

ELECTRONIC ARTS INC.
LICENSE AND
DISTRIBUTION AGREEMENT

This license and distribution agreement (this "*Agreement*") is entered into as of September 4, 2007 (the "*Effective Date*") by and between **ELECTRONIC ARTS INC.**, a Delaware corporation with its principal offices at 209 Redwood Shores Parkway, Redwood City, CA 94065-1175 ("*EA*") and **ONE LAPTOP PER CHILD ASSOCIATION, INC.**, a Delaware corporation, located at One Cambridge Center, Cambridge MA, 02142 ("*OLPC*").

RECITALS

- A. EA designs, develops, publishes and distributes interactive entertainment software products.
- B. OLPC is a non-profit organization that focuses on designing, manufacturing and distributing laptops as learning tools for children living in lesser developed countries (the "*OLPC Program*").
- C. OLPC would like to acquire the right to modify and distribute a version of certain EA source code for the classic SimCity game for the UNIX platform for the OLPC Program.

NOW, THEREFORE, the parties hereby agree as follows:

1. DEFINITIONS

1.1 *Original SimCity*. As used in this Agreement, "*Original SimCity*" means the executable and accompanying source code to EA's classic interactive entertainment software product released as "*SimCity*" for the Unix platform in or about 1990.

1.2 *Deliverable Items*. As used in this Agreement, "*Deliverable Items*" means the items specified in Exhibit A under the heading "Deliverable Items" to be provided by EA and to be used by OLPC to exercise its modification rights with respect to the Original SimCity under section 2.1 of this Agreement.

1.3 *GPL*. As used in this Agreement, "*GPL*" means Version 3 of the GNU General Public License, available at <http://www.gnu.org/copyleft/gpl.html>.

2. GRANT OF LICENSE

2.1 *Modification*. EA hereby grants to OLPC a non-exclusive, non-transferable, non-sub licensable, non-assignable, revocable right and license to modify the Original SimCity as provided by EA for the sole purpose of producing a version of the Original SimCity for distribution on laptops provided through the OLPC Program pursuant to the specifications set forth in Exhibit A ("*OLPC SimCity*"). All right, title and interest in OLPC SimCity and any interim modifications shall belong solely to EA. OLPC SimCity, and any subsequent versions, will not be distributed by OLPC unless the software meets the requirements set forth in Exhibit A. For the avoidance of doubt, nothing contained in this Agreement shall be deemed to limit or restrict EA's right to use, modify, sell, distribute or license the Original SimCity in any other manner as EA so desires.

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2.2 Distribution. Provided the OLPC SimCity has been expressly approved by EA pursuant to the terms set forth in Section 4 below, EA grants OLPC the right to distribute the OLPC SimCity through the OLPC Program, pursuant to the following terms.

- (i) The OLPC SimCity will identify Electronic Arts Inc. as the copyright holder and will be distributed under the GPL with additional terms specified by EA pursuant to GPL Section 7 (Additional Terms) including a revised disclaimer of warranties and limitations of liability and specific notice that no trademark license is granted to the name "SimCity" or any other EA trademark.
- (ii) The OLPC SimCity will be provided as an executable with a splash screen that identifies the OLPC SimCity as "SimCity". The splash screen for the OLPC SimCity will be provided by EA and will not be altered in any manner by OLPC without EA's express prior approval.
- (iii) The source code for the OLPC SimCity (minus the splash screen, which is not required for the program to be utilized as intended) will be distributed with the executable code through the OLPC Program. EA will not be responsible for making the source for the OLPC SimCity separately available to licensees.
- (iv) OLPC will not include any warranty with the OLPC SimCity.
- (v) No trademark license is granted to any end user for the use of the SimCity brand or any other trademark owned by Electronic Arts Inc.
- (vi) OLPC will not charge any fee for access to the OLPC SimCity (executable or source code) that is separate from the charge for the laptop provided under the OLPC Program.

2.3 License Restrictions. OLPC will not modify the Original SimCity except as provided in 2.1 above. OLPC will not otherwise sell, rent, disclose or distribute to any person the Original SimCity. OLPC's rights to the Original SimCity Code are limited to those expressly granted in this Agreement and are subject to all of the other terms and conditions of this Agreement.

2.4 Return of Materials. OLPC will immediately return to EA the Original SimCity source code upon approval of the OLPC SimCity. OLPC will make no further use of the Original SimCity.

2.5 Trademark License; Proprietary Notices. Subject to EA's approval rights as set forth in Section 4 below, during the term of this Agreement, EA grants OLPC a non-exclusive, non-transferable, non-sub licensable, non-assignable, revocable right and license to include the EA provided splash screen identifying SimCity ("**EA Trademark**") in the executable for the OLPC SimCity. OLPC agrees to include in each laptop that contains a copy of the OLPC SimCity, the EA copyright notice. OLPC agrees not to alter, erase, deface or overprint any such copyright notice or EA provided splash screen on the OLPC SimCity. Nothing in this Agreement confers a license to the use of the trademark SimCity except as expressly set forth in this section, or confers any other rights or interests in any other trademark, patent, copyright or other intellectual property right of EA or its licensors. Neither the name of Electronic Arts Inc., names of its employees, nor any EA trademark, including the mark SIMCITY, may be used to

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endorse or promote any products derived from the Original SimCity without specific prior written permission from EA.

3. DISCLAIMER OF WARRANTIES.

THE ORIGINAL SIMCITY IS PROVIDED BY EA "AS IS" WITHOUT WARRANTY OF ANY KIND. ANY AND ALL EXPRESS, STATUTORY OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT ARE DISCLAIMED. IN NO EVENT SHALL EA OR ITS LICENSORS BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; LOSS OF USE, DATA, OR PROFITS; OR BUSINESS INTERRUPTION) HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, WHETHER IN CONTRACT, STRICT LIABILITY, OR TORT (INCLUDING NEGLIGENCE OR OTHERWISE) ARISING FROM OR OTHERWISE RELATING TO THE USE OF OR OTHER DEALINGS WITH THE ORIGINAL SIMCITY, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

4. APPROVAL RIGHTS.

4.1 EA. OLPC will not distribute OLPC SimCity or any subsequent version unless it has been approved for distribution by EA. If OLPC SimCity meets the specifications set forth in Exhibit A, EA will not withhold its approval. The parties will work together in good faith to resolve any disagreements and achieve approval of the OLPC SimCity for distribution. Notwithstanding the above, EA acknowledges that the OLPC user interface for laptops distributed through the OLPC Program is subject to ongoing modification. OLPC may make modifications to OLPC SimCity to ensure that it is compatible with the OLPC user interface without seeking EA's approval provided that OLPC does not make changes to OLPC SimCity that affect the game's presentation, play-ability or features. EA's approval rights in this Agreement supersede any contradictory terms in the GPL license under which the OLPC SimCity will be distributed. OLPC will not make any statements about EA's participation in the OLPC Program or the inclusion of SimCity in the OLPC Program without the express prior written approval of EA.

4.2 OLPC. EA will not use the OLPC logo or any other trademark of OLPC in any press statement, announcement, or other marketing materials regarding EA's participation in the OLPC Program or the inclusion of SimCity in the OLPC Program without the express prior written approval of OLPC.

5. OBLIGATIONS

5.1 Conduct of Business. OLPC will: (i) conduct its business and the OLPC Program in a manner that reflects favorably at all times on the SimCity game and brand, and the good name, goodwill and reputation of EA; (ii) avoid deceptive, misleading or unethical practices that are or might be detrimental to EA or the SimCity brand; (iii) make no false or misleading representation with regard to EA, or SimCity (iv) not publish or employ or cooperate in the publication or employment of any deceptive or misleading advertising material with regard to EA, or SimCity; (v) make no representations, warranties or guarantees to end users or to the public regarding the specifications, features or capabilities of the OLPC SimCity or the Original SimCity, that are inconsistent with the disclaimer of warranties in

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this Agreement and in the GPL; and (vi) will comply with all applicable international, national, state, regional, and local laws and regulations, including but not limited to export laws and regulations, in performing its duties hereunder and in any of its dealings with respect to the OLPC Program.

5.2 *Know How and Experience.* OLPC represents and warrants to EA that it has the know how and experience to conduct and administer the OLPC Program and that the management and administration of the OLPC Program will be in accordance with generally accepted practices, and the laws and regulations related to operation of a non-profit organization.

6. SUPPORT

OLPC agrees and acknowledges that EA shall have no obligation to provide technical support for OLPC's or any other parties' use of the OLPC SimCity and OLPC will take reasonable steps to ensure that customers do not look to EA for customer support, including specifically stating in the appropriate program materials that customer support for the OLPC SimCity is not provided. OLPC further agrees that it will provide warranty and post warranty service to its end users and customers at least in accordance with generally accepted industry standards. OLPC shall in all events be solely responsible to its end users and customers for support, warranty and post-warranty service and will hold EA harmless from all claims made under such warranties or otherwise arising out of OLPC Program. OLPC will provide EA with directions on how to refer customers to OLPC for issues arising with the OLPC laptops and software, including the OLPC SimCity.

7. OWNERSHIP OF INTELLECTUAL PROPERTY RIGHTS

As used in this Agreement, "*Intellectual Property Rights*" means patent, copyright, trade secrets, know-how, trademarks, service marks, trade names, trade dress, and corresponding rights in registrations and applications for registration of any of the foregoing rights, and such other intellectual property rights recognized by the law of each applicable jurisdiction.

7.1 *Ownership of Original SimCity and OLPC SimCity.* As between EA and OLPC, EA owns all rights in and to the Original SimCity and the OLPC SimCity and any and all modifications, enhancements and derivative works of the Original SimCity and the Intellectual Property Rights embodied therein. OLPC hereby sells, grants and assigns to EA without reservation all OLPC's right, title and interest in and to all modifications made to the Original SimCity by OLPC or any contractor on OLPC's behalf. Notwithstanding the above, EA agrees that it will not make any use of the OLPC SimCity (other than as specified in this agreement).

7.2 *Ownership of EA Trademarks, Logos, and Copyrights.* Nothing contained in this Agreement confers in OLPC any interest in the EA Trademark except as expressly stated herein. OLPC agrees that it will not at any time during or after the term of this Agreement assert or claim any interest in or do anything which may adversely affect the validity or enforceability of the EA Trademark or any copyright in the Original SimCity or any modification thereof. OLPC will not register, seek to register, or cause to be registered the EA Trademark, or any copyrights to SimCity Code, without EA's prior written consent, nor shall OLPC adopt and use any trademark that might be confusingly similar to the EA Trademark or any copyrighted material in the Original SimCity.

7.3 *Infringement.* OLPC agrees to notify EA of all known or suspected breaches of EA's Intellectual Property Rights in the OLPC SimCity that come to OLPC's attention. EA reserves the sole

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and exclusive right at its discretion to assert claims against third parties for infringement or misappropriation of its Intellectual Property Rights in the OLPC SimCity.

8. INDEMNITY

OLPC shall indemnify and hold harmless EA, its officers, directors, employees, agents and representatives from and against any and all damages, costs, judgments, penalties and expenses of any kind (including reasonable legal fees and disbursements) which may be obtained against, imposed upon or suffered by any of them as a result of any use by OLPC of the Original SimCity or the OLPC SimCity or the breach by OLPC of any of OLPC's representations or warranties under this Agreement.

EXCEPT FOR THE INDEMNITY PROVIDED FOR IN THIS SECTION 8, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY KIND OR THE LOSS OF ANTICIPATED PROFITS ARISING FROM ANY BREACH OF THIS AGREEMENT EVEN IF THE OTHER PARTY IS NOTIFIED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER ANY REMEDY SET FORTH HEREIN FAILS OF ITS ESSENTIAL PURPOSE.

9. TERMINATION OF AGREEMENT

9.1 *Termination for Breach.* Either party may terminate this Agreement at any time after thirty (30) days prior written notice (specifying details of the breach or default) to the other party if:

- (i) the other party is in breach or default of any provision of this Agreement; and such breach or default has a material adverse effect on the rights or obligations of the other party; and
- (ii) the breach or default is not cured within the thirty (30) day notice period.

9.2 *Waiver of Damages.* **A PARTY WHO TERMINATES THIS AGREEMENT IN ACCORDANCE WITH THE EXPRESS PROVISIONS OF THIS AGREEMENT SHALL NOT BE LIABLE TO THE OTHER FOR DAMAGES OF ANY KIND INCLUDING WITHOUT LIMITATION, INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES ON ACCOUNT OF SUCH TERMINATION OF THIS AGREEMENT.**

9.3 *Survival of Certain Obligations.* EA's rights and OLPC's obligations under Sections 3, 4, 5, 7, 8, 9, 10, and 11 shall survive any termination of this Agreement.

10. PUBLIC STATEMENTS

OLPC and EA agree that it will not make or release any public statements concerning this Agreement or the association between EA and OLPC except as provided in Section 4 above. OLPC and EA will create a mutually acceptable announcement regarding EA's participation in the OLPC Program.

11. GENERAL PROVISIONS

11.1 *Authority.* Each party represents and warrants to the other that it has the requisite power and authority to enter into and carry out the terms of this Agreement.

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11.2 Governing Law; Jurisdiction. This Agreement will be deemed entered into in San Mateo County, California and will be governed by and interpreted in accordance with the substantive laws of the State of California without regard to its choice or conflicts of laws provisions. The parties agree that any dispute arising under this Agreement will be resolved in the state or federal courts within the Northern District of California and OLPC expressly consents to jurisdiction therein.

11.3 Paragraph Headings and Interpretation. The paragraph headings contained in this Agreement are for reference only and shall not be considered as substantive parts of this Agreement.

11.4 Entire Agreement. This Agreement and Exhibits A and B constitute the entire Agreement between the parties pertaining to the subject matter hereof, and any and all written or oral agreements previously existing between the parties are expressly canceled and superseded. OLPC acknowledges that it is not entering into this Agreement on the basis of any representations not expressly contained herein.

11.5 Force Majeure. Neither party will be deemed in default of this Agreement to the extent that performance of its obligations or attempts to cure any breach are delayed or prevented by reason of any act of God, fire, natural disaster, accident, act of government, shortages of material or supplies or any other cause reasonably beyond the control of such party ("Force Majeure"), provided that such party gives the other party written notice thereof promptly and, in any event, within fifteen (15) calendar days of discovery thereof, and uses its diligent, good faith efforts to cure the breach. In the event of such a Force Majeure, the time for performance or cure will be extended for a period equal to the duration of the Force Majeure but not in excess of six (6) months.

11.6 Assignment. This Agreement shall not be assignable by either party, in whole or in part without the written consent of the other, which consent will not be unreasonably withheld. However, either party may assign this Agreement to a subsidiary or entity controlled by or under common control with such party.

11.7 Amendment; Waiver. Any provision of this Agreement can only be amended or waived by a written document signed by both EA and OLPC. The waiver by either party of a default or breach by the other party will not be considered a waiver of subsequent defaults of the same or different kind.

11.8 Notices. All notices and statements hereunder required to be given to EA shall be sent to EA at its address stated at the beginning of this Agreement, to the attention of EA's General Counsel, and all notices to OLPC shall be sent to OLPC at its address stated at the beginning of this Agreement, to the attention of: _____. Notices are deemed to be received by the addressee of the notice on the earlier of the date the notice is actually delivered to the addressee and: (i) ten (10) days after the notice is sent by first class mail; (ii) the next business day after the notice is sent by confirmed fax transmission; or (iii) on the date of guaranteed delivery if the notice is sent by recognized international or domestic express courier.

11.9 Relationship of the Parties. OLPC's relationship with EA during the term of this Agreement shall be that of an independent contractor. OLPC shall not have, and shall not represent that it has, any power, right or authority to bind EA, or to assume or create any obligation or responsibility, express or implied, on behalf of EA. Nothing stated in this Agreement will be construed as implying that OLPC and EA are partners or as creating the relationships of employer/employee, franchisor/franchisee, or principal/agent between the parties.

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11.10 *Unenforceability*. If any provision or provisions of this Agreement are held by a court or arbitrator of competent jurisdiction to be unenforceable, each such provision shall be given effect according to its intent to the maximum extent that it is legally enforceable. The unenforceability of any provision of this Agreement will not affect the enforceability or interpretation of any other provision.

IN WITNESS WHEREOF, the parties hereto have executed the Agreement as of the Effective Date.

ELECTRONIC ARTS INC.

**THE ONE LAPTOP PER CHILD
ASSOCIATION, INC.**

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

EXHIBIT A

Territory:

Worldwide

Original SimCity Code:

<i>Title</i>	<i>Format</i>
SimCity (published in or about 1990)	Unix Platform

Deliverable Items: EA will deliver to OLPC the following materials on or shortly after the Effective Date:

1. Source code for the Unix port version of the Original SimCity.
2. Any EA Documentation that EA deems necessary.

General Software Requirements: OLPC agrees that the OLPC SimCity will not be approved by EA for distribution under Section 2.2 of this Agreement, until the OLPC SimCity meets the following general software requirements:

1. EA's QA team is unable to crash the game in sixteen (16) man-hours of play-time.
2. EA's QA team is unable to find images/language that is deemed inappropriate to achieve an "E" rating by the ESRB standard.
3. No use of any EA Trademarks that would reflect negatively upon the established reputation of EA.
4. Add copyright/license information to each source file to reflect the proper licensing.

Specific Software Requirements: OLPC agrees that the OLPC SimCity will not be approved by EA for distribution under Section 2.2 of this Agreement, until the OLPC SimCity meets the following specific software requirements

1. The Air Crash Disaster is removed from the game.
2. EA approved splash screen is shown before the start of the game.
3. Simplify the Main Menu with EA provided GUI elements.
4. All text in the game must be legible.
5. Game audio must work.
6. Remove all attempted multi-player features.
7. SimCity Should be properly integrated to the XO's GUI
8. Code for the EA approved splash screen is not included in the source code to be distributed with the OLPC SimCity executable.

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EXHIBIT B

EA TRADEMARK AND LEGAL NOTICE:

“SIMCITY TM & (c) 1989 - 2007 Electronic Arts Inc. All rights reserved.

EA does not support this software. For technical support

visit:<http://wiki.laptop.org/go/SimCity> or email simcity@laptop.org.

RESTRICTIONS ON USE:

OLPC shall not reproduce or use (or authorize the reproduction or use of) the EA Trademark, or any other trademark, service mark, service name, trade name, designation or logo of EA, in any manner whatsoever other than as expressly authorized by this Agreement. Furthermore, except as authorized hereunder, OLPC shall not reproduce or use any service mark, service name, trade name, trademark, designation or logo confusingly similar to the EA Trademark or any other trademark, service mark, service name, trade name, designation or logo of EA.

OLPC shall mark each use of the EA Trademark with either the superscript ® symbol or the superscript TM symbol as set forth above adjacent to such EA Trademark. EA may at any time, and from time to time, amend this Exhibit B.

OLPC shall also take such other steps as may reasonably be requested by EA to evidence EA's ownership and license to OLPC of any of the EA Trademark, including, without limitation, execution of registered user agreements if required by applicable law.