



2022 PROBLEM

The case focuses on a dispute between two game development studios and involves intellectual property infringement, derivative works, breach of contract, and non-fungible tokens. Midnight Dive is the developer and publisher of *Orbital Harbour*, an MMORPG video game.

Midnight Dive entered into a collaboration agreement with Benbow, a luxury fashion brand, to introduce branded in-game content to the game. Fourth Wall, a game development studio, used a software tool to extract characters and other assets—including Benbow-branded items—from *Orbital Harbour*. The extracted assets have been repurposed and are used in Fourth Wall's online NFT strategy card video game, *Orbital Decks*.

Midnight Dive, together with Benbow, filed a lawsuit against Fourth Wall, claiming that Fourth Wall's use of *Orbital Harbour* assets and Benbow trademarks is unlawful and infringing upon their intellectual property rights.

CLAIMANT & RESPONDENT

Claimant: Midnight Dive, a game development studio, and Benbow, a luxury fashion brand.

Respondent: Fourth Wall, a newly established game development studio.

TIMELINE

1. Midnight Dive is a small video game developer based in Seatown, Obliland. Up until 2010, Midnight Dive was mainly developing short single-player PC video games that were based on public domain novels. Midnight Dive was also working on developing their in-house game engine, *Tritonia*.

2. In 2016, having finished the development of *Tritonia*, Midnight Dive began the development of *Orbital Harbour*, a massively multiplayer online (“MMO”) role-playing video game (“RPG”). *Orbital Harbour* was developed with *Tritonia* and is set in the fictional universe of *Treasure Island*, a public domain novel. *Orbital Harbour* uses various characters and settings from the novel and adapts the story into a science fiction setting, i.e., pirates in space. In 2017, Anne Bonny joined Midnight Dive as a Video Game Server Engineer to support the backend development of *Orbital Harbour*.
3. *Orbital Harbour* entered a limited public beta in November 2019 and received a mixed response from both critics and the wider player community. The main feedback was that even though *Orbital Harbour* had an interesting setting, intuitive gameplay mechanics and a rich narrative, it severely lacked customisation options for character creation and featured a limited array of non-player characters (“NPCs”). *Gonzo Noob*, a video game media website, noted that:

“...*Orbital Harbour* is an upcoming MMORPG that falls short of offering a convincing role-playing experience. The only character creation and customisation options offered to players is a laughable selection of 5 different hairstyles. Same goes for NPCs—I swear I must have encountered the same NPC at least 5 times within 30 minutes of play.”
4. Midnight Dive was well aware of the problems faced by *Orbital Harbour*, as these stemmed from *Tritonia*’s limitations. However, as a small developer, Midnight Dive could not afford to invest resources into developing a robust character creation and customisation system for *Tritonia*. Midnight Dive eventually decided to push back the official release of *Orbital Harbour* from December 2020 to December 2023 to address these issues. In January 2020, Midnight Dive fired several employees to cut down on development costs. One of those employees was Anne Bonny.
5. While employed with Midnight Dive, Anne Bonny was working on a module for *Tritonia* as a side project, without any documented or oral requests from her employer. The module featured procedural world and NPC generation as well as robust character creation and customisation tools. While everyone at Midnight Dive was aware that Anne Bonny was busy with an intricate and time-consuming project,

no one—including her direct managers—had actual knowledge of the nature of the work. Nevertheless, even though the module was almost ready for *Tritonia* integration, upon discovering that she was being let go, Anne Bonny transferred all relevant material to an external drive, stopped developing the module and abandoned the project altogether.

6. In March 2020, Midnight Dive conducted an internal audit and discovered a misplaced external drive. The external drive stored a repository along with the source code, documentation and preparatory materials for a module that could procedurally generate environments and NPCs and allow players to greatly customise characters. Upon such discovery, Midnight Dive diverted resources and allocated personnel to work on and expand the module and began developing a wrapper to integrate it into *Tritonia*.
7. In late April 2020, Midnight Dive finished integrating the module in their in-house tools and it became known as the *Briny Brain* module. Upon further testing, *Briny Brain* was successfully implemented in *Orbital Harbour*.
8. *Briny Brain* greatly improved *Orbital Harbour* and became one of the main selling points of the game. In a June 2020 press release, Midnight Dive issued the following statement:

“Greeting Orbiters! We appreciate everyone who participated in our limited public beta back in 2019. We apologise for the long silence but we have been reviewing your bug reports and generally working on improving Orbital Harbour.

One of the main criticisms we have received was concerning our limited character customisation options and repetitive NPC design. Today we are excited to announce our new procedural world and character generation tool, Briny Brain! We acknowledge that a core part of a successful MMORPG is unique interactions with equally distinctive NPCs and the ability to create unique and fully customisable player characters.

We have been hard at work developing and integrating the Briny Brain module that will ensure that you will never encounter identical NPCs when in orbit. The module will also give players thousands of customisation options and the ability to create truly unique player characters.

We are also super excited to announce that Orbital Harbour will be released as originally planned in December 2020! We are excited for you to experience what we have in store!

See you in Orbit, Space Pirate!"

9. In preparation for *Orbital Harbour's* release, and to increase interest in the game, Midnight Dive entered into a License Agreement with Benbow, a luxury fashion brand. Midnight Dive collaborates with Benbow to introduce branded in-game equipment for player characters. The equipment is developed in collaboration with and approved by Benbow.

10. *Orbital Harbour* was released in December 2020 and received very favourable reviews. The game was praised for its gameplay, story and especially for its elaborate character creation and customisation tool as well as for its unique NPCs. Players can also equip their characters with branded in-game items thanks to Midnight Dive's collaboration with Benbow. *Gonzo Noob* gave *Orbital Harbour* 9/10 stating that:

"...Orbital Harbour is one of the best MMORPGs to date. While the beta release was not perfect, we are happy to report that Midnight Dive addressed all our previous concerns. Thanks to Midnight Dive's Briny Brain tool, Orbital Harbour is now a highly immersive RPG, featuring a highly innovative character creation tool."

11. *Orbital Harbour* has become one of the most popular and most played MMORPGs. In February 2021, Anne Bonny realised that *Briny Brain* was based on the side-project she was working on before departing Midnight Dive. Upon becoming aware of Midnight Dive's integration, Anne Bonny developed an extraction tool, the *Temporal Mirage*, that can bypass Midnight Dive's protection measures and can directly access assets generated by *Briny Brain*. Anne Bonny released *Temporal Mirage* under a GNU General Public License. *Temporal Mirage* can extract NPCs, player characters and other assets generated with *Briny Brain*.

12. The *Orbital Harbour* player community is now widely using *Temporal Mirage* to extract their characters from the game. The extraction includes any Benbow trademarks and branded content equipped by the character at the time of extraction. Players post their characters on online forums and video game modification websites. Some players

also mint and trade their characters as Non-Fungible Tokens (“NFTs”) on OpenSea and Rarible. While Midnight Dive was aware of these activities, they did not take any action against players.

13. In May 2021, Anne Bonny founded Fourth Wall, an Obliland-based video game developer. Fourth Wall developed and released *Orbital Decks* in August 2021, using assets extracted by *Temporal Mirage*.
14. *Orbital Decks* is an online NFT strategy card video game. Each card in the game is an NFT token that can be purchased, earned by playing, or sold on the *Orbital Decks* marketplace or platforms such as OpenSea and Rarible. The internal currency of *Orbital Decks* is the DBLOON token, similar to *Orbital Harbour’s* doubloon-based digital currency. In addition to their original designs and art, Fourth Wall uses player characters and NPCs extracted with *Temporal Mirage* to create and customise *Orbital Decks* cards. More specifically, Fourth Wall uses the extracted assets as a canvas for designing some of their cards and converts them into *Orbital Deck’s* unique art style. Fourth Wall also asks for players’ consent prior to using player-created characters. Finally, Fourth Wall creates the in-game skills, abilities and stats for the cards and actively balances the game based on gameplay data and a formula they developed. *Orbital Decks* has become a massive hit, generating over \$1 billion in revenue within the first 5 months of release.
15. Benbow became aware of Fourth Wall’s activities and was greatly displeased with this turn of events. Both Fourth Wall and the player community use in-game equipment bearing their trademarks and logos without permission and for use which falls outside the scope of their collaboration agreement with Midnight Dive. Benbow immediately contacted Midnight Dive with an investigation request.
16. On December 10th, 2021, upon becoming aware of Fourth Wall’s use of *Temporal Mirage*, and after bearing the brunt of Benbow’s grievances, Midnight Dive contacted Fourth Wall and directly reached out to Anne Bonny with a Cease-and-Desist notice, demanding that Fourth Wall cease all operations and further development and distribution of *Orbital Decks*. Anne Bonny refuted Midnight Dive’s claim, stating that their demand was unfounded, especially because they stole and profited from her work, without asking for her permission and without crediting her as the developer of *Briny Brain*.

17. On January 5th, 2021, Midnight Dive together with Benbow filed a lawsuit in Obliland against Fourth Wall, demanding that:
- A) Fourth Wall shall refrain from making use of any and all trademarks and assets extracted from *Orbital Harbour* and cease the further extraction of player characters, NPCs, and any other *Orbital Harbour* assets, on the grounds that such use is unlawful and is infringing Midnight Dive's and Benbow's intellectual property rights;
 - B) Fourth Wall shall assist with delivering all copies, source code and related materials of *Temporal Mirage* to Midnight Dive and disable access for third parties, on the grounds that *Temporal Mirage* is exclusively used to circumvent Midnight Dive's technological protection measures; and
 - C) Fourth Wall shall cease all NFT trading operations related to: (1) *Orbital Harbour*; and (2) Benbow. Fourth Wall shall provide Midnight Dive with an accounting of any and all sales related to *Orbital Decks*.

* Please note that procedural issues are out of the scope of the case and the parties shall only dispute the merits of the case.

** Please note that, while Obliland laws and judicial system heavily rely on US jurisprudence, precedents and legal principles from other jurisdictions may also be used to support, further and/or strengthen a position.



Exhibit 1

LICENSE AGREEMENT

This License Agreement (the "Agreement") is dated July 5, 2021.

Parties

- (1) Benbow Ltd. incorporated and registered in Obliland with company number 26882 whose registered office is at 27, Cypress Drive, Seatown 1808, Obliland ("**Licensor**"); and
- (2) Midnight Dive Ltd. incorporated and registered in Obliland with company number 50034 whose registered office is at 15, Arroyo Lane, Seatown 2682, Obliland ("**Licensee**").

Background

- (A) The Licensor is the owner of the Mark (as defined below).
- (B) The Licensee wishes to use the Mark in the Territory (as defined below) in relation to the Game (as defined below) and the Licensor is willing to grant the Licensee a license to use the Mark on the terms and subject to the conditions of this license.

Agreed Terms

1. INTERPRETATION

The following definitions and rules of interpretation apply in this license.

1.1 Definitions

Effective Date: the date of this Agreement.

Game: the massively multiplayer online role-playing video game "Orbital Harbour" and in respect of which the Licensee is licensed to use the Mark under the terms of this licence.

In-Game Materials: the in-game items to which the Mark is applied pursuant to this licence.

Mark: the registered trademark, details of which are set out in Schedule 1.

Territory: Worldwide.

1.2 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.3 A reference to writing or written includes fax and email.

1.4 Any words following the terms; including, include, in particular, for example, or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. LICENSE

2.1 The Licensor grants to the Licensee a non-exclusive licence to use the Mark in the Territory on and in relation to the Game, subject to the terms of this licence.

2.2 The Licensor grants to Licensee all rights, licenses, and permissions for the right to use, reproduce, publish, broadcast, distribute, publicly display, create derivative works of and otherwise exploit the Mark in the Game, throughout the world during the Term and after its expiration with respect to the In-Game Materials purchased or received by players during the Term. Licensee players who purchase and/or receive the In-Game Materials during the Term shall have the right to retain what they purchased or received and Licensee shall have no obligation to remove previously player purchased or

received In-Game Materials or received by the players within the Game in perpetuity after expiration of the Term or other termination of the Agreement, provided that: (i) the use of such materials is as a part of the Game, (ii) the In-Game Materials were incorporated into the Game during the Term; and (iii) the Game and such In-Game Materials were published during the Term. After expiration of the Term or other termination of the Agreement, Licensee retains the right to make technical amendments to the In-Game Materials that have been purchased or received by the players during the Term.

- 2.3 Any goodwill derived from the use by the Licensee of the Mark shall accrue to the Licensor. The Licensor may, at any time, call for a document confirming the assignment of that goodwill and the Licensee shall immediately execute it.
- 2.4 No rights or licences are conferred on the Licensee pursuant to this licence except those expressly set out in this licence.
- 2.5 Notwithstanding anything else contained in this Agreement, there shall be no use of the Mark in and/or in connection with NFTs (Non-Fungible Tokens).

3. QUALITY CONTROL AND MARKING

The Licensee's licence to use the Mark is subject to the following conditions:

- (a) the Licensee shall, in exercising its right under this agreement, comply with, and shall ensure that the Game sold or otherwise distributed by the Licensee complies with, all applicable laws, regulations, industry standards and codes of practice;
- (b) samples of all In-Game Materials to which the Mark is applied pursuant to this licence shall be submitted to the Licensor for its approval prior to being used; and
- (c) the Licensee shall not do or fail to do any act or thing whereby the validity, enforceability, or the Licensor's ownership of the trademark registrations for the Mark, or the reputation or goodwill associated with the Mark anywhere in the Territory, is likely to be prejudiced.

4. PAYMENT

- 4.1 On the Effective Date the Licensee shall pay to the Licensor the sum of \$50,000.
- 4.2 The sum payable under clause 4.1 shall be paid free and clear of all deductions unless the deduction is required by law. If any deduction is required by law the Licensee shall pay to the Licensor such sum as will, after the deduction has been made, leave the Licensor with the same amount as it would have been entitled to receive in the absence of any such requirement to make a deduction.
- 4.3 In the event of any delay in paying the sum due under clause 4.1 by the due date, the Licensee shall pay to the Licensor:
- (a) interest on the overdue amount at the rate of 4% per annum. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Licensee shall pay the interest together with the overdue amount; and
 - (b) an amount equal to any penalties incurred by the Licensor as a direct result of the delay.
- 4.4 The provisions of this clause 4 shall remain in effect notwithstanding termination or expiry of this agreement until the settlement of all subsisting claims by the Licensor.

5. MAINTENANCE

The Licensor shall pay all renewal fees and take all steps necessary to maintain the trademark registration for the Marks.

6. INDEMNITY

The Licensee shall on demand and in full indemnify and defend the Licensor against all liabilities, costs, expenses, damages, and any and all losses, including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs and all other reasonable professional costs and expenses suffered or incurred by the Licensor arising out of or in connection with:

- (a) the Licensee's exercise of its rights granted under this Agreement;

- (b) the Licensee's breach or negligent performance or non-performance of this Agreement, including any liability claim relating to the Game; or
- (c) the enforcement of this Agreement.

7. PROTECTION OF THE MARK

- 7.1 The Licensee shall promptly inform the Licensor of any suspected unauthorised use of the Mark (or any confusingly similar mark) of which it becomes aware and shall provide the Licensor with such documents, information, and assistance as it can in relation to any such use.
- 7.2 The Licensor gives no warranty and makes no representation in or pursuant to this licence that the use of the Mark will not infringe the rights of others.

8. DURATION AND TERMINATION

- 8.1 This licence shall commence on the Effective Date and continue for a period of one year (the "**Term**") unless terminated earlier under clause 8.2.
- 8.2 The Licensor may terminate this licence by notice with immediate effect if the Licensee commits any breach of this licence which is material and not capable of remedy, or which is capable of remedy but which is not remedied within 14 days of notice from the Licensor to do so.
- 8.3 The Licensee undertakes to the Licensor that, save as expressly permitted by this licence, it will not make any use anywhere in the world of the Mark or any name or mark intended or likely to be confused or associated with it. In particular, upon termination of this licence for any reason the Licensee shall cease immediately to make any use of the Mark.
- 8.4 Any provision of this agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this agreement shall remain in full force and effect.

9. ASSIGNMENT AND OTHER DEALINGS

The Licensee shall not assign, transfer, mortgage, charge, sub-license, sub-contract, declare a trust over or deal in any other manner with any or all of

its rights and obligations under this licence without the prior written consent of the Licensor.

10. GOVERNING LAW


This licence and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with its subject matter or formation shall be governed by and construed in accordance with the law of Obliland.


11. JURISDICTION

Each party irrevocably agrees that the courts of Obliland shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this agreement or its subject matter or formation.

This licence has been entered into on the date stated at the beginning of it.

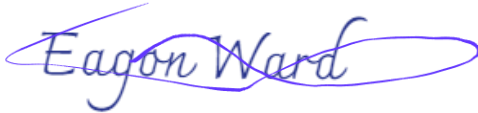
Schedule 1 Mark

| Mark | Registration Number | Date of Registration | Classes |
|---|---------------------|----------------------|----------------|
| Benbow | 19890000453 | 05/08/1989 | 16, 18, 24, 25 |
|  | 19960000789 | 17/02/1996 | 16, 18, 24, 25 |

| | | | |
|---|-------------|------------|----------------|
|  | 20000000503 | 20/01/2000 | 16, 18, 24, 25 |
|---|-------------|------------|----------------|

THUS, the Parties have executed the Agreement as of the Effective Date.

Midnight Dive Ltd.



Name: Eagon Ward

Title: Director

Benbow Ltd.



Name: Eleanor le Gris

Title: Director



Exhibit 2



CONTRACT OF EMPLOYMENT

This Agreement (the “**Agreement**”) is made on 15 December 2017.

Parties

- (1) Midnight Dive Ltd. incorporated and registered in Obliland with company number 50034 whose registered office is at 15, Arroyo Lane, Seatown 2682, Obliland (the “**Company**”); and
- (2) Anne Bonny, of Obliland, holder of identity card numbered 555615 (“**you**”).

each a “**Party**” and together the “**Parties**”.

Agreed Terms

1. INTERPETATION

1.1 The following definitions and rules of interpretation apply in this license.

“**Commencement Date**” means 20 December 2017.

“Confidential Information” shall mean any information which relates to disclosing Party and/or any of its group companies’ business that is disclosed or made available (directly or indirectly) by disclosing Party to receiving Party, whether in oral, visual or written form (including graphic material), whether before, on or after the Effective Date. Confidential Information includes but is not limited to: (a) to the extent applicable: proprietary information, technical data, know-how, formulae, engineering processes, strategies, photographs, technology, technical literature, research, product plans, products, services, equipment, customers, markets, source and/or object code, software, inventions, discoveries, ideas, processes, designs, drawings, specifications, product configuration information, pricing, marketing and finance documents, prototypes, samples, data sets, audio, audiovisual, graphics, text, manuals and other written materials, gameplay, mechanics, look and feel, user interface, logo, name, plot, setting and characters and equipment or other materials including information which is attributable to, or the existence of which is derived from, the Parties cooperation and/or this Agreement; and (b) the existence and terms of this Agreement; and (c) information otherwise reasonably expected to be treated in a confidential manner under the circumstances of disclosure under this Agreement or by the nature of the information itself.

“Employment” means your employment by the Company under this Agreement.

“Game” means the massively multiplayer online role-playing video game “Orbital Harbour”

“Intellectual Property Rights” shall mean any and all intellectual property rights of any nature anywhere in the world, including patents, utility models, rights to inventions, copyright and related rights, rights in computer software, database rights, trade marks and service marks, logos, business names and domain names, rights in get-up and trade dress, goodwill, rights in designs, rights to use and protect the confidentiality of, confidential information (including know-how and trade secrets), moral rights, publicity rights, performance rights, synchronization rights, mechanical rights, publishing, rental, lending and transmission rights and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

“Invention” means any invention, idea, discovery, development, improvement, or innovation made by you under this Agreement, whether or not patentable or capable of registration, and whether or not recorded in any medium.

“Termination Date” means the date on which the Employment terminates for whatever reason.

“Work” means without limitation any information, data, know-how, products, discoveries, processes, systems, programs (including software programs and source code), reports, ideas, designs, drawings or other materials or work created or provided by you (either alone or jointly with others) or arising from this Agreement or any duties assigned to you by the Company, whether or not during your normal working hours.

- 1.2 The Annexes shall form an integral part of this Agreement and shall have the same force and effect as if set out in full in the body of this Agreement and any references to this Agreement includes the Annexes.

2. EMPLOYMENT

- 2.1 You will be employed by the Company as a “Server Engineer”. Your duties and responsibilities are those set out in Annex 1 as well as any other duties and responsibilities which the management of the Company may delegate to you from time to time.

[...]

3. COMMENCEMENT AND DURATION

- 3.1 The Employment shall commence on the Commencement Date and shall be, subject to the remaining terms of this Agreement, for an indefinite term.

[...]

- 3.2 Your appointment and your continuing employment are at all times conditional upon your being permitted to work in Obliland.

[...]

10. CONFIDENTIAL INFORMATION

10.1 You acknowledge that in the course of the Appointment you will have access to Confidential Information. You have therefore agreed to accept the restrictions in this clause 10.

10.2 You shall not (except in the proper course of your duties), either during the Employment or at any time after its termination (however arising), use or disclose to any person, company, or other organisation whatsoever (and shall use your best endeavours to prevent the publication or disclosure of) any Confidential Information and you will use your best endeavours to prevent the unauthorised publication or disclosure by third parties of any Confidential Information.

[...]

13. INTELLECTUAL PROPERTY

13.1 You shall give the Company full written details of all Inventions and of all works embodying Intellectual Property Rights made wholly or partially by you during the course of your employment with the Company which relate to your duties and responsibilities set out in Annex 1. You acknowledge that all Intellectual Property Rights subsisting (or which may in the future subsist) in all such Inventions and works stored in Company equipment shall automatically, on creation, vest in the Company absolutely. To the extent that they do not vest automatically, you hold them on trust for us. You agree promptly to execute all documents and do all acts as may be necessary to give effect to this clause 13.1.

[...]

Annex 1

You will, among others:

- Design, develop and implement high quality code required to run and stream the Game.
- Develop and maintain the Game server and develop interfaces and tools required for maintenance.
- Develop new features to improve the efficiency, reliability, and security of the Game and the Game server.

- Work and collaborate with hardware engineers, software engineers and designers to optimize the Game and ensure low latency for players.
- Identify and solve problems that affect the development of the Game.

IN WITNESS WHEREOF the parties have executed this Agreement on 15 December 2017.

Midnight Dive Ltd.

A handwritten signature in cursive script that reads "Freya Bailey". The signature is written in black ink and is underlined with a single horizontal line.

Name: Freya Bailey

Title: General Manager, for and on behalf of Midnight Dive Ltd.

Anne Bonny

A handwritten signature in cursive script that reads "Anne Bonny". The signature is written in black ink and is underlined with a single horizontal line.



Exhibit 3



ORBITAL DECKS END USER LICENSE AGREEMENT

Orbital Decks End User License Agreement

Revised: December 20, 2021

1. About this End User Licence Agreement

- 1.1. This End User Licence Agreement (or "EULA") governs the relationship between you and Fourth Wall Limited, 24, Arkham Way, Seatown 6982, Obliland ("Fourth Wall", "we", "our" and "us") in relation to our Game.
- 1.2. You confirm your agreement to this EULA as part of the installation process of the Game (if applicable) or by using the Game. If you do not agree to this EULA, please do not attempt to install or use the Game.

2. Definitions

Art: means any art, design, animation, and drawings (irrespective of the form or media, including but not limited to photographs and video) that may be associated or embodied within a purchased NFT.

Content: all content including text, information, data, software, executable code, images, audio, or video material in any medium or form provided by us to you.

Derivative Work: work generated or developed based on the Content and Art embodied within the NFT or an underlying work in relation to this (including translations, musical arrangements, dramatizations, fictionalisations, motion picture versions, sound recordings, art reproductions, abridgements, condensations, or any other form in which a work may be recast, transformed or adapted).

Game: the Orbital Decks on-line NFT strategy card video game.

Game Marketplace: the Orbital Decks in-game NFT marketplace.

NFT: a non-fungible token (NFT)

Specialized Platform: The Rarible and OpenSea online marketplaces that facilitate the creation, purchase and selling of NFTs.

3. Amendments

From time to time, we may need to amend this EULA for serious reasons, for example to reflect new features and functionality in the Game or because of changes in the law. If we make a change to this EULA, we will inform you via email in advance of such changes thirty (30) days before such changes enter into force and of your right not to accept them. The latest version of this EULA will always be available on the Midnight website. Please make sure you check for updates to this EULA each time you use the Game. Changes to this EULA shall not affect your accrued rights and shall not have retroactive effect.

4. Using the Game

- 4.1. In return for your acceptance of this EULA, we give you the personal right (known as a 'licence') during the time this EULA is in force between you and us to download, install and play the Game.
- 4.2. This license is:

- a. non exclusive;
- b. revocable;
- c. personal;
- d. non-transferable;
- e. limited; and
- f. conditional on your compliance with this EULA.

5. Intellectual Property

The Game, including the code, graphics, game play, user interface, audio, and other content, contain proprietary information and material that is protected by copyright and other laws including but not limited to intellectual property. You agree that we own or licence all of this proprietary information and material and that you may not use or exploit any of it without our permission.

6. Ownership of an NFT

6.1 NFT Ownership arises when an NFT is earned by you using the Game, purchased by you via the Game Marketplace or purchased by you via a Specialized Platform and in accordance with its Terms of Service.

6.2 You own the NFT completely and have the right to sell or transfer the earned or purchased NFT via the Game Marketplace or via a Specialized Platform according and subject to its Terms of Service. Ownership of a purchased NFT via a Specialized Platform is facilitated entirely by the platform.

6.3 Ownership of the NFT does not grant ownership of or any other rights with respect to the Content and Art embodied in the NFT.

7. Ownership of an NFT

7.1 You agree that you may not, nor permit any third party to do or attempt to do any of the foregoing:

- a. modify the Content and Art embodied in the purchased NFT in any way;

- b. use the Content and Art embodied in the purchased NFT in movies, videos, or any other forms of media, except to the limited extent that such use is expressly permitted in this agreement or solely for your own personal, non-commercial use;
- c. use the Content and Art embodied in the purchased NFT to create Derivative Works of any kind;
- d. sell, distribute, or otherwise commercialize merchandise that includes, contains, or consists of the Content and Art embodied in the purchased NFT;
- e. attempt to acquire intellectual property rights in or to the Content and Art embodied in the purchased NFT; or
- f. use the Content and Art embodied in the purchased NFT in any other way that is not explicitly allowed by the terms of this agreement.

7.2 You shall not apply for, register, or otherwise use or attempt to use any of our trademarks, or any confusingly similar marks, based on any of our Content and Art that are embodied in the purchased NFT anywhere in the world.

8. Warranties and Liability

We warrant that we have the right to enter this EULA and to grant you the licences to use the Game.

9. Governing Law and Jurisdiction

This EULA and any dispute, claim or obligation (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by the laws of Obliland, unless otherwise required by the law of the country where the user has his habitual residence.

10. General

- 10.1 The EULA governs our relationship with you. It does not create any rights for any other person, unless otherwise expressly stated in this EULA.
- 10.2 If any part of this EULA is held to be unenforceable, then it will not affect the enforceability of any other part of this EULA. Also, we and you agree to interpret the rest of this EULA in such a way as to reflect your and our intentions in this EULA as far as possible.
- 10.3 If you or we fail to exercise (or delay exercising) any right which you or we may have under this EULA, that failure or delay does not mean that we or you lose that right. If we or you only partially exercise a right or only exercise it once, that will not stop you or us from exercising it again in the future.



Exhibit 4

Obliland Copyright Act 2000, as Amended

1. **Copyright and Subject Matter.**
 - (1) Copyright is a property right which subsists in original works of authorship, now known or later developed [...] Works of authorship include the following:
 - a. literary works;
 - b. musical works;
 - c. dramatic works;
 - d. artistic works;
 - [...]
 - g. motion pictures and other audiovisual works;
 - h. sound recordings;
 - [...]
 - (4) The subject matter of copyright as specified by section 1(1) includes compilations and derivative works, but protection for a work employing pre-existing material in which copyright subsists does not extend to any part of the work in which such material has been used unlawfully.
 - (5) The copyright in a compilation or derivative work extends only to the material contributed by the author of such work, as distinguished from the pre-existing material employed in the work, and does not imply any exclusive right in the pre-existing material. The copyright in such work is independent of, and does not affect or enlarge the scope, duration,

ownership, or subsistence of, any copyright protection in the pre-existing material.

6. Authorship and Ownership.

- (1) The author of an original work under section 1(1) means the person who creates it.

[...]

- (4) The owner of copyright in literary, dramatic, musical, and artistic works created by an employee within the scope of her employment is the employer, subject to any agreement to the contrary.

[...]

- (5) Ownership of a copyright, or of any of the exclusive rights under a copyright, is distinct from ownership of any material or digital object in which the work is embodied. Transfer of ownership of any material or digital object [...] does not of itself convey any rights in the copyrighted work embodied in the object; nor, in the absence of an agreement, does transfer of ownership of a copyright or of any exclusive rights under a copyright convey property rights in any material object.

9. Joint Authorship.

- (1) A work of joint authorship means an original work under section 1(1) created by two or more authors in which the contribution of each author is not distinct from that of the other author.

[...]

16. Rights of Copyright Owner.

- (1) The owner of copyright in an original work has the exclusive rights to do and authorize any of the following:
- a. to reproduce the work in copies in any material form;
 - b. prepare derivative works based upon the original work;
 - c. distribute copies of the original work to the public by sale or other transfer of ownership, or by rental, lease, or lending;
 - d. in the case of literary, dramatic, musical, and artistic works, including the individual images of a motion picture or other audiovisual work, to display the work publicly;

- (2) A person will infringe copyright in a work if they, or authorise another person to, do any of the acts restricted by the copyright.

18. Limitations on Exclusive Rights.

- (1) The use of an original work under section 1(1), including such use by reproduction in copies [...] or by any other means [...] for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include:
- a. the purpose and character of the use, including whether such use is of a commercial nature or is for non-profit educational purposes;
 - b. the nature of the copyrighted work;
 - c. the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
 - d. the effect of the use upon the potential market for or value of the copyrighted work.
- (2) The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors.

[...]

21. Moral Rights.

- (1) Moral rights shall protect the link between the authors and their works which is unlimited in time and independent of any waiver or transfer, and, in particular, the rights:
- a. to be an author of the work;
 - b. to sign the work with the author's name or pseudonym, or to make it available to the public anonymously;
 - c. to have the contents and form of the author's work inviolable and properly used;
 - d. to decide on making the work available to the public for the first time;
 - e. to control the manner of using the work.

[...]

27. Circumvention of Copyright Protection Systems.

- (1) No person shall manufacture, import, offer to the public, provide, or otherwise traffic in any technology, product, service, device, component, or part thereof, that:
- a. is primarily designed or produced for the purpose of circumventing a technological measure that effectively controls access to a work protected under this title;
 - b. has only limited commercially significant purpose or use other than to circumvent a technological measure that effectively controls access to a work protected under this title; or
 - c. is marketed by that person or another acting in concert with that person with that person's knowledge for use in circumventing a technological measure that effectively controls access to a work protected under this title.

[...]

33. Definitions.

- (9) A “derivative work” is a work based upon one or more pre-existing works [...] A work consisting of editorial revisions, annotations, elaborations, or other modifications which, as a whole, represent an original work of authorship, is a “derivative work”.

[...]

- (20) A “literary work” means any work, other than a dramatic or musical work, which is written, spoken, or sung, and includes [...] a computer program, including preparatory design material for a computer program.

[...]

- (27) To “circumvent a technological measure” means to descramble a scrambled work, to decrypt an encrypted work, or otherwise to avoid, bypass, remove, deactivate, or impair a technological measure, without the authority of the copyright owner; and a technological measure “effectively controls access to a work” if the measure, in the ordinary course of its operation, requires the application of information, or a process or a treatment, with the authority of the copyright owner, to gain access to the work.

CLARIFICATIONS

- 1. Why would the players extract their characters from the game? In what format would they (players) extract the characters from the game? How was that operation technically conducted?**

The character creation and customisation tool in *Orbital Harbour* allows players to create unique character designs. Players extract their character creations to, among other things, create and share fan art, use them as avatars in online social spaces, modify them into other video games and mint NFTs. The *Temporal Mirage* tool extracts information from all on-screen *Orbital Harbour* 3D models, including textures, shaders, animation and rigging, skins, armour and weapon parts in various 3D and image file formats. The *Temporal Mirage* tool is activated and injects itself into the game while *Orbital Harbour* is running and automatically detects on-screen 3D models created using the *Briny Brain* module.

- 2. How much money did the Midnight Dive make from December 2020 to December 2021?**

Between December 2020 and December 2021, Midnight Dive sold 6.8 million copies of *Orbital Harbour*, generating an estimated \$340 million in gross sales.

- 3. To which international treaties or unions is Obliland a signatory?**

Obliland is a contracting party to the Berne Convention for the Protection of Literary and Artistic Works. Obliland is also a member state of the World Intellectual Property Organization (“WIPO”) and the World Trade Organization. Obliland is a signatory to all WIPO-Administered Treaties, including the WIPO Copyright Treaty.

- 4. Did Anne Bonny have a copy of the information stored in the external drive?**

Anne Bonny had a duplicate copy of all information stored in the external drive discovered by Midnight Dive in 2020.

- 5. Did Anne Bonny use any material and/or information created during her work at Midnight Dive while developing Temporal Mirage?**

In developing *Briny Brain*, Anne Bonny used all materials and information that she had access to and/or made available to her

during her employment with Midnight Dive. Anne Bonny used all materials related to *Briny Brain* to develop the *Temporal Mirage* tool.

6. Please describe how Midnight Dive and Benbow collaborated regarding the introduction of branded in-game content during the development of Orbital Harbour?

Midnight Dive creates in-game items and player equipment for *Orbital Harbour* that feature the Benbow trademarks licensed by Midnight Dive. Prior to introducing any such in-game items, Midnight Dive sends samples to Benbow for their approval as per the terms of the License Agreement (Exhibit 1).

7. Whose equipment and resources did Anne Bonny use to develop Briny Brain?

In developing *Briny Brain*, Anne Bony used both her own as well as equipment and resources that were made available to her by Midnight Dive during her employment.

8. Had Anne Bonny ever participated in the meetings of the development team, common chats, and projects groups in the CRM system where the problem character's customisation was discussed? Before her dismissal, what were Anne's incentives and plans regarding the character customisation module?

Anne Bonny was part of project groups and communications that were related to her line of duties and responsibilities as part of her employment with Midnight Dive. When *Orbital Harbour* entered a limited public beta in 2019, everyone at Midnight Dive was aware of the limitations of the *Tritonia* engine in respect to character creation and customisation. Anne Bonny's motivation was to create a module that would allow the creation of unique character designs.

9. Did Midnight Dive require players to agree to an EULA before granting them access to Orbital Harbour? Were there any limitations regarding using characters outside of the game?

Before installing and accessing *Orbital Harbour*, players must agree to both the Orbital Harbour End-User License Agreement (EULA) and the Terms of Service. Section 5 of the EULA states that:

By accepting this EULA, we grant you the personal right (a "Licence") to install and play the Game. The License is non-exclusive, revocable, personal, non-transferable, limited,

and conditional on your compliance with this EULA. Unless and to the extent that we have expressly authorised you in writing, you must not: (a) distribute, publicly perform or display, lease, sell, transmit, transfer, publish, edit, copy, create derivative works from, rent, sub-license, distribute, decompile, disassemble, reverse engineer or otherwise make unauthorized use of the Game; (b) use the names, features, images and designs of Game characters; (c) make any commercial use of the Game; or (d) remove, obscure, or alter copyright, patent, trademark, or other proprietary rights notices affixed to the Game.

- 10. We would like to confirm whether the misplaced external drive is the same external drive Anne Bonny transferred the module to as stated in Para 5, Line 10.**

The external drive that Midnight Dive discovered in 2020 is the same drive that Anne Bonny transferred the module to.

- 11. It is stated that Fourth Wall seeks players' consent before using player-created characters. Does this refer to Orbital Harbour or Orbital Decks players?**

Fourth Wall asks for consent from *Orbital Harbour* players.

- 12. Whether Temporal Mirage is exclusively used to circumvent Midnight Dive's technological protection measures?**

The *Temporal Mirage* tool was created based on the *Briny Brain* module. Midnight Dive uses an active software scanner while the game is running. The scanner's purpose is to detect any background process used for cheating, hacking and/or exploiting vulnerabilities, extracting assets etc. The scanner cannot detect *Temporal Mirage* as a foreign background process due to its association with *Briny Brain*. The scanner recognises *Temporal Mirage* as being part of *Orbital Harbour*.

- 13. Whether the lawsuit was filed on January 5th, 2021? In Para 17, Line 1, it is stated that Midnight Dive, together with Benbow, filed a lawsuit in Obliland against Fourth Wall. However, in our understanding, Orbital Deck was developed in August 2021, as stated in Para 13, Line 3.**

The lawsuit was filed on January 5th, 2022.