

AWARD OF THE InGAME R&D VOUCHER IS CONDITIONAL UPON THE ACCEPTANCE OF THE TERMS AND CONDITIONS OF THIS AGREEMENT WHICH ARE NON_NEGOTIABLE AND MAY NOT BE AMENDED

IN CASH AND IN KIND TEMPLATE

InGAME R&D VOUCHER SCHEME AGREEMENT

Between

THE UNIVERSITY COURT OF ABERTAY UNIVERSITY a body corporate in terms of The Abertay University (Scotland) Order of Council 2019, having its principal office at Kydd Building, Bell Street, Dundee DD1 1HG and a registered Scottish charity with registered number SC016040. ("Abertay");

and

[insert details] (Company No. [insert details]) having its principal place of business at [insert details] (the "Company").

WHEREAS

- A. Abertay on behalf of the Parties has applied for financial support towards the costs of an InGAME R&D Voucher Scheme project, which application has been successful;
- B. "InGAME: Innovation for Games and Media Enterprise" is a collaboration between the Universities of Abertay, Dundee and St Andrews ("the Collaborating Universities") funded under the Arts and Humanities Research Council ("AHRC") Creative Clusters programme and managed by the University of Abertay. Abertay on behalf of the Collaborating Universities is providing a contribution towards the project costs which is a VAT inclusive (if applicable) sum of up to a maximum of five thousand pounds (£5,000) Sterling (the "InGAME Contribution");
- C. The Company contribution is expected to match the InGAME Contribution in kind or in cash, and the Company has agreed to match the InGAME Contribution accordingly;
- D. The Company wishes Abertay to carry out a project; and
- E. The Parties agree such project shall be carried out on the terms and conditions set out below.

WHEREBY IT IS AGREED AS FOLLOWS

1. DEFINITIONS AND INTERPRETATION

1.1. In this Agreement, unless the context otherwise require or permits:-

"Agreement" means this InGAME R&D Voucher Scheme Agreement.

"Application" means the application form for the InGAME R&D Voucher Scheme

AY [insert academic year] completed by the Parties and forming Part 1 of the Schedule to this Agreement.

"Background IP" means all Intellectual Property, information, data, software and materials belonging to a Party that are provided by that Party to the other for use in the Project (whether before or after the date of this Agreement), and including, but not limited to such Background IP as is set out in the Application but not, for the avoidance of doubt, the Foreground IP.

"Confidential Information" means confidential information disclosed by a Party to the other for use in the Project and whether or not identified as confidential before or at the time of disclosure, the other Party's Background IP and any Foreground IP owned by it.

"Foreground IP" means all Intellectual Property, information, data, software and materials identified, created or first reduced to practice or writing in the course of the Project.

"Intellectual Property" means any patents, trademarks, registered designs, copyright, unregistered design right, database right or semi-conductor topography right including the rights to apply for the same and for any renewals of such rights, rights in and to trade or business names, Know-how or Confidential Information, and any similar or analogous rights or forms of protection in any part of the world.

"Know-how" means technical information (including, without limitation, information relating to inventions, discoveries, concepts, methodologies, models, research, development and testing procedures, the results of experiments, tests and trials, manufacturing processes, techniques and specifications, quality control data, analyses, reports and submissions) that is not in the public domain and that is not the subject of a patent application.

"Parties" means the Company and Abertay and "Party" shall be construed accordingly.

"Project" means the project described in the Application.

- 1.2. The headings in this Agreement are included for convenience only and shall be ignored in construing this Agreement.
- 1.3. The Schedule shall form part of this Agreement and shall have the same force and effect as if set out in the body of this Agreement and references to this Agreement include the Schedule.

2. THE PROJECT

- 2.1. The Company contribution shall match the InGAME Contribution in kind (staff time materials, access to facilities et cetera) according to the information provided in the Application. All expenditure must be clearly accounted for in the final report (the "Final Report") a pro forma of which is in the Application.
- 2.2. In consideration of the Company fulfilling its obligations set out hereunder Abertay will use reasonable endeavours to undertake the Project. Abertay and the Company will work together in order to complete and provide the Final Report timeously.

- 2.3. The Project shall start on [insert details] and this Agreement shall take effect on that date and shall continue in force until [insert details] unless terminated earlier in accordance with clause 11 of this Agreement or extended in writing by the Parties.

3. PAYMENT

- 3.1. The Company shall pay Abertay the cash contribution of £0.00 Pounds (Zero pounds) Sterling which shall be paid by electronic transfer into Abertay's bank account, details of which are set out in Part 2 of the Schedule, and in accordance with the invoice schedule set out in Part 2 of the Schedule. Abertay shall provide the Company with appropriate invoices prior to each payment date. The Company will pay all invoices received from Abertay within thirty (30) days of the date of the invoice.

All sums payable by the Company under this Agreement are expressed exclusive of any Value Added Tax which may be due thereon and for which the Company shall be additionally liable.

4. PERSONNEL

The Project will be supervised by the InGAME Project Director or such other individual as may be delegated by the InGAME Project Director ("the Supervisor").

5. OWNERSHIP OF BACKGROUND IP

- 5.1. All Background IP used in connection with the Project shall remain the property of the Party introducing such Background IP (or, where applicable, the third party from whom its right to use the Background IP has derived).
- 5.2. Subject to any third party rights, each Party grants the other a royalty-free, non-exclusive licence to use its Background IP for the purpose of carrying out the Project, but for no other purpose.
- 5.3. In the event that the Company needs Abertay's Background IP in order to use and exploit the Foreground IP in accordance with the terms of this Agreement, Abertay shall, where free and able to do so, grant the Company a non-exclusive licence for such use of its Background IP, subject to the agreement of reasonable terms and conditions between the Parties.

6. OWNERSHIP OF FOREGROUND IP

- 6.1. Foreground IP shall be owned by the Company. Abertay hereby assigns to the Company all Intellectual Property in and to the Foreground IP.
- 6.2. The Company hereby grants Abertay a perpetual, irrevocable, worldwide non-exclusive royalty free licence, with the rights to sublicense under a separate licence and confidentiality agreement amongst the Collaborating Universities (the "Licence Agreement"), to use the Foreground IP for the purposes of academic research, teaching and collaboration, including any collaboration with third parties provided that such third parties are not granted any rights to exploit the Foreground IP.

7. CONFIDENTIALITY

- 7.1. Any Confidential Information, including the Collaborating Universities Confidential Information, will not without prior written consent of the disclosing Party or as otherwise provided under this Agreement be used, published or disclosed except for the purposes of this Agreement.
- 7.2. The Company consents to Abertay disclosing its Confidential Information to the other Collaborating Universities, in accordance with the Licence Agreement, for the purposes of carrying out its obligations under this Agreement.
- 7.3. The foregoing obligations in clause 7.1 shall not apply, or shall cease to apply, to such Confidential Information as the receiving Party can show to the reasonable satisfaction of the disclosing Party:
 - 7.3.1. has become public knowledge other than through any fault of the receiving Party;
 - 7.3.2. was already known to the receiving Party prior to disclosure by the disclosing Party;
 - 7.3.3. was independently developed by the receiving Party without recourse to or use of any Confidential Information;
 - 7.3.4. has been received by the receiving Party from a third party who did not acquire it in confidence from the disclosing Party, or someone owing a duty of confidence to the disclosing Party; or
 - 7.3.5. the receiving Party is required to disclose by law or by a requirement of a regulatory body.
- 7.4. Where either Party is in receipt of an information request pursuant to the Freedom of Information (Scotland) Act 2002 or any analogous regulations in respect of Confidential Information (or any other information) relating to this Agreement or to the Project (the "Request") it shall make an analysis as to whether the Confidential Information or other information requested is capable of benefiting from an exemption from disclosure. In the event that the Party in receipt of the Request considers that disclosure is legally required and makes the requested disclosure, no liability shall attach thereto.

8. PUBLICATION

- 8.1. Notwithstanding the provisions of clause 7 above, it is recognised that the Collaborating Universities will be expected to publish Foreground IP on equivalent terms to this clause 8 under the Licence Agreement.
- 8.2. Prior to the publication of any Foreground IP, the Supervisor shall forward a copy of the proposed publications to the Company for review. The Company shall have a period of one (1) month from receipt of said text in which to intimate, in writing, to the Supervisor that such text contains either confidential or commercially sensitive information belonging to the Company, or that the Company wishes to seek intellectual property protection of its Foreground IP. In the event of the Company intimating that it wishes to seek intellectual property protection of its Foreground IP, the Collaborating Universities shall refrain from presenting or publishing the relevant text for a period of

up to ninety (90) days (or such other period as may be agreed by the Parties), to allow such protection to be pursued.

- 8.3. The Company agrees that information relating to or arising from the Project may be included without restriction in a dissertation prepared by a research student involved in the Project for submission in accordance with the regulations of the Collaborating Universities where the student is registered. Nothing contained in this Agreement shall be interpreted as preventing or unduly delaying such submission.
- 8.4. Without prejudice to the foregoing, the Collaborating Universities may make certain information relating to the Project public in accordance with usual academic principles. Such information may include the provision of knowledge transfer and / or impact metrics to any co-funders of the Project and other relevant bodies and may include, but not be limited to, a brief outline of the Project including reference to the Company together with any outcomes and impacts generated therefrom. In addition, the Collaborating Universities shall be allowed to use the subject matter of the Project and the Company's participation therein as a case study in their marketing material.
- 8.5. All publications and other forms of media communication, press releases and conferences, must acknowledge the support received from the AHRC and InGAME in a format to be agreed between the Parties.

9. LIABILITY

- 9.1. Abertay shall use reasonable endeavours to ensure the accuracy of the work performed and any information given but Abertay makes no warranty, express or implied, as to accuracy and accepts no responsibility for any use by the Company of Abertay-owned Background IP or any use of the Foreground IP, nor for any reliance placed by the Company on Abertay-owned Background IP or any reliance on the Foreground IP, nor for advice or information given in connection with the Project. All implied terms, conditions and warranties are hereby excluded to the maximum extent permitted by law. Any use of Abertay-owned Background IP or any use of the Foreground IP by the Company shall be at the Company's sole risk.
- 9.2. The Company will indemnify Abertay and keep it fully and effectively indemnified against each and every claim made against Abertay as a result of the Company's use of any of Abertay-owned Background IP or any use of the Foreground IP in breach of the terms of this Agreement provided that the Abertay must:
 - 9.2.1. promptly notify the Company of details of the claim;
 - 9.2.2. not make any admission in relation to the claim;
 - 9.2.3. allow the Company to have the conduct of the defence or settlement of the claim; and
 - 9.2.4. give the Company all reasonable assistance (at the Company's expense) in dealing with the claim.

This indemnity does not apply to the extent that any claim arises as a result of the Abertay's negligence or deliberate breach of this Agreement.

- 9.3. Nothing in this Agreement limits or excludes either Party's liability for

- a. death or personal injury;
 - b. any fraud or any sort of liability that by law cannot be limited or excluded; or
 - c. any loss or damage caused by a deliberate breach of this Agreement.
- 9.4. Subject to clause 9.3, the liability of neither Party to the other for any breach of this Agreement, or any negligence shall extend to any indirect damages or losses, even if the Party bringing the claim has advised the other of the possibility of those losses or if they were within the other Party's contemplation.
- 9.5. Subject to clause 9.4, the Company will indemnify Abertay and keep it fully and effectively indemnified against any loss which Abertay may incur as a result of the Company having provided inaccurate or incorrect information in the Application. In such cases, the Company shall be liable to pay to Abertay a sum equal to the InGAME Contribution with such sum due for payment immediately.

10. USE OF NAME AND BRANDING

- 10.1 The Company shall not use the Collaborating Universities's names or InGAME branding in connection with the work undertaken under the Agreement without the express written consent of Abertay which shall be sought on each occasion. Such consent shall not be unreasonably withheld.
- 10.2 The Collaborating Universities and InGAME shall not use the Company's branding in connection with the work undertaken under the Agreement without the express written consent of The Company which shall be sought on each occasion. Such consent shall not be unreasonably withheld.

11. FORCE MAJEURE

Neither Party shall be deemed to be in breach of this Agreement if it is unable to carry out any provision of it for any reason beyond its control including (without limiting the generality of the foregoing) acts of God, legislation, fuel shortages, war, fire, flood, drought, failure of power supply embargo, civil commotion and employee action.

12. TERMINATION

- 12.1. Either Party may terminate this Agreement with immediate effect by notice in writing to the other Party (the "Breaching Party") in the event of the Breaching Party committing a material breach of this Agreement, which if the breach is capable of remedy the Breaching Party has failed to remedy within thirty (30) days after receipt of notice in writing.
- 12.2. Abertay may terminate this Agreement with immediate effect by notice in writing to the Company in the event that any information provided by the Company in the Application is discovered to be inaccurate or incorrect. In this case, the Company shall be liable to pay to Abertay a sum equal to the InGAME Contribution with such sum due for payment immediately.
- 12.3. In the event of termination, Abertay shall be reimbursed by the Company for all expenses properly incurred on the Project, including expenses falling due for payment after the date of termination which arise from commitments reasonably and necessarily incurred by Abertay for the performance of the Project.

12.4. Notwithstanding the expiry or earlier termination of this Agreement, the provisions of clause 5, (except, in the case of termination of this Agreement by Abertay pursuant to clauses 12.1 or 12.2, the licence option granted to the Company under clause 5.3), 6, 7, 8, 9, 10, 12.4, 15, 16 and 17 shall survive and continue in full force and effect, together with any other provisions of this Agreement necessary to give effect to such provisions.

13. ASSIGNATION

Except as expressly provided for in this Agreement neither Party shall be entitled to:-

13.1. assign or transfer any or all of its rights and/or obligations under this Agreement (or purport to do so); or

13.2. sub-license or sub-contract any or all of its obligations under this Agreement (or purport to do so);

save, in either case, with the prior written consent of the other Party.

14. DE MINIMIS

The InGAME Contribution constitutes State Aid as defined under Articles 87 and 88 of the Treaty of Rome and is being granted as 'de minimis' aid under Commission Regulation EC 1998/2006 (the "De Minimis Aid Regulation"). European Commission rules prohibit any undertaking from receiving more than €200,000 'de minimis' aid over any period of three fiscal years. Any 'de minimis' aid granted over the €200,000 limit may be subject to repayment with interest.

The monetary value of the InGAME Contribution is:

£ X,XXX / or € X,XXX

For the purposes of the De Minimis Aid Regulation, the Company must retain a copy of this Agreement together with any related documentation (including but not limited to the Application) for a period of three years from the end of the Project and produce it on any request by the UK public authorities or the European Commission.

The Company acknowledges and hereby agrees that its signature of this Agreement constitutes its awareness of and adherence to the De Minimis Aid Regulation.

15. NOTICES

15.1. Any notice to be given under this Agreement shall be in writing and shall be deemed to have been duly given by:

15.1.1. first class post or express or other fast postal service; or

15.1.2. registered post at the party's address as given at the start of this Agreement or such alternative address as the Party may intimate in writing to the other.

15.2. Notices given to Abertay should be marked for the attention of the [insert details]. Notices given to the Company should be marked for the attention of [insert details].

16. GENERAL

- 16.1. Except as otherwise expressly provided in this Agreement none of the terms and conditions of this Agreement shall be enforceable by any person who is not a Party to it.
- 16.2. Each provision of this Agreement shall be construed separately and, save as otherwise expressly provided herein, none of the provisions hereof shall limit or govern the extent, application or construction of any other of them and, notwithstanding that any provision of this Agreement may prove to be unenforceable by law, the remaining provisions of this Agreement shall continue in full force and effect.
- 16.3. No waiver by either Party of any of the requirements hereof or of any of its rights hereunder shall be effective unless given in writing and signed by or on behalf of that Party and no forbearance, delay or indulgence by either Party in enforcing the provisions of this Agreement shall prejudice or restrict the rights of that Party nor shall any waiver by either Party of any of the requirements hereof or any of its rights hereunder release the other from full performance of its obligations stated herein.
- 16.4. This Agreement constitutes the entire understanding between the Parties and supersedes and extinguishes all (if any) prior drafts, agreements, understandings, undertakings, representations, warranties and/or arrangements of any nature whatsoever (whether or not in writing) between the Parties in connection therewith.
- 16.5. Nothing in this Agreement shall be construed as establishing or implying any partnership or joint venture between the Parties and nothing in this Agreement shall be deemed to constitute one of the Parties as the agent of the other.
- 16.6. The Parties shall procure that in carrying out the Project they will comply with all applicable laws, regulations and statutes relating to anti-bribery including but not limited to the Bribery Act 2010.

17. APPLICABLE LAW

This Agreement shall in all respects be construed and interpreted in accordance with, and governed by, the Law of Scotland, and the Parties prorogate the jurisdiction of the Scottish Courts.

Signed for and on behalf of Abertay
 at
 on
 by

 Position

Witness
 Name
 Address

Signed for and on behalf of the Company

Witness

at.....

Name

on

Address

by

.....

.....

.....

Position

SAMPLE

THIS IS THE SCHEDULE REFERRED TO IN THE FOREGOING INGAME R&D VOUCHER AGREEMENT BETWEEN ABERTAY AND **[insert details]**

PART 1

THE PROJECT

[Please attach the application form].

SAMPLE

**THIS IS THE SCHEDULE REFERRED TO IN THE FOREGOING INGAME R&D VOUCHER
SCHEME AGREEMENT BETWEEN ABERTAY AND [insert details]**

PART 2

PAYMENT

Invoice Schedule

Abertay shall provide the Company with appropriate invoices in accordance with the following schedule:

[Insert invoicing dates]

The Company shall make payments in Pounds Sterling by electronic transfer into Abertay's bank account, details of which are as follows:

[Insert details]