Technology included in the Software Title by Publisher at Microsoft's discretion. Additionally, Microsoft may add Security Technology that prohibits the play of Software Titles on Xbox 360 units manufactured in a region or country different from the location of manufacture of the respective FPU's or that have been modified in any manner not authorized by Microsoft.

7.10 DEMO VERSIONS. If Publisher wishes to distribute a Demo Version in FPU format, Publisher must obtain Microsoft's prior written approval and Microsoft may charge a reasonable fee to offset costs of the Certification. Subject to the terms of the Xbox 360 Publisher Guide, such Demo Version(s) may be placed on a single disc, either as a stand-alone or with other Demo Versions and the price of such units must be [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] or its equivalent in local currency. Unless separately addressed in the Xbox 360 Publisher Guide, all rights, obligations and approvals set forth in this Agreement as applying to Software Titles shall separately apply to any Demo Version. [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2]. If Publishers wishes to distribute a Demo Versions in an online downloadable format, such downloadable Demo Version shall be distributed via by Microsoft Xbox Live in

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accordance with Section 10.3, and such downloadable Demo Version will be subject to all other terms and policies applicable to Online Content set forth herein and in the Xbox 360 Publisher Guide.

8. PAYMENTS

The Parties shall make payments to each other under the terms of Exhibit 1.

9. MARKETING, SALES AND SUPPORT

9.1 PUBLISHER RESPONSIBLE. As between Microsoft and Publisher, Publisher is solely responsible for the marketing and sales of the Software Title. Publisher is also solely responsible for providing technical and all other support relating to the FPU's (including for Xbox Live Users of Online Content). Publisher shall provide all appropriate contact information (including without limitation Publisher's address and telephone number, and the applicable individual/group responsible for customer support), and shall also provide all such information to Microsoft for posting on <http://www.xbox.com>, or such successor or related Web site identified by Microsoft or in Xbox Live. Customer support shall at all times conform to the Customer Service Requirements set forth in the Xbox 360 Publisher Guide and industry standards in the console game industry.

9.2 WARRANTY. Publisher shall provide the original end user of any FPU a minimum warranty in accordance with local laws and industry practices. For example, in the United States, Publisher shall, as of the Effective Date, provide a minimum [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] limited warranty that the FPU will perform in accordance with its user documentation or Publisher will refund the purchase price or provide a replacement FPU at no charge. Publisher may offer additional warranty coverage consistent with the traditions and practices of video game console game publishers within the applicable Sales Territory or as otherwise required by local law.

9.3 RECALL. Notwithstanding anything to the contrary contained in this Agreement, if there is a material defect in a Software Title and/or any FPU's, which defect in the reasonable judgment of Microsoft would significantly impair the ability of an end user to play such Software Title or FPU or would adversely affect the gameplay of the Xbox 360 or Xbox Live, Microsoft may require Publisher to recall FPU's and undertake prompt repair or replacement of such Software Title and/or FPU's.

9.4 NO BUNDLING WITH UNAPPROVED PERIPHERALS, PRODUCTS OR SOFTWARE. Except as expressly stated in this section, Publisher shall not market or distribute a FPU bundled with any other product or service, nor shall Publisher knowingly permit or assist any third party in such bundling, without Microsoft's prior written consent. Publisher may market or distribute (i) FPU bundled with a Software Title(s) that has been previously certified and released by Microsoft for manufacturing; or (ii) FPU bundled with a peripheral product (e.g. game pads) that has been previously licensed as an "Xbox 360 Licensed Peripheral" by Microsoft, without obtaining the written permission of Microsoft. Publisher shall contact Microsoft in advance to confirm that the peripheral or Software Title to be bundled has previously been approved by Microsoft pursuant to a valid license.

9.5 SOFTWARE TITLE LICENSE. Publisher grants Microsoft a fully-paid,

royalty-free, worldwide, non-exclusive license (i) to publicly perform the Software Titles at conventions, events, trade shows, press briefings, public interactive displays and the like; (ii) to use the title of the Software Title, and screen shots from the Software Title, in advertising and promotional material relating to Xbox 360 and related Microsoft products and services, as Microsoft may reasonably deem appropriate; (iii) distribute Demo Versions with the Official Xbox Magazine, as a standalone product with other demo software; and (iv) distribute Software Title trailers via xbox.com. Publisher may also select Online Content for inclusion in public interactive displays and/or compilation demo discs published by Microsoft, in which case Publisher grants Microsoft a fully-paid, royalty-free, worldwide, transferable, sublicenseable license to broadcast, transmit, distribute, host, publicly display, reproduce and manufacture such selected Online Content as part of public interactive displays and compilation demo discs, and to distribute and permit end users to download and store (and, at Publisher's discretion, to make further copies) such Online Content via public interactive displays. The rights granted in the preceding sentence are in addition to any rights that Microsoft may have for uses of Publisher Software Titles under the applicable law, such as uses that are "referential," "fair use" or "reasonable use."

10. GRANT OF DISTRIBUTION LICENSE, LIMITATIONS

10.1 DISTRIBUTION LICENSE. Upon Certification of the Software Title, approval of the Marketing Materials and the FPU test version of the Software Title by Microsoft, and subject to the terms and conditions contained within this

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Agreement, Microsoft grants Publisher a non-exclusive, non-transferable, license to distribute FPUs containing Redistributable and Sample Code (as defined in the XDK License) and Security Technology (as defined above) within the Sales Territories approved in the Software Title's Concept in FPU form to third parties for distribution to end users and/or directly to end users. The license to distribute the FPUs is personal to Publisher and except for transfers of FPU through normal channels of distribution (e.g. wholesalers, retailers), absent the written approval of Microsoft, Publisher may not sublicense or assign its rights under this license to other parties. For the avoidance of doubt, without the written approval of Microsoft, Publisher may not sublicense, transfer or assign its right to distribute Software Titles or FPU to another entity that will brand, co-brand or otherwise assume control over such products as a "publisher" as that concept is typically understood in the console game industry. Publisher may only grant end users the right to make personal, non-commercial use of Software Titles and may not grant end users any of the other rights reserved to a copyright holder under US Copyright Law, Japanese Copyright Law, or its international equivalent. Publisher's license rights do not include any license, right, power or authority to subject Microsoft's software or derivative works thereof or intellectual property associated therewith in whole or in part to any of the terms of an Excluded License. "Excluded License" means any license that requires as a condition of use, modification and/or distribution of software subject to the Excluded License, that such software or other software combined and/or distributed with such software be (a) disclosed or distributed in source code form; (b) licensed for the purpose of making derivative works; or (c) redistributable at no charge.

10.2 NO DISTRIBUTION OUTSIDE THE SALES TERRITORY. Publisher shall distribute FPUs only in Sales Territories for which the Software Title has been approved by Microsoft. Publisher shall not directly or indirectly export any FPUs from an authorized Sales Territory to an unauthorized territory nor shall Publisher knowingly permit or assist any third party in doing so, nor shall Publisher distribute FPUs to any person or entity that it has reason to believe may re-distribute or sell such FPUs outside authorized Sales Territories.

10.3 ONLINE FEATURES. In consideration of the royalty payments as described in Exhibit 1, Publisher grants to Microsoft (i) a worldwide, transferable, sublicenseable license to broadcast, transmit, distribute, host, publicly display, reproduce, and license Online Content for use on Xbox 360s, and (ii) a worldwide, transferable license solely to distribute to end users and permit end users to download and store Online Content (and, at Publisher's discretion, to make further copies). Publisher agrees that the license grants set forth in this section applicable to Online Content are exclusive, meaning that except as expressly permitted under this Agreement, the Xbox 360 Publisher Guide and/or as

agreed by the Parties, Publisher shall not directly or indirectly permit or enable access to Online Content by any means, methods, platforms or services other than through Xbox Live, or as otherwise set forth in this Agreement. Notwithstanding the foregoing, this Section 10.3 does not prevent Publisher from making other platform versions of its Software Titles or Online Content available via other platform-specific online services. This Section 10.3 shall survive expiration or termination of this Agreement solely to the extent and for the duration necessary to effectuate Section 17.3 below.

10.4 NO REVERSE ENGINEERING. Publisher may utilize and study the design, performance and operation of Xbox 360 or Xbox Live solely for the purposes of developing the Software Title or Online Content. Notwithstanding the foregoing, Publisher shall not, directly or indirectly, reverse engineer or aid or assist in the reverse engineering of all or any part of Xbox 360 or Xbox Live except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation. In the event applicable law grants Publisher the right to reverse engineer the Xbox 360 or Xbox Live notwithstanding this limitation, Publisher shall provide Microsoft with written notice prior to such reverse engineering activity, information regarding Publisher's intended method of reverse engineering, its purpose and the legal authority for such activity and shall afford Microsoft a reasonable period of time before initiating such activity in order to evaluate the activity and/or challenge the reverse engineering activity with the appropriate legal authorities. Publisher shall refrain from such reverse engineering activity until such time as any legal challenge is resolved in Publisher's favor. Reverse engineering includes, without limitation, decompiling, disassembly, sniffing, peeling semiconductor components, or otherwise deriving source code. In addition to any other rights and remedies that Microsoft may have under the circumstances, Publisher shall be required in all cases to pay royalties to Microsoft in accordance with Exhibit 1 with respect to any games or other products that are developed, marketed or distributed by Publisher, and derived in whole or in part from the reverse engineering of Xbox 360, Xbox Live or any Microsoft data, code or other material.

10.5 RESERVATION OF RIGHTS. Microsoft reserves all rights not explicitly granted herein.

10.6 OWNERSHIP OF THE SOFTWARE TITLES. Except for the intellectual property supplied by Microsoft to Publisher (including without limitation the Licensed Trademarks hereunder and the licenses in certain software and hardware granted by an XDK License), ownership of which is retained by Microsoft, insofar as Microsoft is concerned, Publisher will own all rights in and to the Software Titles and Online Content.

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10.7 SUB-PUBLISHING. Notwithstanding Section 10.1, Publisher may enter into independent agreements with other publishers to distribute Software Titles in multiple approved Sales Territories (a "Sub-Publishing Relationship"), so long as:

10.7.1 Publisher provides written notice to Microsoft, at least [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] prior to authorizing a Sub-Publisher to manufacture any Software Title(s), of the Sub-Publishing relationship, along with (i) a summary of the scope and nature of the Sub-Publishing relationship including, without limitation, as between Publisher and Sub-Publisher, (ii) which party will be responsible for Certification of the Software Title(s) and/or any Online Content, (iii) a list of the Software Title(s) for which Sub-Publisher has acquired publishing rights, (iv) the geographic territory(ies) for which such rights were granted, and (v) the term of Publisher's agreement with Sub-Publisher; and

10.7.2 The Sub-Publisher has signed an Xbox 360 publisher license agreement ("Xbox 360 PLA") and both Publisher and Sub-Publisher are and remain at all times in good standing under each of their respective Xbox 360 PLAs. Publisher is responsible for making applicable royalty payments for the FPU's for which it places manufacturing orders, and Sub-Publisher is responsible for making royalty payments for the FPU's for which it places manufacturing orders.

10.8 AUTHORIZED AFFILIATES. If Publisher and an affiliate execute the "Publisher Affiliate Agreement" provided in Exhibit 4, then Publisher's authorized affiliate may exercise the rights granted to Publisher under this

Agreement. The foregoing shall not apply to any Publisher affiliate which pays or intends to pay royalties from a European billing address. Any such European affiliate shall instead execute an Xbox 360 Publisher Enrollment with MIOL, a copy of which is attached hereto as Exhibit 3.

11. USAGE DATA

Publisher acknowledges that the operation of the Xbox Live service requires that Microsoft collect and store Xbox Live User usage data, including, without limitation, Xbox Live User statistics, scores, ratings, and rankings (collectively, "Xbox Live User Data"), as well as personally-identifiable Xbox Live User data (e.g., name, email address) ("Personal Data"). Microsoft reserves the right, in its discretion, to use such Xbox Live User Data for any purpose, including without limitation, posting the Xbox Live User Data on Xbox.com or other Microsoft Web sites. Microsoft agrees to use commercially reasonable efforts to periodically make certain Xbox Live User Data and Personal Data available to Publisher; provided that Publisher's use of such data is in accordance with the then-current Xbox Live Privacy Statement and such other reasonable restrictions as Microsoft may require. Without limiting the foregoing, Publisher agrees that any disclosure of Personal Data to Publisher is only used by Publisher and may not be shared with any other third parties, and any permitted email communications with Xbox Live Users includes instructions for opting out of receiving any further communications from Publisher.

12. TRADEMARK RIGHTS AND RESTRICTIONS

12.1 LICENSED TRADEMARKS LICENSE. In each Software Title, FPU, Online Content and on all Marketing Materials, Publisher shall incorporate the Licensed Trademarks and include credit and acknowledgement to Microsoft as set forth in the Xbox 360 Publisher Guide. Microsoft grants to Publisher a non-exclusive, non-transferable, personal license to use the Licensed Trademarks in connection with Software Titles, FPUs, Online Content and Marketing Materials according to the Xbox 360 Publisher Guide and other conditions herein, and solely in connection with marketing, sale, and distribution in the approved Sales Territories or via Xbox Live.

12.2 LIMITATIONS. Publisher is granted no right, and shall not purport, to permit any third party to use the Licensed Trademarks in any manner without Microsoft's prior written consent. Publisher's license to use Licensed Trademarks in connection with the Software Title, FPUs and/or Online Content does not extend to the merchandising or sale of related or promotional products.

12.3 BRANDING SPECIFICATIONS. Publisher's use of the Licensed Trademarks (including without limitation in FPUs, Online Content and Marketing Materials) must comply with the Branding Specifications set forth in the Xbox 360 Publisher Guide. Publisher shall not use Licensed Trademarks in association with any third party trademarks in a manner that might suggest co-branding or otherwise create potential confusion as to source or sponsorship of the Software Title, Online Content or FPUs or ownership of the Licensed Trademarks, unless Microsoft has otherwise approved such use in writing. Upon notice or other discovery of any non-conformance with the requirements or prohibitions of this section, Publisher shall promptly remedy such non-conformance and notify Microsoft of the non-conformance and remedial steps taken.

12.4 PROTECTION OF LICENSED TRADEMARKS. Publisher shall assist Microsoft in protecting and maintaining Microsoft's rights in the Licensed Trademarks, including preparation and execution of documents necessary to register the Licensed Trademarks or record this Agreement, and giving immediate notice to Microsoft of potential infringement of the Licensed Trademarks. Microsoft shall have the sole right to and in its sole discretion may, commence, prosecute or defend, and control any action concerning the Licensed Trademarks, either in its own name or by joining Publisher as a party thereto. Publisher shall not during the term of this Agreement contest the validity of, by act or omission jeopardize, or take any action inconsistent with, Microsoft's rights or goodwill in the Licensed Trademarks in any country, including attempted registration of any Licensed Trademark, or use or attempted registration of any mark confusingly similar thereto.

12.5 OWNERSHIP AND GOODWILL. Publisher acknowledges Microsoft's ownership of all Licensed Trademarks, and all goodwill associated with the Licensed

Trademarks. Use of the Licensed Trademarks shall not create any right, title or interest therein in Publisher's favor. Publisher's use of the Licensed Trademarks shall inure solely to the benefit of Microsoft.

13. NON-DISCLOSURE; ANNOUNCEMENTS

13.1 NON-DISCLOSURE AGREEMENT. The information, materials and software exchanged by the parties hereunder or under an XDK License, including the terms and conditions hereof and of the XDK License, are subject to the Non-Disclosure Agreement between the parties attached hereto as Exhibit 5 (the "Non-Disclosure Agreement"), which is incorporated herein by reference; provided, however, that for purposes of the foregoing, Section 2(a)(i) of the Non-Disclosure Agreement shall hereinafter read, "The Receiving Party shall: (i) Refrain from disclosing Confidential Information of the Disclosing Party to any third parties for as long as such remains undisclosed under 1(b) above except as expressly provided in Sections 2(b) and 2(c) of this [Non-Disclosure] Agreement." In this way, all Confidential Information provided hereunder or by way of the XDK License in whatever form (e.g. information, materials, tools and/or software exchanged by the parties hereunder or under an XDK License), including the terms and conditions hereof and of the XDK License, unless otherwise specifically stated, will be protected from disclosure for as long as it remains Confidential.

13.2 PUBLIC ANNOUNCEMENTS. Neither party shall issue any such press release or make any such public announcement(s) related to the subject matter of this Agreement or any XDK License without the express prior consent of the other party, which consent will not be unreasonably withheld or delayed. Nothing contained in this Section 13.2 will relieve Publisher of any other obligations it may have under this Agreement, including without limitation its obligations to seek and obtain Microsoft approval of Marketing Materials.

13.3 REQUIRED PUBLIC FILINGS. Notwithstanding Sections 13.1 and 13.2, the parties acknowledge that this Agreement, or portions thereof, may be required under applicable law to be disclosed, as part of or an exhibit to a party's required public disclosure documents. If either party is advised by its legal counsel that such disclosure is required, it will notify the other in writing and the parties will jointly seek confidential treatment of this Agreement to the maximum extent reasonably possible, in documents approved by both parties and filed with the applicable governmental or regulatory authorities, and/or Microsoft will prepare a redacted version of this Agreement for filing.

14. PROTECTION OF PROPRIETARY RIGHTS

14.1 MICROSOFT INTELLECTUAL PROPERTY. If Publisher learns of any infringement or imitation of the Licensed Trademarks, a Software Title, Online Content or FPU, or the proprietary rights in or related to any of them, it will promptly notify Microsoft thereof. Microsoft may take such action as it deems advisable for the protection of its rights in and to such proprietary rights, and Publisher shall, if requested by Microsoft, cooperate in all reasonable respects therein at Microsoft's expense. In no event, however, shall Microsoft be required to take any action if it deems it inadvisable to do so. Microsoft will have the right to retain all proceeds it may derive from any recovery in connection with such actions.

14.2 PUBLISHER INTELLECTUAL PROPERTY. Publisher, without the express written permission of Microsoft, may bring any action or proceeding relating to infringement or potential infringement of a Software Title, Online Content or FPU, to the extent such infringement involves any proprietary rights of Publisher (provided that Publisher will not have the right to bring any such action or proceeding involving Microsoft's intellectual property). Publisher shall make reasonable efforts to inform Microsoft regarding such actions in a timely manner. Publisher will have the right to retain all proceeds it may derive from any recovery in connection with such actions. Publisher agrees to use all commercially reasonable efforts to protect and enforce its proprietary rights in the Software Title or Online Content.

14.3 JOINT ACTIONS. Publisher and Microsoft may agree to jointly pursue cases of infringement involving the Software Titles or Online Content (since such products will contain intellectual property owned by each of them). Unless the

parties otherwise agree, or unless the recovery is expressly allocated between them by the court (in which case the terms of Sections 14.1 and 14.2 will apply), in the event Publisher and Microsoft jointly prosecute an infringement lawsuit under this provision, any recovery will be used first to reimburse Publisher and Microsoft for their respective reasonable attorneys' fees and expenses, pro rata, and any remaining recovery shall also be given to Publisher and Microsoft pro rata based upon the fees and expenses incurred in bringing such action.

15. WARRANTIES

15.1 PUBLISHER. Publisher warrants and represents that:

15.1.1 It has the full power to enter into this Agreement;

15.1.2 It has obtained and will maintain all necessary rights and permissions for its and Microsoft's use of the Software Title, FPU's, Marketing Materials, Online Content, all information, data, logos, and software or other materials provided to Microsoft and/or made available to Xbox Live Users via Xbox Live (excluding those portions that consist of the Licensed Trademarks, Security Technology and redistributable components of the so-called "XDK" in the form as delivered to Publisher by Microsoft pursuant to an XDK License) (collectively, the "Publisher Content"), and that all Publisher Content complies with all laws and regulations, and does not and will not infringe upon or misappropriate any third party trade secrets, copyrights, trademarks, patents, publicity, privacy or other proprietary rights.

15.1.3 It shall comply with all laws, regulations, industry content rating requirements and administrative orders and requirements within any applicable Sales Territory relating to the distribution, sale and marketing of the Software Title, and shall keep in force all necessary licenses, permits, registrations, approvals and/or exemptions throughout the term of this Agreement and for so long as it is distributing, selling or marketing the Software Title in any applicable Sales Territory.

15.1.4 The Software Title, Online Content and/or information, data, logos and software or other materials provided to Microsoft and /or made available to Xbox Live Users via Xbox Live, do not and shall not contain any messages, data, images or programs that are, by law, defamatory, obscene or pornographic, or in any way violate any applicable laws or industry content rating requirements (including without limitation laws of privacy) of the applicable Sales Territory(ies) where the Software Title is marketed and/or distributed.

15.1.5 The Online Content shall not harvest or otherwise collect information about Xbox Live Users, including e-mail addresses, without the Xbox Live Users' express consent; and the Online Content shall not link to any unsolicited communication sent to any third party.

15.2 MICROSOFT. Microsoft warrants and represents that it has the full power to enter into this Agreement and it has not previously and will not grant any rights to any third party that are inconsistent with the rights granted to Publisher herein.

15.3 DISCLAIMER. EXCEPT AS EXPRESSLY STATED IN THIS SECTION 15, MICROSOFT PROVIDES ALL MATERIALS (INCLUDING WITHOUT LIMITATION THE SECURITY TECHNOLOGY) AND SERVICES HEREUNDER ON AN "AS IS" BASIS, AND MICROSOFT DISCLAIMS ALL OTHER WARRANTIES UNDER THE APPLICABLE LAWS OF ANY COUNTRY, EXPRESS OR IMPLIED, REGARDING THE MATERIALS AND SERVICES IT PROVIDES HEREUNDER, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTY OF FREEDOM FROM COMPUTER VIRUSES. WITHOUT LIMITATION, MICROSOFT PROVIDES NO WARRANTY OF NON-INFRINGEMENT.

15.4 EXCLUSION OF INCIDENTAL, CONSEQUENTIAL AND CERTAIN OTHER DAMAGES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL MICROSOFT, ITS AFFILIATES, LICENSORS OR ITS SUPPLIERS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND OR NATURE WHATSOEVER, RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY, INCLUDING WITHOUT LIMITATION, LOST PROFITS OR LOST GOODWILL AND WHETHER BASED ON BREACH OF ANY EXPRESS OR IMPLIED WARRANTY, BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR STRICT LIABILITY, REGARDLESS OF WHETHER SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE OR IF SUCH DAMAGE COULD HAVE BEEN REASONABLY FORESEEN.

15.5 LIMITATION OF LIABILITY. THE MAXIMUM LIABILITY OF MICROSOFT TO PUBLISHER OR TO ANY THIRD PARTY ARISING OUT OF THIS AGREEMENT WILL BE [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24b-2]. FURTHERMORE, UNDER NO CIRCUMSTANCES SHALL MICROSOFT BE LIABLE TO PUBLISHER FOR ANY DAMAGES WHATSOEVER WITH RESPECT TO ANY CLAIMS RELATING TO THE SECURITY TECHNOLOGY AND/OR ITS EFFECT ON ANY SOFTWARE TITLE OR FOR ANY STATEMENTS OR CLAIMS MADE BY PUBLISHER, WHETHER IN PUBLISHER'S MARKETING MATERIALS OR OTHERWISE, REGARDING THE AVAILABILITY OR OPERATION OF ANY ONLINE FEATURES.

16. INDEMNITY; INSURANCE. A claim for which indemnity may be sought hereunder is referred to as a "Claim."

16.1 MUTUAL INDEMNIFICATION. Each party hereby agrees to indemnify, defend, and hold the other party harmless from any and all third party claims, demands, costs, liabilities, losses, expenses and damages (including reasonable attorneys' fees, costs, and expert witnesses' fees) arising out of or in connection with any claim that, taking the claimant's allegations to be true, would result in a breach by the indemnifying party of any of its representations, warranties or covenants set forth in Section 15.

16.2 ADDITIONAL PUBLISHER INDEMNIFICATION OBLIGATION. Publisher further agrees to indemnify, defend, and hold Microsoft harmless from any and all third party claims, demands, costs, liabilities, losses, expenses and damages (including reasonable attorneys' fees, costs, and expert witnesses' fees) arising out of or in connection with any claim regarding any Software Title or FPU including without limitation any claim relating to quality, performance, safety thereof, or arising out of Publisher's use of the Licensed Trademarks in breach of this Agreement.

16.3 NOTICE AND ASSISTANCE. The indemnified party shall: (i) provide the indemnifying party reasonably prompt notice in writing of any Claim and permit the indemnifying party to answer and defend such Claim through counsel chosen and paid by the indemnifying party; and (ii) provide information, assistance and authority to help the indemnifying party defend such Claim. The indemnified party may participate in the defense of any Claim at its own expense. The indemnifying party will not be responsible for any settlement made by the indemnified party without the indemnifying party's written permission, which will not be unreasonably withheld or delayed. In the event the indemnifying party and the indemnified party agree to settle a Claim, the indemnified party agrees not to publicize the settlement without first obtaining the indemnifying party's written permission.

16.4 INSURANCE. Publisher shall maintain sufficient and appropriate insurance coverage to enable it to meet its obligations under this Agreement and by law (whether Products Liability, General Liability or some other type of insurance). For FPU's distributed in the Japan Sales Territory, Publisher's coverage will have minimum limits of the Japanese yen equivalent of [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] per occurrence, with a deductible of not more than the Japanese yen equivalent of [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2]. For FPU's distributed in the Asian Sales Territory, Publisher's coverage will have minimum limits of [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] per occurrence (or its equivalent value in local currency as of the date of issuance), with a deductible of not more than [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] (or its equivalent value in local currency as of the date of issuance). For FPU's distributed outside of Japan and the Asian Sales Territories, Publisher shall maintain Professional Liability and Errors & Omissions Liability Insurance (E&O) with policy limits of not less than [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] per occurrence (or its equivalent value in local currency as of the date of issuance), each claim with a deductible of not more than [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] (or its equivalent value in local currency as of the date of issuance). Such insurance shall include coverage for infringement of any proprietary right of any third party, including without limitation copyright and trademark infringement as related to Publisher's performance under this Agreement. The E&O insurance retroactive coverage date will be no later than [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2]. Publisher shall maintain an active policy, or purchase an extended reporting

period providing coverage for claims first made and reported to the insurance company within [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] after [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2]. Upon request, Publisher shall deliver to Microsoft proof of such coverage. In the event that Publisher's proof evidences coverage that Microsoft reasonably determines to be less than that required to meet Publisher's obligations created by this Agreement, then Publisher agrees that it shall promptly acquire such coverage and notify Microsoft in writing thereof.

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17. TERM AND TERMINATION

17.1 TERM. The term of this Agreement shall commence on the Effective Date and shall continue until [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2]. Unless one party gives the other notice of non-renewal within [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] of the end of the then-current term, this Agreement shall automatically renew for successive [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] terms.

17.2 TERMINATION FOR BREACH. If either party materially fails to perform or comply with this Agreement or any provision thereof, and fails to remedy the default within [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] after the receipt of notice to that effect, then the other party has the right, at its sole option and upon written notice to the defaulting party, to terminate this Agreement upon written notice; provided that if Publisher is the party that has materially failed to perform or comply with this Agreement, then Microsoft has the right, but not the obligation, to suspend availability of the Online Content during such [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] period. Any notice of default hereunder must be prominently labeled "NOTICE OF DEFAULT"; provided, however, that if the default is of Sections 10, 12 or Sections 1 or 2 of Exhibit 1, the Non-Disclosure Agreement, or an XDK License, then the non-defaulting party may terminate this Agreement immediately upon written notice, without being obligated to provide a [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] cure period. The rights and remedies provided in this section are not exclusive and are in addition to any other rights and remedies provided by law or this Agreement. If the uncured default is related to a particular Software Title or particular Online Content, then the party not in default has the right, in its discretion, to terminate this Agreement its entirety or with respect to the applicable Software Title or the particular Online Content. If Microsoft determines, at any time prior to the Commercial Release of a Software Title or Online Content, that such Software Title or Online Content does not materially comply with the requirements set forth in the Xbox 360 Publisher Guide or to any applicable laws, then Microsoft has the right, in Microsoft's sole discretion and notwithstanding any prior approvals given by Microsoft, to terminate this Agreement without cost or penalty, as a whole or on a Software Title by Software Title, or Sales Territory by Sales Territory basis upon written notice to Publisher with respect to such Software Title or Sales Territory.

17.3 EFFECT OF TERMINATION; SELL-OFF RIGHTS. Upon termination or expiration of this Agreement, Publisher has no further right to exercise the rights licensed hereunder or within the XDK License and shall promptly cease all manufacturing of FPU through its Authorized Replicators and, other than as provided below, cease use of the Licensed Trademarks. Publisher shall have a period of [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2], to sell-off its inventory of FPUs existing as of the date of termination or expiration, after which sell-off period Publisher shall immediately return all FPUs to an Authorized Replicator for destruction. Publisher shall cause the Authorized Replicator to destroy all FPUs and issue to Microsoft written certification by an authorized representative of the Authorized Replicator confirming the destruction of FPUs required hereunder. All of Publisher's obligations under this Agreement shall continue to apply during such [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] sell-off period. If this Agreement is terminated due to Publisher's breach, at Microsoft's option, Microsoft may require Publisher to immediately destroy all FPUs not yet distributed to Publisher's distributors, dealers and/or end users and shall require all those distributing the FPU over which it has control to cease distribution. Upon termination or expiration of this Agreement, Publisher shall continue to support existing Online Game Features for FPUs that

have already been sold until the end of the Minimum Commitment term.

17.4 CROSS-DEFAULT. If Microsoft has the right to terminate this Agreement, then Microsoft may, at its sole discretion also terminate the XDK License. If Microsoft terminates the XDK License due to a breach by Publisher, then Microsoft may, at its sole discretion also terminate this Agreement.

17.5 SURVIVAL. The following provisions shall survive expiration or termination of this Agreement: Sections 2, 6.2.2 (as to the Minimum Commitment), 6.2.3, 8 and Sections 1, 2 and 5 of Exhibit 1, 9.1-9.3, 10.3, 10.4, 11, 13.1, 14, 15, 16, 17.3, 17.5 and 18.

18. GENERAL

18.1 GOVERNING LAW; VENUE; ATTORNEYS FEES. This Agreement is to be construed and controlled by the laws of the State of Washington, U.S.A., and Publisher consents to exclusive jurisdiction and venue in the federal courts sitting in King County, Washington, U.S.A., unless no federal jurisdiction exists, in which case Publisher consents to exclusive jurisdiction and venue in the Superior Court of King County, Washington, U.S.A. Publisher waives all defenses of lack of

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personal jurisdiction and forum non conveniens. Process may be served on either party in the manner authorized by applicable law or court rule. The English version of this Agreement is determinative over any translations thereof. If either party employs attorneys to enforce any rights arising out of or relating to this Agreement, the prevailing party is entitled to recover its reasonable attorneys' fees, costs and other expenses. This choice of jurisdiction provision does not prevent Microsoft from seeking injunctive relief with respect to a violation of intellectual property rights or confidentiality obligations in any appropriate jurisdiction.

18.2 NOTICES; REQUESTS. All notices and requests in connection with this Agreement are deemed given on the [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] after they are deposited in the applicable country's mail system [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2], postage prepaid, certified or registered, return receipt requested; or [INFORMATION OMITTED AND FILED SEPARATELY WITH THE COMMISSION UNDER RULE 24B-2] sent by overnight courier, charges prepaid, with a confirming fax; and addressed as follows:

Publisher: MAJESCO ENTERTAINMENT COMPANY	Microsoft: MICROSOFT LICENSING, GP
160 Raritan Center Parkway	6100 Neil Road, Suite 100
Edison, NJ 08837	Reno, NV 89511-1137

Catherine Biebelberg

Attention: -----

732-225-5451

Fax: ----- Attention: Xbox Accounting Services

732-225-8910

Phone: -----

catherineb@majescoentertainment.com

Email: ----- with a cc to: MICROSOFT CORPORATION
One Microsoft Way
Redmond, WA 98052-6399

Attention: Law & Corporate Affairs Department
Assoc. General Counsel, Consumer Legal
Group (H&ED)
Fax: (425) 936-7329

or to such other address as the party to receive the notice or request so designates by written notice to the other.

18.3 NO DELAY OR WAIVER. No delay or failure of either party at any time to exercise or enforce any right or remedy available to it under this Agreement, and no course of dealing or performance with respect thereto, will constitute a waiver of any such right or remedy with respect to any other breach or failure by the other party. The express waiver by a party of any right or remedy in a particular instance will not constitute a waiver of any such right or remedy in any other instance. All rights and remedies will be cumulative and not exclusive of any other rights or remedies.

18.4 ASSIGNMENT. Publisher may not assign this Agreement or any portion thereof, to any third party unless Microsoft expressly consents to such assignment in writing. Microsoft will have the right to assign this Agreement and/or any portion thereof as Microsoft may deem appropriate and/or authorize its affiliates or partners to perform this Agreement in whole or part on its behalf. For the purposes of this Agreement, a merger, consolidation, or other corporate reorganization, or a transfer or sale of a controlling interest in a party's stock, or of all or substantially all of its assets is to be deemed to be an assignment. This Agreement will inure to the benefit of and be binding upon the parties, their successors, administrators, heirs, and permitted assigns.

18.5 NO PARTNERSHIP. Microsoft and Publisher are entering into a license pursuant to this Agreement and nothing in this Agreement is to be construed as creating an employer-employee relationship, a partnership, a franchise, or a joint venture between the parties.

18.6 SEVERABILITY. If any provision of this Agreement is found invalid or unenforceable pursuant to judicial decree or decision, the remainder of this Agreement shall remain valid and enforceable according to its terms. The parties intend that the provisions of this Agreement be enforced to the fullest extent permitted by applicable law. Accordingly, the parties agree that if any provisions are deemed not enforceable, they are to be deemed modified to the extent necessary to make them enforceable.

18.7 INJUNCTIVE RELIEF. The parties agree that Publisher's threatened or actual unauthorized use of the Licensed Trademarks or other Microsoft proprietary rights whether in whole or in part, may result in immediate and irreparable

damage to Microsoft for which there is no adequate remedy at law. Either party's threatened or actual breach of the confidentiality provisions may cause damage to the non-breaching party, and in such event the non-breaching party is entitled to appropriate injunctive relief from any court of competent jurisdiction without the necessity of posting bond or other security.

18.8 ENTIRE AGREEMENT; MODIFICATION; NO OFFER. This Agreement (including the Concept, the Non-Disclosure Agreement, the Xbox 360 Publisher Guide, written amendments thereto, and other incorporated documents) and the XDK License constitute the entire agreement between the parties with respect to the subject matter hereof and merges all prior and contemporaneous communications. This Agreement shall not be modified except by a written agreement dated subsequent hereto signed on behalf of Publisher and Microsoft by their duly authorized representatives. Neither this Agreement nor any written or oral statements related hereto constitute an offer, and this Agreement is not legally binding until executed by both parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the Effective Date on the dates indicated below.

MICROSOFT LICENSING, GP

MAJESCO ENTERTAINMENT COMPANY

/s/ Roxanne V. Spring

/s/ Jesse Sutton

By (sign)

By (sign)

Roxanne V. Spring

Jesse Sutton

Name (Print)

Name (Print)

SVP	President

Title	Title
September 13, 2005	9-8-05

Date	Date

EXHIBIT 21.1

LIST OF SUBSIDIARIES

NAME OF SUBSIDIARY	STATE OF INCORPORATION
Majesco Europe Limited	United Kingdom

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors
Majesco Entertainment Company

We hereby consent to the incorporation of our reports dated January 10, 2006 included in this Form 10-K on the consolidated financial statements of Majesco Entertainment Company as of October 31, 2005 and 2004, and for each of the three years in the period ended October 31, 2005, and on management's assessment of the effectiveness of internal control over financial reporting as of October 31, 2005, into the Company's previously filed registration statements on Form S-8 (No. 333-120143), Forms S-3 (333-122519; 333-115822; 333-121640; and 333-120103).

GOLDSTEIN GOLUB KESSLER LLP
New York, New York

February 1, 2006

CERTIFICATION

I, Jesse Sutton, certify that:

1. I have reviewed this annual report on Form 10-K of Majesco Entertainment Company and Subsidiary:
2. Based on my knowledge, this annual report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this annual report;
3. Based on my knowledge, the financial statements, and other financial information included in this annual report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this annual report;
4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rule 13a-15 (f) and 15 (d) — 15(f)) for the registrant and we have:
 - a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this annual report is being prepared;
 - b) designed such internal control over financing reporting, or caused such internal control over financial to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles.;
 - c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) disclosed in this report any change in the registrants' internal control over financial reporting that occurred during the registrant's most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect the registrant's internal control over the financial reporting; and
5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a) all significant deficiencies and material weaknesses in the design or operation of internal controls over financial reporting that are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls over financial reporting.

Date: February 1, 2006

/s/ Jesse Sutton
President
(Principal Executive Officer)

CERTIFICATION

I, John Gross, certify that:

1. I have reviewed this annual report on Form 10-K of Majesco Entertainment Company and Subsidiary:
2. Based on my knowledge, this annual report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this annual report;
3. Based on my knowledge, the financial statements, and other financial information included in this annual report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this annual report;
4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rule 13a-15 (f) and 15 (d) — 15(f)) for the registrant and we have:
 - a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this annual report is being prepared;
 - b) designed such internal control over financial reporting, or caused such internal control over financial to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles.;
 - c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) disclosed in this report any change in the registrants' internal control over financial reporting that occurred during the registrant's most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect the registrant's internal control over the financial reporting; and
5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a) all significant deficiencies and material weaknesses in the design or operation of internal controls over financial reporting that are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls over financial reporting.

Date: February 1, 2006

/s/ John Gross
Chief Financial Officer
(Principal Financial Officer)

Certification

**Pursuant To Section 906 of the Sarbanes-Oxley Act Of 2002
(Subsections (A) And (B) Of Section 1350, Chapter 63 of Title 18, United States Code)**

Pursuant to section 906 of the Sarbanes-Oxley Act of 2002 (subsections (a) and (b) of section 1350, chapter 63 of title 18, United States Code), each of the undersigned officers of Majesco Entertainment Company and Subsidiary, (the "Company"), does hereby certify, to such officer's knowledge, that:

The Annual Report on Form 10-K for the fiscal year ended October 31, 2005 (the "Form 10-K") of the Company fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, and the information contained in the Form 10-K fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: February 1, 2006 /s/ Jesse Sutton

President

Dated: February 1, 2006 /s/ John Gross

Chief Financial Officer

A signed original of this written statement required by Section 906 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.