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## 2020 Problem

1. Omnia Ltd. is one of the leading global game developers and publishers based in Seatown, Obliland. It owes its first success to the game *Cosmic Dust* which was released in 1987 and by 1990 it became one of five most popular MUDs worldwide.
2. After a few years of being on the sidelines, in 2005 Omnia decided to relaunch its computer games business and commenced development of an MMO F2P sequel *Cosmic Dust 2*. *Cosmic Dust 2* was released in 2010. During the coming years it won several 'Golden Joystick' awards and was mentioned a number of times by PC Gamer, GamesRadar and other games related media as one of the most popular MMO PC games.
3. At the beginning of 2013, Omnia's leading game designer Anna Vein urged Omnia to meet the high demands of *Cosmic Dust 2*'s sophisticated audience and persuaded Omnia's CEO Ramon Nanda to invest into the development of a modern PC version of *Cosmic Dust 2*. The game under the working title *Outer Space Oddity* was going to incorporate fully innovative game mechanics which were just becoming possible thanks to the most recent developments in the sphere of AI and machine learning. The characteristic feature of the game was that the missions offered within the game would adjust to players' preferences defined by their previous in-game activity. Anna Vein presented to Omnia's leadership committee the *Outer Space Oddity* game design documentation created with the diligence and precision intrinsic to everything she did and received the pre-production greenlight.
4. After some considerations, Omnia realised that to have *Outer Space Oddity* released before Gamescom 2015, Omnia would need to hire a third-party developer to assist with developing *Outer Space Oddity*, and in particular, with Omnia's ambitious AI integration plans.
5. In March 2013 Anna Vein attended GDC in San Francisco where she met Ivan Bekic – a famous AI enthusiast in the past, now a founder and lead developer at Starka Games based in Talestown, Terryland. Starka Games has been known in the industry for developing popular PC and mobile titles and for being rather advanced in integrating cutting-edge AI technology into their games. Anna and Ramon discussed with Ivan the *Outer Space Oddity* game design document, the main AI developments that needed to be created in order to embody Omnia's game design plans, as well as the main terms of the deal which were subsequently allocated in the Game Development and Publishing Agreement ("GDPA") signed by both parties [Schedule 1]. The GDPA was drafted based on the template provided by Omnia. Starka Games did not have an in-house lawyer at that moment, and as a result the contract was negotiated by Ivan Bekic himself and only minor changes were introduced upon Ivan's request (e.g. Ivan agreed on having Obliland law as applicable law but managed to negotiate arbitration in Terryland instead).
6. The same day that Omnia and Starka Games signed the GDPA, Ivan posted his famous tweet: "*Starka Games has done so many great things... Yet, meeting Anna Vein's mind-blowing ideas requires all of us to leap through hoops of fire. You know what? We are up for it!*"
7. Starka Games embarked in the development of *Outer Space Oddity* as early as in June 2013. Even though Starka Games already owned more games-related AI code than any other company in the market by this point, it required crucial amendments to fit Anna's game design document which, according to the parties' agreements, had to be followed rigorously. As a result, Starka Games had to write a big part of AI code for *Outer Space Oddity* from scratch. In 2013 and 2014 almost the whole Starka Games studio was working hard on *Outer Space Oddity*. The new technology, which turned out to exceed everyone's expectations, got a romantic title *Space is New Brain*.

8. By March 2015 *Outer Space Oddity* was in OBT and showed very positive results. Anna Vein sent an e-mail to Ivan Bekic congratulating him with a successful project and mentioning that both parties would benefit from the cooperation. The game was finally released worldwide as planned, just two days before Gamescom 2015.
9. As soon as *Outer Space Oddity* went into commercial release in August 2015, Omnia started issuing royalty statements to Starka Games [Schedule 2]. As required by the GDPA, Omnia specified both the royalties paid and the royalties due in each statement.
10. From time to time, royalty statements would come later than as agreed in the GDPA, but Starka Games never objected because they were aware of the complicated accounting system on Omnia's side which was the main reason for the delay. In addition, Starka Games was receiving royalty payments for other titles, so they were not in much need of cash flow. Moreover, the payment process operated by the parties in practice looked as follows: Starka Games would issue an invoice based upon the royalty statement received, and Omnia would pay the amount stated in the invoice.
11. By summer 2018, the game showed steady revenue growth and was very successful both critically and commercially. The parties were satisfied with the general progress.
12. In the end of July 2018, Omnia's main competitor MoonPlay released a game called *Epsilon* which immediately attracted massive attention from both media and players and soon became the most popular F2P MMO game in space genre at that time. In the light of this development and having years of experience in the videogames market, Omnia decided to significantly cut marketing and UA investments into *Outer Space Oddity*, and gradually shifted their main attention to other projects. During the coming months *Outer Space Oddity* lost around 30% of MAU and significantly dropped in monthly revenue.
13. Around the same time Ivan Bekic was approached by MoonPlay with an offer to test their AI solutions in mobile and consoles. MoonPlay had ambitious plans with porting *Epsilon* to consoles and mobile, and they wanted someone experienced in the market to do the porting as well as to add AI elements into the ported games.
14. Ivan Bekic decided to accept MoonPlay's proposal. Being perfectly aware of the GDPA non-compete clause and that the GDPA required Starka Games to support *Outer Space Oddity* to be entitled to royalty, Ivan decided to act proactively and to initiate termination of the GDPA with Omnia. On October 10<sup>th</sup>, 2018, Ivan sent an e-mail to Omnia suggesting them to mutually terminate the GDPA [Schedule 3]. Later in October the parties met in Obliland to discuss the details of termination, and in November 2018, more than 3 years after global launch, Starka Games and Omnia signed the Termination Agreement [Schedule 4]. Omnia continued publishing *Outer Space Oddity*, while Starka Games embarked in development of mobile and console versions of *Epsilon*.
15. Soon after signing the Termination Agreement, Starka Games hired a new CFO Tom Brown who decided to check all royalty payments that Starka Games had received during the last 5 years. In early 2019, Tom discovered that there were obvious discrepancies between the amounts of royalties stated by Omnia as due in royalty statements, and the amount of royalties actually paid to Starka Games under the GDPA. As a result, Omnia has underpaid around EUR 615,000 to Starka Games during 3 years of cooperation. Tom immediately brought this unfortunate discovery to the attention of Ivan Bekic, who in turn reached out to Ramon Nanda to clarify the situation [Schedule 5a].
16. Starka Games was very disappointed with Omnia's response [Schedule 5b] and decided to carry out an independent audit of the royalty statements for the period from August 2015 until November 2018 (inclusive). The audit has revealed a number of errors in the royalty statements, including but not limited to miscalculations and misstatements. As a result, Omnia had underreported around EUR 231,000 to Starka Games.

17. On July 19<sup>th</sup>, 2019, Starka Games filed an official claim to Omnia requesting the latter to pay outstanding royalties (both reported and underreported, in total around EUR 846,000) within 10 calendar days [Schedule 6]. The audit report was attached to the claim. In response to that claim, Omnia reiterated that Section 4 of the Termination Agreement provided for a cut-off date relating to the unreported and unpaid royalties. In addition, Omnia pointed out that Section 6.4 of the GDPA did not allow Starka Games to object to the royalty statements that were older than one year.
18. In further correspondence between the companies, Omnia alleged that they had recently found out that Starka Games were in breach of the Omnia's intellectual property rights under the laws of Obliland, as well as the GDPA's intellectual property provisions. According to Omnia, Starka Games' new game *Epsilon Mobile* was using the source code of SiNB functionality that Starka Games created for Omnia as a work-for-hire while working on *Outer Space Oddity*.
19. A few weeks later Starka Games issued an article about SiNB [Schedule 7]. Shortly after, Starka Games informed Omnia that SiNB is the Developer Technology under the GDPA, and even though only about 20% of its code was written before June 10<sup>th</sup>, 2013, the rest of the code was dynamically linked to this pre-existing technology.
20. Omnia did not settle the payment request from Starka Games for outstanding royalty. On November 5<sup>th</sup>, 2019, Starka Games filed a claim with Terryland Alternative Dispute Resolution Centre claiming that:
  - A. Omnia Ltd. owes Starka Games total amount of EUR 846,933 of unpaid royalties under the GDPA:
    1. EUR 615,863 of reported but unpaid royalties are not subject to mutual release clause in Section 4 of the Termination Agreement;
    2. EUR 231,070 of unreported and unpaid royalties are neither subject to mutual release clause in Section 4 of the Termination Agreement, nor fall under limitation of Section 6.4 of the GDPA;
  - B. All intellectual property rights to SiNB belong to Starka Games under the GDPA:
    1. SiNB is a part of the Developer Technology;
    2. if the court decides that the SiNB or a part of SiNB is not the Developer Technology, Starka Games, as well as any third party, has an implied license to use SiNB, because the code was on GitHub under BSD-3 license for years and Omnia has never objected thereto.

## SCHEDULE 1

### Game Development and Publishing Agreement

This Game Development and Publishing Agreement (the “**Agreement**”) is entered into as of June 10<sup>th</sup>, 2013 (the “**Effective Date**”),

#### BY AND BETWEEN:

- (1) **OMNIA LIMITED** registered in Obliland under number 571938364819, with registered office at 187 Peggy Street, floor 12, Seatown, Obliland (“**PUBLISHER**”), and
- (2) **STARKA GAMES LLC** registered in Terryland under number NA2453, with registered office at Nicholas Ave. 34/1, Talestown FE-9076, Terryland (“**DEVELOPER**”),

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

#### RECITALS

WHEREAS, DEVELOPER is a developer of interactive entertainment software products operable on personal computers, mobile devices and game consoles;

WHEREAS, PUBLISHER is in the business of developing, producing, distributing, publishing and licensing entertainment software products;

WHEREAS, DEVELOPER and PUBLISHER desire to enter into an agreement with respect to the development of the entertainment software product as set forth herein;

WHEREAS, PUBLISHER may publish and operate the entertainment software product as set forth herein; and

WHEREAS, the Parties signed a Mutual Non-Disclosure Agreement (“**MNDA**”) on March 20<sup>th</sup>, 2013,

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual agreements and promises set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

#### 1. DEFINITIONS.

For purposes of this Agreement the following terms have the indicated meaning:

- a) **Commercial Release** shall mean the date on which the Game is made available to the general public in all or any part of the Territory as determined solely by PUBLISHER in the Game Publishing Schedule below, as a general release excluding any alpha, Beta or pre-general release versions.
- b) **DEVELOPER Technology** shall mean (i) DEVELOPER’s pre-existing proprietary software; and (ii) any technologies, being derivative from the DEVELOPER’s pre-existing proprietary software, which are not specific for the Game and are of general use or applicability in video games (and interactive entertainment products and services); BUT, for the avoidance of doubt, EXCLUDING (a) the name, title and other proprietary characteristics of the Game that are specific to the PUBLISHER Materials; and (b) any aspects or elements of the Game to the extent that they derived from the PUBLISHER Materials.
- c) **Game** shall mean a free-to-play MMO tactical battle game under the working title ‘Outer Space Oddity’ that substantially meets the requirements described in Game Development Schedule and is suitable for the Platform(s).
- d) **Game Development Schedule** shall mean the signed attachment to this Agreement labelled as a Game Development Schedule.
- e) **Gross Revenues** shall mean all revenues actually received by PUBLISHER or its subdistributors for online sales of the in-Game items.

- f) **Intellectual Property Rights** shall mean any and all copyright, trademarks, service marks, trade dress, brand names, logos, goodwill, get up, trade, business or domain names, design rights, database rights, patents, rights in inventions, know-how, trade secrets and confidential information, moral rights, publicity rights, performance rights, synchronisation rights, mechanical rights, publishing, rental, lending and transmission rights and other intellectual property and exploitation rights of a similar or corresponding character which may now or in the future subsist worldwide, in all cases whether or not registered or registrable including all granted applications and all applications for registration, division, continuation, reissuance, renewals, extensions, restorations and reversions regarding same, worldwide.
- g) **Material Defect** shall mean a fault, error or malfunction in software which materially adversely affects the operation of the Game.
- h) **Platform** shall mean PC platforms through which the Game is being distributed, monetized, and/or offered for purchase or download to the members of general public, and which may be determined in Publisher's sole discretion.
- i) **PUBLISHER Materials** shall mean all copy, content, graphics, images, software, data and other materials provided by PUBLISHER (or by a third party on behalf of PUBLISHER) to be incorporated into (or used in association with) the Game by DEVELOPER.
- j) **Territory** shall mean worldwide.

## 2. GAME DEVELOPMENT

**2.1. Game Development.** DEVELOPER shall in consideration of payment by PUBLISHER: (a) develop the Game in full compliance with this Agreement for distribution on the Platforms in the Territory; and (b) carry out any other work agreed by the Parties.

[...]

**2.5. Cooperation with PUBLISHER.** DEVELOPER shall work in close cooperation with staff as dedicated by PUBLISHER, who shall participate in the development of the Game. DEVELOPER shall implement in a timely manner all changes and modifications to the Game which were agreed upon between DEVELOPER and the dedicated PUBLISHER's staff.

[...]

## 3. GAME PUBLISHING AND OPERATION

**3.1. Publishing and Distribution.** Subject to the terms of this Agreement and as further detailed in Section 5, PUBLISHER shall have the exclusive right to publish and distribute the Game. PUBLISHER shall exercise this option in its sole discretion.

**3.2. Strategic Decisions.** PUBLISHER shall determine the publishing, monetization, pricing, communication, promotion, positioning and marketing strategy for the Game, price policy and localization plans for specific territories. This includes but is not limited to setting prices for the Game, in-Game items and in-Game services and progressions (such as virtual currency and items, premium accounts, etc.), as well as for the placement of advertisement(s) of third parties.

[...]

## 4. INTELLECTUAL PROPERTY

**4.1. PUBLISHER's Property.** Subject to Section 4.2 below all and any Intellectual Property Rights in the Game, including without limitation in the name, gameplay mechanics and any technology on which the gameplay mechanics run, characters, settings, themes, storyline and characteristics, shall belong to, vest in and be the exclusive property of PUBLISHER. DEVELOPER shall do all such things as shall be necessary to give effect to the same including hereby assigning to PUBLISHER all right title and interest as it shall have in the foregoing (in consideration for the payment of the Royalties).

**4.2. DEVELOPER Technology.** All Intellectual Property Rights in the DEVELOPER Technology shall belong to, vest in and be the exclusive property of DEVELOPER. PUBLISHER shall, on request, do all such things as shall be necessary to give effect to the same.

[...]

**4.7. License to DEVELOPER Technology.** DEVELOPER grants PUBLISHER a non-exclusive, irrevocable, perpetual, fully paid, transferable and sub-licensable, worldwide licence with all the rights to use, reproduce, distribute, modify all or any portion of the DEVELOPER Technology.

**4.8. Third Party Materials.** DEVELOPER shall provide PUBLISHER with details of any Third Party Materials to be included in the Game, which Third Party Materials shall be licensed to PUBLISHER on the same terms as the DEVELOPER Technology, unless otherwise agreed in writing. Nothing in this Agreement shall be deemed to transfer, assign or convey to PUBLISHER any Intellectual Property Rights in the Third Party Materials that may be incorporated into the Game.

## 5. OBLIGATIONS OF THE PARTIES

**5.1. Development.** DEVELOPER shall deliver to PUBLISHER, by the completion date set out in the Game Development Schedule, the complete and fully operational Game without Material Defects together with the instructions necessary for formal and competent operation of the Game. The Game shall be delivered with the design goal that no changes or corrections will be required by PUBLISHER, such that the version of the Game used and implemented by PUBLISHER will be taken directly from the version delivered without further iterations.

[...]

**5.7. DEVELOPER's Contribution.** DEVELOPER hereby acknowledge and accept that its regular and first-priority participation in the development the support of the Game after its Commercial Release ("**Material Obligation**") is a material condition for the payment of payment of Royalties. DEVELOPER shall be entitled to receive Royalty for so long as it continues its work on the development of the Game. PUBLISHER shall not be obliged to pay the portion of the Royalty to DEVELOPER accrued after the date that DEVELOPER voluntarily terminates or ceases in any form its regular, first-priority participation on the development and support of the Game.

**5.8. Non-Compete Obligation.** During the period in which DEVELOPER is providing its services in connection with Game, i.e., until termination of this Agreement, DEVELOPER will not directly or indirectly contract with, advise, be engaged by, or be interested in any business in connection with the development of operation of any interactive entertainment products or services relating to a multiplayer space game.

[...]

## 6. ROYALTIES

**6.1. Development Fees.** In consideration of the work-for-hire to be performed by DEVELOPER under this Agreement, PUBLISHER shall pay DEVELOPER the Development Fees as set out in the Game Development Schedule.

**6.2. DEVELOPER Royalties.** In consideration of the rights granted under this Agreement, PUBLISHER shall pay DEVELOPER the Royalties in the amount of twenty five percent (25%) of the Gross Revenues during the Term ("**Royalties**").

**6.3. Royalty Payments and Statements.** Within sixty (60) calendar days after the end of each calendar quarter, PUBLISHER shall submit to DEVELOPER a written statement providing a complete, itemized description of the calculation of the Royalties paid for the preceding calendar quarter ("**Royalty Statement**") along with the Royalties payable pursuant to this Agreement. At a minimum, PUBLISHER will provide DEVELOPER with the information on the types and cost on in-Game items sold, amount of Royalties earned by DEVELOPER and the Royalties owed. PUBLISHER may adjust any future Royalty payment for any past overpayments that may have occurred and/or any other adjustments to the Gross Revenue calculations.

**6.4. Final and Binding Effect.** DEVELOPER shall be deemed to have consented to all Royalty Statements and all other accountings rendered by PUBLISHER hereunder, and each such Royalty Statement or other accounting shall be conclusive, final and binding, shall constitute an account stated and shall not be subject to any questions for any reason whatsoever, unless specific objection in writing, setting forth the basis thereof, is given by DEVELOPER to PUBLISHER within one (1) year after DEVELOPER's receipt of the Royalty Statements, if any, pursuant to this Agreement. No action, suit, or proceedings of any nature with respect to any Royalty Statement or other accounting rendered by PUBLISHER hereunder may be maintained against PUBLISHER unless such action, suit or proceeding is commenced against PUBLISHER in court of competent jurisdiction within one (1) year after DEVELOPER's receipt of the Royalty Statements, if any, pursuant to this Agreement.

**6.5. Audit of Royalty Statements.** Not more than once per every twelve (12) months during the Term, starting from the Commercial Launch of the Game, at DEVELOPER's expense, DEVELOPER shall have the right to audit the books of account and records of PUBLISHER, solely relating to this Agreement as are reasonably necessary to verify the reporting of Royalties.

Such audits and audit rights shall also be subject to the following: (a) audits may only be conducted by an independent accounting or audit firm, at the expense of DEVELOPER, at the premises where PUBLISHER maintains consolidated books of account, without disruption to PUBLISHER's daily business operations; (b) such audits shall be conducted upon no less than twenty (20) Business Days advance written notice and at a mutually agreeable time; (c) the auditing firm must sign a confidentiality agreement reasonably acceptable to PUBLISHER; (d) records supporting any Royalty Statement may only be audited once; and (e) unless the delay is caused by PUBLISHER's lack of cooperation, audits must be completed within thirty (30) calendar days from the date when such audits are actually commenced.

In the event that the results of the independent audit indicate any shortage or overpayment of Royalties, the shortage or overpayment, as the case may be, shall be paid by the responsible Party within ten (10) calendar days from receipt of the final and complete audit report. Costs for such audits and related activities will be paid for by DEVELOPER, unless the audit establishes an underpayment of Royalties to DEVELOPER in the amount of more than ten percent (10%) of the aggregated amount of Royalties paid during the period being audited, in which case PUBLISHER shall reimburse the reasonable costs of the audit and expenses related thereto, as and when paid by DEVELOPER.

**6.6. Payment Pursuant to Audit Rights.** With respect to any claim by DEVELOPER that additional moneys are payable by PUBLISHER to DEVELOPER pursuant to this Agreement based upon an audit by DEVELOPER of PUBLISHER's books and records, PUBLISHER shall not be deemed in breach of this Agreement if within thirty (30) calendar days after PUBLISHER's receipt of DEVELOPER's written claim that additional monies are due and payable together with the copy of the audit report prepared in connection with such audit, PUBLISHER shall either (a) pay such additional monies so claimed by DEVELOPER, with interests and costs as applicable, or (b) contest such claim, in whole or in part, by written notice to DEVELOPER specifying in reasonable detail the grounds for contesting such claim. In the event PUBLISHER shall contest any such claim, PUBLISHER shall not be deemed in breach of this Agreement unless such claim shall have been reduced to a judgement by a court of competent jurisdiction or resolved by binding arbitration and PUBLISHER shall have failed to pay DEVELOPER the amount thereof within ten (10) calendar days after PUBLISHER shall have received notice of the entry of such final non-appealable judgement.

## **7. TERM AND TERMINATION**

**7.1. Term.** This Agreement shall commence on the Effective Date and continue for a period of five (5) years ("Initial Term") and shall automatically extend for consecutive periods of two (2) years (each, a "Renewal Term" and collectively with the Initial Term, the "Term").

**7.2. Termination by Mutual Consent.** This Agreement may be terminated at any time by the mutual consent of both Parties in writing.

[...]

**7.5. Breach of Material Obligation.** PUBLISHER shall have the right to terminate this Agreement immediately in writing if DEVELOPER breaches its Material Obligation.



## 8. GENERAL PROVISIONS

(i) The Parties shall keep confidential this Agreement and each other's confidential information. The terms of the MNDA between the Parties shall continue in full force and effect and shall be incorporated into this Agreement and have full force and effect in relation to it. (ii) This Agreement does not create any exclusive relationship between the Parties nor any partnership, joint venture, employment or agency between them. (iii) No failure or delay by a Party to exercise any right under this Agreement or at law shall be a waiver of that right. (iv) Any variation of this Agreement must be in writing (email excluded) and signed by the Parties. (v) If any part of this Agreement is found to be invalid or unenforceable, that shall not affect the rest of this Agreement. (vi) Any notices under this Agreement must be in English and sent to the other Party's registered office and/or by email (unless expressly excluded), as set forth on the signature page hereto as the same may be updated by either Party from time to time. (vii) This Agreement constitutes the whole agreement between the Parties and supersedes all previous agreements between them regarding its subject matter. Each party acknowledges that, in entering into this Agreement, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty other than as expressly set out in this Agreement. Nothing in this Section shall limit any liability for fraud. (viii) Each Party is responsible for its own costs regarding this Agreement. (ix) Each Party shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may be required for the purpose of giving full effect to this Agreement. (x) This Agreement and any dispute or claim in connection with it will be governed by the law of Obliland. ANY DISPUTE, CONTROVERSY OR CLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO THE FORMATION, PERFORMANCE, BREACH, TERMINATION OR INVALIDITY THEREOF, AS WELL AS MATTERS CONCERNING INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS, SHALL BE SETTLED BY ARBITRATION IN ACCORDANCE WITH TERRYLAND ALTERNATIVE DISPUTE RESOLUTION CENTRE ARBITRATION RULES. THE PARTIES FURTHER AGREE THAT: (a) THE APPOINTING AUTHORITY SHALL BE TERRYLAND SUPREME COURT; (b) THE NUMBER OF ARBITRATORS SHALL BE THREE (3); (c) THE PLACE OF ARBITRATION SHALL BE TALESTOWN, TERRYLAND; (d) THE LANGUAGE TO BE USED IN THE ARBITRAL PROCEEDINGS SHALL BE ENGLISH. (xi) This Agreement shall be executed in two (2) counterparts, each of which shall be deemed to be an original and both of which together shall be deemed to be one and the same Agreement. No counterpart shall be effective until each Party has executed at least one counterpart.

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

OMNIA LIMITED	STARKA GAMES LLC
.....	.....
(Signature)	(Signature)
<b>Ramon Nanda</b>	<b>Ivan Bekic</b>
(Name)	(Name)
<b>CEO</b>	<b>Director</b>
(Title)	(Title)

## SCHEDULE 2

### Sample Royalty Statement

#### Royalty Statement Starka Games

***Omnia Ltd.***

Summary Royalty Statement

Updated quarter starting: 01/10/2015

Through quarter ending: 31/12/2015

	Week 1	Week 2	Week 3	Week 4	Week 5	Week 6	Week 7	Week 8	Week 9	Week 10	Week 11	Week 12	TOTAL
In-game currency	58,802	49,881	55,852	73,154	48,176	49,198	50,731	51,753	62,264	68,176	71,567	76,132	<b>715,686</b>
In-game items	15,660	30,037	28,600	28,756	19,007	18,258	13,134	14,385	19,011	25,007	27,097	27,431	<b>266,383</b>
Premium account	7,854	17,714	21,649	3,100	3,542	3,985	4,650	5,092	9,314	13,542	14,871	22,657	<b>127,970</b>
	<b>82,316</b>	<b>97,632</b>	<b>106,101</b>	<b>105,010</b>	<b>70,725</b>	<b>71,441</b>	<b>68,515</b>	<b>71,230</b>	<b>90,589</b>	<b>106,725</b>	<b>113,535</b>	<b>126,220</b>	<b>1,110,039</b>

Total Summary	Q4 – 2015	Accumulated
Gross Revenue	EUR 1,110,039	EUR 1,487,541
Adjustments	N/A	N/A
Due to Starka Games, 25%	EUR 277,510	EUR 371,885
Less Royalties paid		EUR 94,375

**Amount due (owed)      EUR 277,510**

### SCHEDULE 3

**From: Ivan Bekic**

**Sent: 10 October 2018, 10:04 a.m.**

**To: Ramon Nanda**

**Re: Status Outer Space Oddity / Proposal on Termination of GDPA**

Dear Mr. Nanda,

I trust you are doing well.

I would like to reiterate a discussion about profitability of the Outer Space Oddity project that we started some time ago with you. It is evident now that the revenue has significantly dropped during recent months, and we keep losing MAU. We suspect that this might have happened partly since you have considerably cut the marketing spent in comparison with the preceding periods. However, we have no intention whatsoever to blame Omnia or anyone else in what is happening to the game. Instead, we suggest (please note that this decision has not come easy) that we amicably part our ways and continue with other projects.

All in all, it has been a great journey, and we are sad it is somewhat coming to an end for us. Nevertheless, we hope that Outer Space Oddity will grow and develop without our direct involvement. Needless to say, we have no claims towards the future revenues of the game.

Could you please let me know if you are fine with signing a mutual termination of the GDPA and if you could provide an initial draft. I would appreciate your soonest feedback.

Kind regards,

Ivan Bekic

Director

Starka Games

Nicholas Ave. 34/1,

Talestown FE-9076, Terryland

T: (0)146 3094-355

Email: [i.bekic@starkagames.net](mailto:i.bekic@starkagames.net)

## SCHEDULE 4

### TERMINATION AGREEMENT

This Termination Agreement (the “**Termination Agreement**”) is made as of November 21<sup>st</sup>, 2018 (the “**Effective Date**”), by and between **OMNIA LIMITED** registered in Obliland under number 571938364819, with registered office at 187 Peggy Street, floor 12, Seatown, Obliland (“**PUBLISHER**”), and **STARKA GAMES LLC** registered in Terryland under number NA2453, with registered office at Nicholas Ave. 34/1, Talestown FE-9076, Terryland (“**DEVELOPER**”), each a “**Party**” and jointly the “**Parties**”.

**WHEREAS**, the Parties entered into Game Development and Publishing Agreement dated June 10<sup>th</sup>, 2013 (“**GDPA**”) for development and publishing of the Game;

**WHEREAS**, the Parties have decided to mutually terminate the GDPA and to mutually release each other from any and all claims and demands heretofore raised by either against the other,

**NOW, THEREFORE**, in consideration of the foregoing recitals and the mutual agreements and promises set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

#### 1. Termination of GDPA

Subject to terms set forth herein, the GDPA shall terminate and be of no force and effect as of **December 1<sup>st</sup>, 2018**.

#### 2. DEVELOPER’s Audit Rights

For the avoidance of doubt, PUBLISHER will continue to account to DEVELOPER pursuant to the GDPA, and DEVELOPER shall retain all of the audit rights granted to it under the GDPA.

#### 3. Survival of Rights under the GDPA.

For all matters arising out of the relationship of the Parties the following paragraphs shall survive the termination of the GDPA: 4, 6 and 8.

#### 4. Mutual Release.

Except for the continuing rights and obligations of the Parties as expressly set forth in this Termination Agreement, each Party hereby releases and discharges the other Party, and any of its affiliates, successors, assigns, employees, officers and directors (both individually, and in their official capacity), and agents from any and all claims, actions, demands, contracts and causes of action, in law or equity, which either Party (or her heirs, successors or assigns) may have had, now has or may thereafter have (whether known or unknown) against the other Party arising from the GDPA. For the sake of clarity, once DEVELOPER has received the final Royalty Report and full payment for the time period commencing October 1<sup>st</sup>, 2018 and continuing through November 30<sup>th</sup>, 2018, neither Party shall have any claim, demand or request based on the GDPA, with the sole exception of any claim originating from DEVELOPER Audit Rights as stated under Section 2 of this Termination Agreement.

#### 5. Interpretation

Capitalized terms used in this Termination Agreement without definition shall have the respective meanings specified in the GDPA.

**OMNIA LIMITED**



Ramon Nanda,  
CEO

**STARKA GAMES LLC**



Ivan Bekic,  
Director

SCHEDULE 5a

**From: Ivan Bekic**

**Sent: 17 January 2019, 3:54 p.m.**

**To: Ramon Nanda**

**Cc: Tom Brown**

**Re: Outer Space Oddity: Underpaid Royalties Discovered**

Dear Mr. Nanda,

I hope this e-mail finds you well.

I would like to bring to your attention a rather serious issue which our CFO Tom Brown (in CC) has recently revealed.

From the analysis of the royalty statements and corresponding payments made by Omnia for the period starting from August 2015, it became evident that Omnia was significantly underpaying Starka Games under the GDPA which was in place at that time. In total, we are speaking about around EUR 615,000.

Unfortunately, due to unregular and overcomplicated royalty statements, as well as receiving payments from Omnia in installments (as opposed to the GDPA which required the payment for a certain quarter to be made at once), we have been unable to discover the above discrepancies at an earlier stage.

However, thanks to highly professional investigation carried out by our CFO team, we managed to establish the deficiency between the reported royalties and paid royalties in the amount mentioned above. Please see the correspondent analysis attached.

If you believe that for any reason our calculation is inaccurate, please let us know ASAP – we are ready to meet and discuss it with you. Otherwise, we will issue an invoice in due course for the amount of the underpaid royalties.

This is a very unfortunate discovery for us and we hope that the matter will be resolved without undue delay.

Best regards,

Ivan Bekic

Director

Starka Games

Nicholas Ave. 34/1,

Talestown FE-9076, Terryland

T: (0)146 3094-355

Email: [i.bekic@starkagames.net](mailto:i.bekic@starkagames.net)

SCHEDULE 5b

**From: Ramon Nanda**

**Sent: 11 February 2019, 5:51 p.m.**

**To: Ivan Bekic**

**Cc: Tom Brown**

**Re: Outer Space Oddity: Underpaid Royalties Discovered**

Dear Mr. Bekic,

Thank you for your e-mail and for bringing your thoughts to our attention.

To begin with, I am not aware of any fact of underpayment of royalty by Omnia Ltd. under the GDPA. Please note that we have not conducted an analysis of the documents you have provided to us; therefore, we are not ready to comment on the results of the investigation carried out by your team.

Nevertheless, we have checked our accounting records and we can assure you that all the invoices submitted by Starka Games under the GDPA have been duly and fully paid by Omnia Ltd.

In addition to the above, we believe that in no case Omnia owes any royalty payment to Starka Games as the Termination Agreement signed by both parties clearly states that the parties do not have any monetary claims towards each other (see Section 4).

Feel free to reach out to me directly in case of any additional questions on the matter.

Best regards,

Ramon Nanda

CEO

Omnia Ltd.  
187 Peggy Street, floor 12  
Seatown, Obliland  
T.: (00) 9384-334-12  
E-mail: [r.n@omnia.com](mailto:r.n@omnia.com)

SCHEDULE 6

**Omnia Limited**

187 Peggy Street, floor 12

Seatown, Obliland

Attn.: Mr. Ramon Nanda, CEO

July 19, 2018

Dear Mr. Nanda,

We refer to the Game Development and Publishing Agreement which has been entered into as of June 10th, 2013 ("**GDPA**") between OMNIA LIMITED ("**Omnia**") and STARKA GAMES LLC ("**Starka Games**"), under which Omnia was publishing the game Outer Space Oddity ("**Game**") while Starka Games was supporting the Game and receiving royalty from sales of the Game.

Under the GDPA, Omnia was supposed to pay 25% of Gross Revenue of the Game to Starka Games. Within the period from August 2015 until November 2018 (inclusive) Omnia has reported to Starka Games royalty due in the amount of **EUR 4,062,078**, while the payment actually received by Starka Games amounted to **EUR 3,446,215**, resulting in an **underpayment of EUR 615,863**.

As soon as the underpayment had been discovered, Starka Games repeatedly requested Omnia to settle the underpayment that has emerged. However, as of the day of sending this claim the underpayment has not yet been settled.

Furthermore, Starka Games have conducted an independent audit of the royalty statements for the period from August 2015 until November 2018. The audit has revealed a number of errors in the royalty statements, including but not limited to miscalculations and misstatements. We attach the audit report hereto for your attention. As a result, Omnia had underreported **EUR 231,070** to Starka Games during the mentioned period.

In total, as of the date of this letter underpayment by Omnia to Starka Games amounts to **EUR 846,933** ("**Underpayment**").

Based on the above we require that you settle the existing Underpayment within **ten (10) calendar days** from the receipt of this claim. If the underpayment is not settled within the specified timeframe, Starka Games will have no choice but to treat those actions as a material breach of the GDPA and take all appropriate steps to protect its position without further notice to you.

We look forward to your prompt response.

For the avoidance of doubt, the foregoing is not intended to be a complete recitation of all applicable law and/or facts, and shall not be deemed to constitute a waiver or relinquishment of any of Starka Games' rights or remedies, all of which are hereby expressly reserved.

Yours faithfully,



Ivan Bekic,

Director, Starka Games LLC

## Happy birthday SiNB!

Now, we are in a rocket flying to the moon and beyond.  
The technology is already used in many famous games...

For many years *SiNB* was just a vague concept until I found a bright team of devoted gamers who helped me to shape my idea into something tangible. Just in six months of day-night crunch we made our technology solid enough to be interesting for investors and *big players in the game business*.

**Ivan Bekic**  
AI enthusiast, founder and lead developer at Starka Games  
August 15th, 2019

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Today we have something big to celebrate! Five years ago, the first and then yet rather basic version of “Space is New Brain” (“SiNB”) technology was released on GitHub for the first time.

This all started from a brave idea many years ago. Back then, I was a law school student missing my classes to play Dota. One day after class, we gathered with friends in a local bar and started discussing how great it would be to teach games to understand our tastes and automatically adjust a gameplay. That sounded like a tremendous idea, and I was just searching for an ambitious goal The thing was, the longer I studied law, the clearer it became to me that I did not want to waste my life drafting useless papers and participating in moot-courts just not to think about the vanity of my existence. I thought that I was meant for something bigger and here it was, something worth living.

With support of my friends and family I took a risky step (which I have not regretted so far) to quit my legal studies and to commence this breathtaking adventure. For many years SiNB was just a vague concept until I found a bright team of devoted gamers who helped me shape my idea into something tangible. In just six months of working day and night we made our technology solid enough to be interesting for investors and big players in the game business.

But all our efforts were not in vain for today SiNB is more than one more technology which improved the game experience: SiNB is a product of mutual effort, the masterpiece of the whole industry aimed to revolutionize the game world. SiNB tailors a game for the user’s individual preferences. If you don’t like tirelessly fighting monsters, then SiNB will make your game-play experience more peaceful and let you quietly discover the cosmic fauna.

**“ SiNB is a product of mutual effort, the masterpiece of the whole industry aimed to revolutionize the game world. SiNB tailors a game for the user’s individual preferences ”**



SiNB tailors a game for the user’s individual preferences.

I am very grateful to the big community of SiNB for its immense support! Without your help and your contributions to the code of SiNB we would never see this technology as revolutionary as it is today. Honestly, when we released our first build, I thought it was a stunning success. Now I understand that it was only a canvas (perhaps with couple of scratches) and the true masterpiece was created only because of your support. I say “created” – no, it is being created right now by all of us!

That’s why I am so happy that SiNB is an opensource available for reuse and contribution under BSD-3 license on GitHub. We chose BSD-3 license not to impose on you any unnecessary restrictions, so feel free to develop it further and enrich your games with a cutting-edge technology. Although, we are very grateful when you share your contributions with the community!

Now, we are in a rocket flying to the moon and beyond. The technology is already used in many famous games including the legendary franchise “Epsilon” by MoonPlay. The stars will not be our limit. Go ahead, SiNB!

## Game Journal

Q

Search...

### Development

Today at the Gamescom, Cool Games announced the release of *Speed Racing Extreme* – a new AAA-quality game of illegal racing, fast vehicles and endless loot! The virtual money that you earn in the in-game competitions can be used to bribe police, customize your vehicles and upgrade your avatar. This is the one to watch if you're tired of generic racing games.



### Esports

“My dad told me I would never earn money sitting at the computer. I told him, ‘I will make in a month more that you earn in a year!’ And, you know what, I just did it!”

A school boy wins the biggest video game competition of all time – the Grand Game League. 12-year-old from Terryland named Kevin Holmes (aka “Winner”) brought home the winnings of \$12m for his stunning performance this Sunday at the event.



### Politics & Law

The UK could probably restrict or even ban any games that depict unicorns, says the report of the UK parliamentary committee on child and animal protection. “We are deeply concerned that video games depicting unicorns make children believe in miracles which is not consistent with our policy to bring them up as down-to-earth and pragmatic citizens”, the report says. The report also says that making children believe in unicorns could affect their feelings towards real animals, which would in turn decrease the rate of animals’ adoption and increase the spending of HM’s government beyond the limits of the tight after-Brexit budget. The MP confidentially told us that for now, they will insist on a ban for unicorns only, but that this ban could also be extended to other creatures in the future.





## CLARIFICATIONS

*Q1. Are Obliland and Terryland members of any international unions (treaties) and what kind of law does serve ground for the law of Obliland? What applicable country and its laws does Obliland's Intellectual Property Right's derive from?*

**A1. Obliland is a common law country, while Terryland is a civil law country. Obliland and Terryland are both contracting parties to the Berne Convention and the WIPO Copyright Treaty. The relevant provisions of the Law on Copyright and Designs of Obliland can be found in Annex 1. None of the countries is a member state of the European Union or any other international or regional political organisation. Obliland has largely harmonised its contract law provisions with the Principles of International Commercial Contracts 2016.**

*Q2. Had MoonPlay known about GDPA clauses concerning IP rights?*

**A2. No, GDPA is a confidential document and it was not disclosed to MoonPlay.**

*Q3. Please advise what kind of IP infringement does Omnia Ltd. accuse Starka Games of?*

**A3. Omnia Ltd. claims copyright infringement by Starka Games.**

*Q4. Does the source code or documentation for Outer Space Oddity and/or Epsilon Mobile include copyright notices of any kind?*

**A4. Yes, Outer Space Oddity contained logo and copyright notice of Omnia Ltd. Starka Games was indicated as the copyright holder on GitHub within the BSD-3 license text. Epsilon Mobile contained logo and copyright of MoonPlay.**

*Q5. Was it possible to find the information concerning financial results of Omnia Ltd. and (or) Outer Space Oddity in public sources, e.g. articles on game sites, game reviews, games conferences, published audit reports etc.?*

**A5. No, Omnia Ltd. is a privately-owned company, therefore such information was not publicly available.**

*Q6. When did Starka Games carry out the independent audit of the statements?*

**A6. An independent audit of royalty statements for the period from August 2015 until November 2018 was carried out by Starka Games in between June 17<sup>th</sup>, 2019 and July 15<sup>th</sup>, 2019.**

*Q7. In the absence of a clause on interest charged on delayed payments, should it be assumed that some interest might be payable in this scenario?*

**A7. No, Starka Games does not claim any interest on the amounts due. All monetary claims of Starka Games related to royalty can be found in para. 20A of the Case.**

*Q8. Can you give further examples of the minor changes that Ivan has influenced during the contract negotiations?*

**A8. During the negotiations Ivan Bekic requested amendments to the developer technology provisions, which were accepted by Omnia Ltd.**

*Q9. Was there a lawyer on behalf of Starka Games when parties signed the Termination Agreement?*

**A9. Yes, by the time the parties started negotiating the Termination Agreement, Starka Games already had an in-house legal counsel.**

*Q10. When was payment for the October 1<sup>st</sup> – November 30<sup>th</sup>, 2018 period made, and does Starka Games dispute whether the amount of this payment is correct?*

**A10. Omnia Ltd. issued a Royalty Statement to Starka Games for the period October-November 2018 on January 10<sup>th</sup>, 2019. Omnia Ltd. transferred to Starka Games full amount of royalty specified in the Royalty Statement on January 25<sup>th</sup>, 2019. As the audit later established, Omnia Ltd. had underreported, and as a result, underpaid to Starka Games EUR 10,157 for the period October-November 2018. This amount has been included into Starka Games' claim as per para. 20A of the Case.**

*Q11. Have parties agreed on the 'in-Game items' term in any form? If yes, please provide us with the respective definition.*

**A11. The parties have not provided for any definition of the in-Game items in the GDPA. However, neither party disputes the meaning of the 'in-Game items' or claims any errors or omissions in the Royalty Statements due to incorrect interpretation of the meaning of the 'in-Game items'.**

*Q12. Does the period of one year specified in the GDPA breach any compulsory legal rules in the Obliland Law?*

**A12. No, 1-year term agreed by the parties in Section 6.4 of the GDPA does not violate any mandatory provision of the law of Obliland.**

*Q13. Can access to the MDNA be provided, or in the alternative are there provisions in the MDNA that might relate to the ability of the parties to place material on GitHub?*

**A13. MNDAs signed between Omnia Ltd. and Starka Games can be found in Annex 2.**

*Q14. Was Omnia Ltd. aware of the placement of SiNB on GitHub and, if so, when they became aware thereof?*

**A14. Some senior engineers of Omnia Ltd. recall discussions with Ivan Bekic about SiNB's being on GitHub. Starka Games referred to an email thread dated April 2015 where Ivan Bekic asked Omnia IT security specialists for an advice related to Starka Games' GitHub repository. It is clear from the correspondence that the repository contains SiNB. Omnia's IT specialist replied with some general advice. Anna Vein was among the people in copy to that correspondence, but she never replied to it. Other than that, Starka Games did not provide any substantive evidence of Omnia's awareness of SiNB's being on GitHub. Omnia Ltd. did not provide any evidence of its unawareness.**

**ANNEX 1**

**OBLILAND**

**Law on Copyright and Designs dated January 1, 1980,**

**as amended**

Article 8.

(a) Copyright protection subsists, in accordance with this law, in original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. Works of authorship include the following categories:

- (1) literary works;
- (2) musical works, including any accompanying words;
- (3) dramatic works, including any accompanying music;
- (4) pantomimes and choreographic works;
- (5) pictorial, graphic, and sculptural works;
- (6) motion pictures and other audiovisual works;
- (7) sound recordings; and
- (8) architectural works.

(b) In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work.

Article 9.

The subject matter of copyright includes compilations and derivative works, but protection for a work employing preexisting material in which copyright subsists does not extend to any part of the work in which such material has been used unlawfully. The copyright in a compilation or derivative work extends only to the material contributed by the author of such work, as distinguished from the preexisting material employed in the work, and does not imply any exclusive right in the preexisting 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 preexisting material.

Article 12.

The owner of copyright under this law has the exclusive rights to do and to authorize any of the following:

- (a) to reproduce the copyrighted work in copies or phonorecords;
- (b) to prepare derivative works based upon the copyrighted work;

(c) to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;

(d) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly;

(e) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly; and

(f) in the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission.

#### Article 19.

Copyright in a work protected under this law vests initially in the author or authors of the work. The authors of a joint work are co-owners of copyright in the work.

#### Article 20.

Where a literary, dramatic, musical or artistic work is made by an employee in the course of his employment, his employer is the first owner of any copyright in the work subject to any agreement to the contrary.

#### Article 21.

(a) The ownership of a copyright may be transferred in whole or in part by any means of conveyance or by operation of law and may be bequeathed by will or pass as personal property by the applicable laws of intestate succession.

(b) Any of the exclusive rights comprised in a copyright may be transferred as provided by clause (a) and owned separately. The owner of any particular exclusive right is entitled, to the extent of that right, to all of the protection and remedies accorded to the copyright owner by this law.

**ANNEX 2**  
**MUTUAL NON DISCLOSURE AGREEMENT**  
**("MND")**

<b>START DATE:</b>	March 20th, 2013
<b>BETWEEN:</b>	<b>OMNIA LIMITED</b> registered in Obliland under number 571938364819, with registered office at 187 Peggy Street, floor 12, Seatown, Obliland (" <b>PUBLISHER</b> "), and
<b>AND:</b>	<b>STARKA GAMES LLC</b> registered in Terryland under number NA2453, with registered office at Nicholas Ave. 34/1, Talestown FE-9076, Terryland (" <b>DEVELOPER</b> ")  each a "Party" and jointly the "Parties".
<b>PURPOSE:</b>	Prospective and actual projects on development of Outer Space Oddity videogame, and any other matters agreed in writing by the Parties.

**TERMS & CONDITIONS:**

**1. Background.** This MND is about Publisher and Developer sharing Confidential Information (defined below) with each other regarding the Purpose. Publisher and Developer are hereinafter separately referred to as the "**Party**" and jointly, as the "**Parties**".

A Party which discloses Confidential Information to another Party is the "**Discloser**" and the Party which receives it is the "**Recipient**".

"**Affiliates**" of the Parties shall mean an individual or entity that (a) directly or indirectly controls, or is controlled by, or is under common control with a Party; and/or (b) owns or controls fifty percent (50.0%) or more of the outstanding voting securities of a Party.

**2. Confidential Information.** "*Confidential Information*" means any information which relates to Discloser and/or any of its group companies' business that is disclosed or made available (directly or indirectly) by Discloser to Recipient, whether in oral, visual or written form (including graphic material), whether before, on or after the Start Date of this MND. 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 Purpose; and
- (b) the existence and terms of this MND; and
- (c) information otherwise reasonably expected to be treated in a confidential manner under the circumstances of disclosure under this MND or by the nature of the information itself.

**3. Disclosure Restrictions.** When the Discloser discloses Confidential Information to the Recipient, the Recipient will:

- (a) only use it for the agreed Purpose and not any other purpose;
- (b) hold it in strict confidence and not disclose it, or anything contained in it or learned from it, to anyone else without the Discloser's prior written permission (unless sub-clause (c) applies);

- (c) restrict access to the Confidential Information to its directors, officers, employees, contractors, agents or legal or accountancy advisors (“**Representatives**”) on a strict and genuine ‘need to know’ basis;
- (d) not copy, reduce into writing, or summarise any Confidential Information (unless required for the Purpose) and keep all reasonable controls over any copies; and
- (e) not modify, reproduce, create derivative works from, decompile, reverse engineer, disassemble, hack or otherwise interfere with, any Confidential Information or any part of it except as expressly permitted by Discloser for the Purpose.
- (f) Notwithstanding anything to the contrary in this MNDA, Developer acknowledges that the credentials (logins, passwords, multi-factor authentication and etc.) for accessing Publisher internal systems (e.g. Jira, Confluence and etc.) can only be used by the specific individuals, who actually received the credentials (logins, passwords, multi-factor authentication and etc.) from PUBLISHER. Inter alia, sharing credentials (logins, passwords, multi-factor authentication and etc.) received from PUBLISHER for accessing Publisher internal systems (e.g. Jira, Confluence, etc.) between employees of the Developer, regardless of their seniority and the need for such sharing for the Purpose, is forbidden.

**4. Exceptions.** Section 3 (Disclosure Restrictions) will not apply to Confidential Information where the Recipient can prove to the Discloser’s reasonable satisfaction that any of the following apply:

- (a) disclosure of the Confidential Information was authorised by the Discloser;
- (b) the Confidential Information was or becomes available to the public generally through no wrongful action or inaction of Recipient or anyone to whom Recipient disclosed the Confidential Information;
- (c) the Confidential Information was in the rightful and lawful possession of Recipient without confidentiality obligations at the time of the disclosure by Discloser to Recipient as shown by the Recipient’s then-contemporaneous written files and records kept in the ordinary course of business;
- (d) the Confidential Information was obtained by Recipient from a third party without an accompanying duty of confidentiality and without a breach of such third party’s obligations of confidentiality;
- (e) the Confidential Information was independently developed by Recipient without use of or reference to Discloser’s Confidential Information; or
- (f) the Recipient is required to disclose any Confidential Information by law or by any court, regulator or administrative body of competent jurisdiction and power (but only to the minimum extent required to fulfil such requirement and Recipient should first give the Discloser the opportunity to challenge the disclosure or obtain a protective order).

**5. Confidential Information protection.** Recipient will ensure the following, subject to any obligations under Section 4 (Exceptions):

- (a) it takes all reasonable steps and security measures necessary to protect Confidential Information from being disclosed to any third party (unless expressly permitted by this MNDA);
- (b) if the Recipient is allowed to disclose the Confidential Information to its Representatives, Recipient undertakes to ensure that such Representatives will treat such information as confidential and comply fully with the terms of this MNDA. The Recipient shall be responsible for any breach of this MNDA and/or any breach of confidentiality by its Representatives; and
- (c) Recipient shall promptly notify Discloser of any unauthorized use or disclosure, or suspected unauthorized use or disclosure, of Discloser’s Confidential Information of which Recipient becomes aware.

**6. Return of Confidential Information.** When requested in writing by Discloser, Recipient shall promptly:

- (a) deliver all documents, materials and other tangible objects containing Confidential Information or part thereof that has been disclosed by Discloser to Recipient, which for the avoidance of doubt includes all copies or extracts thereof or notes derived therefrom that are in the possession of Recipient;

- (b) permanently delete, destroy and erase all electronic copies of Confidential Information from any computer or data storage system into which Confidential Information was entered;
- (c) the foregoing obligation to delete, destroy and erase all electronic copies of Confidential Information from any computer or data storage system into which Confidential Information was entered shall not extend to automatically generated computer or data storage system back-up or archival copies generated in the ordinary course of Recipient's information system procedures ("Archives") where it is not commercially or technically feasible to implement the foregoing obligations regarding the Archives, provided that Recipient shall make no further use of such copies (and, if such copies are actually identified within the Archives, Recipient will then implement the foregoing obligations);
- (d) make no further use of Confidential Information.
- (e) Recipient shall, if required in writing by Discloser, provide a certificate signed by an officer of Recipient certifying compliance with the above provisions.

**7. Intellectual Property Rights and ownership.** As between the Parties, each Party owns or licenses its Confidential Information and any Intellectual Property Rights (defined below) in it as well as any ancillary disclosed material, assets or information. Discloser grants no license or any other type of right, title or interest whatsoever in or to them except as expressly provided for in this MNDA solely for the Purpose.

*"Intellectual Property Rights"* means: any and all patents, trade marks, service marks, brand names, logos, design rights, database rights, copyright (including rights in computer software and databases), goodwill, get up, trade dress, trade, business or domain names, rights in inventions, know-how, trade secrets and confidential information, moral rights, publicity rights, performance rights, synchronization rights, mechanical rights and other intellectual property rights of a similar or corresponding character which may now or in the future subsist in any part of the world, in all cases whether or not registered or registerable including all granted applications and all applications for registration in respect of any of the same.

**8. Warranties:**

- (a) the Parties warrant and represent to each other that they have requisite power to enter into this MNDA and that they are not a party to any arrangements which could reasonably be expected to hinder or prevent the performance of their obligations under this MNDA; and
- (b) all Confidential Information is provided "as is". Neither Party makes any warranties, express, implied or otherwise, regarding: (i) the accuracy, completeness or performance of any Confidential Information; or (ii) the non-infringement or other violation or breach of any Intellectual Property Rights or other rights of a third party or of Recipient.

**9. Indemnity.** Each Party will indemnify each other on demand and hold them harmless on demand against any losses, costs, claims, damages or expenses (including reasonable legal fees and costs) incurred due to any breach of this MNDA.

**10. Remedies.** The Parties acknowledge that if there is an unauthorised disclosure of Confidential Information, monetary damages may not be adequate to remedy the harm suffered by the Party who owns that Confidential Information and therefore that Party may seek equitable relief (including injunctive relief and/or specific performance) as well as monetary damages against the unauthorised discloser.

**11. Data Protection/Privacy.** If any Confidential Information includes personal information, Recipient must ensure that it protects the relevant Confidential Information under applicable data protection/privacy law.

**12. Term.** This MNDA shall become effective on the Start Date and will remain in full force and effect for a period of three (3) years from the Start Date ("**Term**"), subject to the extension or renewal pursuant to paragraph 2 of clause 13. With respect to all Confidential Information disclosed under this MNDA during the Term, the confidentiality, nondisclosure and use restrictions set forth herein shall continue for two (2) years from any termination or expiration of this MNDA.

**13. Other agreements.** Any and all other agreements between the Parties regarding or arising out of the Purpose (“Other Agreements”) must contain confidentiality provisions of the same strength and standard as in this MNDAs and, to the extent possible, replicating its wording.

The Parties may incorporate this MNDAs into Other Agreements by reference. In such case, the Term shall be extended or renewed to cover the cooperation between the Parties under such Other Agreements. For the avoidance of doubt, this MNDAs shall expire on the same day as the Other Agreement with the latest expiration or termination date.

**14. General.** Each Party will pay its own costs regarding this MNDAs. This MNDAs sets out the entire agreement and understanding between the Parties and supersedes all prior agreements, understandings or arrangements (whether oral or written) in respect of the subject matter of this MNDAs. No failure to enforce this MNDAs is a waiver of any part of it. If a court or other body of competent jurisdiction finds any provision of this MNDAs, or portion thereof, to be invalid or unenforceable, the other provisions will remain in full force and effect. The provisions of this MNDAs that ought to survive expiration or termination of this MNDAs by their nature shall survive such expiration or termination. No assignment of this MNDAs is possible without the other Party’s prior written approval. This MNDAs is only enforceable by an express Party to it. No variation or modification of this MNDAs will be effective unless it is in writing and signed on behalf of each of the Parties. Both Parties must comply with any applicable import/export laws. If this MNDAs is translated into any language other than English, the English language version will be the legally binding version and will prevail over any translation. This MNDAs can be executed in multiple counterparts.

**15. Conclusion of an Agreement in electronic form.** This Agreement may be concluded in electronic form and signed by means of e-signatures (including but not limited to DocuSign e-signature). E-signatures shall be deemed original signatures for all purposes and shall have the same force and effect as original signatures. Neither Party will contest existence, validity and/or enforceability of this Agreement and its Annexes because of signing with e-signatures. If the Parties execute hard copy of the Agreement and/or its Annexes in addition to electronic copy, the copy signed electronically shall prevail.

#### **16. GOVERNING LAW AND DISPUTE RESOLUTION.**

This Agreement and any dispute or claim in connection with it will be governed by the law of Obliland. ANY DISPUTE, CONTROVERSY OR CLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO THE FORMATION, PERFORMANCE, BREACH, TERMINATION OR INVALIDITY THEREOF, AS WELL AS MATTERS CONCERNING INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS, SHALL BE SETTLED BY ARBITRATION IN ACCORDANCE WITH TERRYLAND ALTERNATIVE DISPUTE RESOLUTION CENTRE ARBITRATION RULES. THE PARTIES FURTHER AGREE THAT: (a) THE APPOINTING AUTHORITY SHALL BE TERRYLAND SUPREME COURT; (b) THE NUMBER OF ARBITRATORS SHALL BE THREE (3); (c) THE PLACE OF ARBITRATION SHALL BE TALESTOWN, TERRYLAND; (d) THE LANGUAGE TO BE USED IN THE ARBITRAL PROCEEDINGS SHALL BE ENGLISH.

#### **SIGNED AND AGREED:**

Each individual signing this MNDAs certifies that he or she is an authorized representative of their respective Party identified below and is thereby fully authorized to bind their Party to the contractual obligations as defined in this MNDAs.

**OMNIA LIMITED**

**STARKA GAMES LLC**

Signature:



Name:

Ramon Nanda

Title:

CEO

Signature:



Name:

Ivan Bekic

Title:

Director