

FUNDAMENTALLY GAMES – HEADS OF TERMS

Date: _____

Developer	[COMPANY NAME] (Company No. [NUMBER]) of [COMPANY REGISTERED ADDRESS]
Publisher	FUNDAMENTALLY GAMES LTD (Company No. 11701663) of 3 rd Floor 86-90 Paul Street, London, United Kingdom, EC2A 4NE, UK
Game	The game entitled [NAME OF GAME]
Target Game Launch Date	[DATE]
Services	<ol style="list-style-type: none"> 1. LiveOps 2. [Publishing] 3. [User Acquisition funding] 4. [User Acquisition management] <p><i>The services that we will provide – to be agreed between you and us which ones are required.</i></p>
Platforms (and Services per Platform)	<p>[TO BE AGREED]</p> <p><i>For example, we may provide LiveOps Services for more Platforms than those for which we provide other Services.</i></p>
Territories (inc. per Platform and Services)	<p>[TO BE AGREED]</p> <p><i>For example, we may provide LiveOps Services for more Territories than those for which we provide Publishing Services, and we may even help you find a specialist publisher for a specific territory if it isn't within our area of expertise (for example, China).</i></p>
Term	<p>Initial term of 3 years from Launch.</p> <p>Auto-renews for successive terms of 3 years, unless either party cancels the renewal at the end of the initial or successive term by giving at least 90 days' written notice.</p>
Intended Timeline	<p>Based on a typical timeline for Publisher, once the Developer has a build that has incorporated all intended features for Launch, then the period until the Game's initial commercial launch (Launch) will likely be at least 6 months, which will include:</p> <ul style="list-style-type: none"> • Publisher internal review • Initial market testing (gameplay focused) • Beta testing (retention focused) • ROI testing (monetisation focused)

	<ul style="list-style-type: none"> • Developer implementing updates based on mutually agreed recommendation <p>Timescales vary per project and are subject to Developer and Publisher timings. Timelines for games signed prior to having a build ready for market testing will be longer. The intended timeline will be agreed upfront between Publisher and Developer, and reviewed and adjusted as necessary on an ongoing basis by both parties, to ensure the Game is ready for Launch.</p>
RIGHTS	
Intellectual property rights	<p>Developer retains all intellectual property rights in the Game, including any additional content, add-ons and localised versions.</p> <p>Developer grants Publisher an exclusive licence in those intellectual property rights so that Publisher can deliver its commitments under the Long-Form Agreement.</p>
Sequels/prequels/spin-offs	<p>Publisher has a right of first negotiation to provide its services for any sequels, prequels or spin-off games that are based on the Game.</p> <p><i>We hope that the experience of working with us will have been positive and leads to a longer-term relationship. As such, we would like the first opportunity to discuss working with you on a sequel, prequel or spin-off game. But ultimately, it's up to you.</i></p>
Ports	<p>If Publisher has provided a particular Service for all Platforms, it is entitled (but not obliged) to provide that same Service for all ports of the Game, on the same terms as those that apply to the Game.</p> <p>If Publisher has provided a particular Service for one or more Platforms (but not all Platforms), Publisher has a right of first negotiation to provide that Service for any ports of the Game.</p> <p><i>For example, if the Platforms are 'mobile' and 'PC' and we provide LiveOps Services for both those Platforms but we provide Publishing Services for mobile only, we would have an automatic option to provide LiveOps Services for a console port and a right of first negotiation to provide Publishing Services a console port.</i></p>
Publisher's rights over Developer's other games.	None.
Non-compete	<p>None.</p> <p><i>You are free all times to develop and exploit your other games.</i></p>
Ancillary Rights	<p>Developer and Publisher will discuss in good faith any proposals for the exploitation of ancillary rights to the Game, including merchandising rights, film and television rights or any other derivative rights, products or productions (Ancillary Rights). Either party can make proposals to the other party at any time, and the other party shall not unreasonably withhold its approval to a proposal.</p> <p>Both parties will be entitled to recoup their direct costs (where mutually approved) from the first Ancillary Rights revenues. If Publisher is solely involved, then the Ancillary Rights revenue split (post-recoupment of costs) will be 50/50.</p>

	If Developer is solely involved, then the Ancillary Rights revenue split (post-recoupment of costs) will be 90/10 in favour of Developer.
COMMITMENTS AND APPROVALS	
User Acquisition (UA) funding & management / other marketing activity and spend	<p>Developer acknowledges that UA funding will be required for the Game and, if Publisher is not providing UA funding as one of the Services, Developer will need to provide (or procure from a third party) UA funding for the testing and scaling of the Game. Developer acknowledges that without sufficient UA funding, the commercial viability of the Game will be compromised. Publisher will advise on the level of UA funding required for the Game.</p> <p>Developer also acknowledges that UA management will be required for the Game and, if Publisher is not providing UA management as one of the Services, Developer will need to manage (or procure that a third party manages) the UA including the placement and optimisation of ads and in-game ads using data analysis.</p> <p><i>For clarity, User Acquisition (UA) refers to any paid activity intended to drive direct adoption, which will be delivered differently for PC/console compared to mobile.</i></p> <p>Developer acknowledges that other marketing activity and spend may be required for the Game, and if the Publisher is not providing Publishing as one of the Services, Developer will need to fund and manage the marketing activity and spend.</p>
Key Approvals	<p>The following elements will be mutually discussed and agreed between Developer and Publisher:</p> <ul style="list-style-type: none"> • Tone of voice and brand identity, including messaging and imagery styles. • KPIs for what success looks like – revised from time to time. • General principles of LiveOps activity. • Specific set of LiveOps activities – agreed quarterly. • Content and features to be released for the Game – agreed monthly or quarterly – provided that Developer will retain ultimate creative control. • Anticipated and planned UA funding budget, by Publisher or Developer (<i>depending on which party is funding UA</i>) – revised from time to time. • Anticipated and planned costs for creating bespoke marketing materials (e.g. trailers), and PR, by Publisher (if relevant). • Ads and in-game ad guidelines (if relevant). • Optional involvement from Developer in community and, if Developer opts in, associated coordination of work. • If Publisher is providing Publishing Services, then optional involvement from Developer in marketing activity, and if Developer opts in, associated coordination of work. If Publisher is not providing Publishing Services, coordination of Developer marketing activity with Publisher activities. <p>Once any of the elements listed above has been mutually agreed, Publisher and/or Developer is entitled to undertake its activities relating to that element without further approval. If any proposed activity would conflict with the agreed element, the relevant party must obtain the prior approval of the other party to the proposed activity.</p>

	<p>Each party may provide feedback on ongoing activities undertaken by the other party at any time, should it wish to do so, including reasonable requests for changes to the activities going forward.</p> <p>Both parties agree to take all proposals into consideration in good faith and not to unreasonably withhold or delay their approval. Both parties acknowledge that a that refusal to provide approval could impact upon the commercial success of the Game.</p>
<p>Key Developer Commitments</p>	<ol style="list-style-type: none"> 1. Game development, localisation, QA 2. Delivery of content/features ongoing for the lifetime of the Game, to agreed schedules and specifications, fully QA tested 3. [Community management activity as agreed] <i>(if Developer has opted to contribute to community management activity)</i> 4. [Coordinate with Publisher on agreed marketing activity] OR [Coordinate with Publisher on delivery of marketing activity] <i>(depending which party is responsible for marketing)</i> 5. [UA test and scale funding – released in stages based on data, coordinate with Publisher] <i>(if Publisher is not UA funding)</i> 6. [Positioning of ads across relevant advertising and promotional platforms] <i>(if Publisher is not providing User Acquisition management)</i> 7. [In-game ad positioning and associated activities] <i>(if Publisher is not providing User Acquisition management)</i>
<p>Key Publisher Commitments</p>	<ol style="list-style-type: none"> 1. Delivery of LiveOps activities including events and promotions and release of content and features (provided by Developer) 2. Data and sentiment analysis, including against agreed KPIs 3. Make recommendations on content and features for the Game 4. Community management [and coordinate with Developer community management activity] <i>(if Developer has opted to contribute to community management activity)</i> 5. [All marketing activity] OR [Coordinate with Developer on marketing activity] <i>(depending which party is responsible for marketing)</i> 6. [All UA test and scale funding, released in stages based on data] OR [Coordinate with Developer on its UA test and scale funding] <i>(depending which party is responsible for UA funding)</i> 7. [Positioning of ads across relevant advertising and promotional platforms] OR [Coordinate with Developer on its Ads positioning across relevant advertising and promotional platforms] <i>(depending which party is responsible for UA management)</i>

	8. [In-game ad positioning and associated activities] OR [Coordinate with Developer on its in-game ad positioning and associated activities] <i>(depending which party is responsible for UA management)</i>
FINANCIALS	
Gross Revenues	Any revenues received by Publisher (after deduction solely of any third party Platform or distribution fees and any value added tax or other applicable taxes related to the Game) in respect of any exploitation of the Game on all Platforms in the Territories.
Publisher 's Recoupable Costs	<p>Publisher shall first recoup from Gross Revenues its recoupable costs which have been pre-agreed by Developer (such agreement not to be unreasonably withheld). The recoupable costs shall be the following:</p> <ol style="list-style-type: none"> 1. UA (testing and scaling) funding costs; and 2. Costs for creating bespoke marketing materials (e.g. trailers), and PR <p>None of Publisher's recoupable costs shall be internal costs except for the pre-agreed costs relating to creating certain marketing assets (images, videos, gifs) and PR.</p>
Net Revenues	The Gross Revenues less Publisher's Recoupable Costs.
Publisher's share of Net Revenues	<p>Publisher's share of Net Revenues is as follows:</p> <ul style="list-style-type: none"> • For Liveops Services only: <ul style="list-style-type: none"> ○ 20% until Net Revenues are equal to US\$500,000; thereafter ○ 15% until Net Revenues are equal to US\$1,000,000; thereafter ○ 10% until Net Revenues are equal to US\$5,000,000; thereafter ○ 5% of Net Revenues • For Publishing, UA funding and UA management Services: <ul style="list-style-type: none"> ○ 15% of Net Revenues <p><i>Note: If you choose a different combination of Services, the % will be adjusted accordingly.</i></p> <p><i>For clarity, we would only be entitled to our Net Revenue share on revenues earned from Platforms for which we are providing the relevant Service. So, for example, if we provide Publishing, UA funding and UA management Services for mobile platforms only, we would only be entitled to 15% of Net Revenues earned from mobile platforms (and not from PC or console platforms).</i></p>
Calculation of Net Revenues / reserve	In order to calculate the Net Revenue shares due each month to Developer and Publisher, Publisher will take into account the Net Revenues received over the past 12 months or, if fewer than 12 months have elapsed since the date of Launch, the number of months that has elapsed since the date of Launch.

	<p><i>For example, if Publisher is providing Liveops, Publishing , UA Funding and UA management Services, and the Net Revenues for the past 12 months are US\$10,000,000, Publisher will be entitled to US\$2,325,000 for that period broken down as follows:</i></p> <ul style="list-style-type: none"> • For Liveops Services: <ul style="list-style-type: none"> ○ <i>US\$100,000 – being 20% until Net Revenues are equal to US\$500,000; thereafter</i> ○ <i>US\$75,000 - being 15% until Net Revenues are equal to US\$1,000,000; thereafter</i> ○ <i>US\$400,000 – being 10% until Net Revenues are equal to US\$5,000,000; thereafter</i> ○ <i>US\$250,000 – being 5% until Net Revenues are equal to US\$10,000,000</i> • For Publishing, UA funding and UA management Services: <ul style="list-style-type: none"> ○ <i>US\$1,500,000 - being 15% of Net Revenues</i> <p>Publisher is entitled to create a reserve for refunds/returns, which cannot be more than 10% of Net Revenues owed to Developer.</p>
<p>Payments / reports / audit right</p>	<p>Publisher shall use reasonable endeavours to pay Developer its share of Net Revenues within 15 days (and subject to a maximum of 30 days) of receiving any Net Revenues in its bank account.</p> <p>Publisher shall also provide Developer with monthly Net Revenue reports and Developer shall have a right of audit.</p>
<p>Video Games Tax Relief (VGTR)</p>	<p>Publisher has no rights over the VGTR for the Game. Developer is entitled to retain the full benefit of the VGTR.</p>
<p>MISCELLANEOUS</p>	
<p>Credits / press releases</p>	<p>Publisher and Developer shall be credited or listed with equal prominence in all places (including in-game and in marketing materials). For these purposes, each party will provide brand guidelines to the other party, which may be updated from time to time.</p> <p>Publisher and Developer shall jointly pre-agree any press releases relating to the Game.</p>
<p>Long-Form Agreement</p>	<p>As soon as possible after the date of these Heads of Terms, the parties intend to enter into a binding long-form agreement incorporating the terms set out herein together with other mutually agreed terms.</p>
<p>Termination</p>	<p>Either Developer or Publisher may terminate the Long-Form Agreement:</p> <ul style="list-style-type: none"> • for material breach or insolvency of the other party • at the end of the initial 3 year term or any subsequent 3 year renewal

	<ul style="list-style-type: none"> if for any 3 successive quarters, mutually agreed Net Revenue targets are not met <p>Publisher may also terminate the Long-Form Agreement at will prior to Launch.</p>
Consequences of termination	<p>For material breach or insolvency:</p> <ul style="list-style-type: none"> if Developer terminates, Publisher loses its right to recoup its Recoupable Costs and to be paid any revenues from the Game if Publisher terminates, Publisher is entitled to recoup its Recoupable Costs and to receive a 5% net revenue share in perpetuity <p>For end of term or failure to meet agreed Net Revenue targets for 3 successive quarters:</p> <ul style="list-style-type: none"> if Developer terminates, Publisher is entitled to recoup its Recoupable Costs and to receive a 5% net revenue share in perpetuity if Publisher terminates, Publisher is entitled to recoup its Recoupable Costs but is not entitled to any revenue share <p>If Publisher terminates at will prior to Launch, it is entitled to recoup its Recoupable Costs from the Net Revenues (if any) received up to the date of termination (but is not entitled to any revenues received after the date of termination).</p> <p>Developer is entirely free to use and/or exploit the Game as it wishes post-termination.</p>
Other terms	<i>[Any additional points here]</i>

This document is a Heads of Terms which sets out the intent of the parties and is not formal or binding on either party unless and until the Long-Form Agreement has been entered into and signed by both parties.

Signed by **[NAME OF DIRECTOR]**

for and on behalf of **[NAME OF DEVELOPER]**

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Director

Signed by **[NAME OF DIRECTOR]**

for and on behalf of **FUNDAMENTALLY GAMES LTD**

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Director