

CLOSED BETA PARTICIPANT NON-DISCLOSURE AGREEMENT

This Agreement is entered into and is effective immediately by and between Utomik BV, (“Disclosing Party”), a company incorporated under the laws of The Netherlands, and the Utomik Cloud Gaming Closed Beta Participant Applicant (“Participant”).

ACKNOWLEDGEMENTS

- a. In this Agreement, the Utomik BV, as the party disclosing information, shall be referred to as the “Disclosing Party” and the party receiving such information shall be referred to as the “Participant”.
- b. Upon acceptance of the Participant’s application by the Disclosing Party, the Participant will be given access to Confidential Information which is the property of the Disclosing Party.
- c. This Agreement goes into effect immediately only when the applicant is accepted as a Participant through explicit written approval of the Disclosing Party, and therefore does not apply to those who applied and did not get accepted into the Utomik Cloud Gaming Closed Beta.
- d. Participants will be accepted into the Cloud Closed Beta at the sole discretion of the Disclosing Party.

IT IS AGREED AS FOLLOWS:

1. DEFINITION

In this Agreement, unless the context otherwise requires, “Confidential Information” shall mean all information and material whether commercial, financial, technical, creative or otherwise, including without limitation all secret or confidential information, of or relating to the Disclosing Party or its affiliates, suppliers and customers in whatever form supplied, together with any details of games, programs, software, business methods and systems, customer lists, contact information, all analyses, compilations, data, studies, method of presentation, look and feel of presentation, or other documents or materials prepared by the Disclosing Party and all such information, data or material prepared by the Participant which are derived from or in connection with the Disclosing Party's Confidential Information, data or material or which contain or are based in whole or in part upon such information and material.

2. CONFIDENTIALITY OBLIGATIONS

- a. Confidential Information: the Participant acknowledges that as a participant in the Closed Beta, the Participant will be given confidential information. Specifically, the Participant agrees that the characteristics, performance, and details including all software, images, screenshots, and any documentation are all Confidential Information.
- b. The Participant acknowledges that disclosure of Confidential Information could cause serious harm to the Disclosing Party and, as an essential term and condition of participating in the Closed Beta, agrees not to disclose Confidential Information to any person or organization.
- c. During the Non-Disclosure Period, the Participant agrees not to disseminate, publish, or otherwise communicate any review, account, description or other information concerning the service or its games, except directly to the Disclosing Party or with express prior written consent of the Disclosing Party.
- d. The Participant further agrees not to participate in or facilitate in any way, shape or form, the copying, decompiling, or reverse engineering of the properties of the Disclosing Party at any time during or after the Closed Beta.
- e. All Confidential Information of the Disclosing Party is acknowledged by the Participant to be the property of the Disclosing Party and the Participant acknowledges that all rights, including copyright, data and trade secret protection and all other intellectual and industrial property rights, therein shall remain the property of the Disclosing Party and disclosure of the Confidential Information to the Participant by the Disclosing Party shall not be deemed to confer any rights in respect of the Confidential Information to the Participant.

3. STANDARD OF CARE

The Participant agrees that it shall protect the Confidential Information of the Disclosing Party by storing and handling the Confidential Information in a secure manner, to prevent unauthorized disclosure.

4. RETURN OF CONFIDENTIAL INFORMATION

The Participant shall ensure that:

· Any Confidential Information disclosed pursuant to the terms of this Agreement and any copies thereof in whatever medium shall be returned or destroyed (upon the request of the Disclosing Party and as the Disclosing Party shall direct) and the Participant shall provide (when requested by the Disclosing Party) a written statement to the effect that upon such return or destruction the Participant has not retained in its possession or under its control, either directly or indirectly, any Confidential Information or copies thereof in any form and that all copies

thereof in any electronic storage medium have been deleted, and the Participant shall comply with any such request within seven (7) days of receipt of such request; and

· Any part of the Confidential Information including analyses, compilations, studies or other documents prepared by or for the Participant will be destroyed by request of the Disclosing Party, and on request by the Disclosing Party such destruction will be confirmed by the Participant in writing.

5. EXCLUDED INFORMATION

The obligations of confidentiality set out in clauses 2 and 4 of this Agreement shall not apply to any Confidential Information that:

- a. is the possession of the Participant prior to receipt from the Disclosing Party as evidenced by its records;
- b. is or becomes publicly known or is available to a third party, otherwise than as a consequence of a breach of this Agreement;
- c. is disclosed by the Participant to satisfy the legal demand of a competent court of law or government body, provided that the Participant shall advise the Disclosing Party prior to disclosure so that the Disclosing Party has an opportunity to defend, limit or protect against such disclosure, and provided the Participant will disclose only that portion of the Confidential Information which is legally required to be disclosed and the Participant will exercise its reasonable efforts to obtain a protective order or other reliable assurance that confidential treatment will be accorded to any Confidential Information required to be disclosed; or

Except as provided above, the obligations of clauses 2, 3, 4, 5, 7, 8, 9, 10 and 11 of this Agreement shall survive the completion of the Business Purpose or the termination for whatever reason of this Agreement unless otherwise agreed by the Disclosing Party in writing.

6. REPRESENTATIONS AND WARRANTIES

The Participant represents that it has full power and authority to enter into and perform this Agreement. The Participant acknowledges that the Disclosing Party makes no representation or warranty as to the accuracy or completeness of the Confidential Information.

7. INDEMNITY

- a. The Participant agrees fully and effectively to indemnify and keep the Disclosing Party indemnified from any losses, damages, claims, liabilities, costs or expenses (including legal fees) arising directly or indirectly from any breach of its obligations hereunder.

- b. The Participant agrees that in addition to monetary damages for a breach by it of the provisions of this Agreement that the Disclosing Party shall be entitled to specific performance, injunction or other equitable relief together with all associated costs as further remedy for such breach.

8. ENTIRE AGREEMENT AND SEVERABILITY

This Agreement contains the entire agreement of the parties with respect to the subject matter of this Agreement and supersedes all prior agreements between the parties, whether written or oral.

If any term or provision of this Agreement shall be held by any judicial, arbitral, regulatory or other public authority of competent jurisdiction to be invalid, illegal or unenforceable in any respect, it will be to that extent omitted and the validity or enforceability of the remainder of this Agreement shall not be affected.

9. NOTICES

All notices, demands or other communications by the Disclosing Party under this Agreement shall be given or made in writing and shall be delivered or sent by facsimile copy or e-mail, addressed to the party to whom they are directed and shall be deemed to have been received by the Participant upon transmission by the Disclosing Party.

10. ADDITIONAL TERMS AND PROVISIONS

- a. Utomik Gaming Closed Beta access is non-transferable under any circumstances; any such rights will be revoked at the end of the Closed Beta OR at the discretion of the Disclosing Party.
- b. Local laws in your respective jurisdiction may require that you are of a certain age in order to enter into certain legally binding arrangements such as the terms of this Agreement. In the event that you are under the required age, your parent or legal guardian has to review and agree to these terms.
- c. The Participant shall execute and deliver such other documents and do such other acts and things as may be necessary or desirable to carry out the terms, provisions and purposes of this Agreement.
- d. No amendment, modification or waiver of any provisions of this Agreement shall be effective unless made in writing and signed by the Disclosing Party.

- e. The failure to enforce at any time or for any period any one or more of the provisions of this Agreement shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of this Agreement.
- f. Headings are used for convenience only and shall not affect the meaning or construction of the contents of this Agreement.
- g. This Agreement may be executed in counterparts, all of which shall constitute one agreement, and each such counterpart shall be deemed to have been made, executed and delivered on the date of the first application to become a Participant.
- h. This Agreement shall be governed by and construed in accordance with the laws of The Netherlands, and its terms shall be enforced in a court of competent jurisdiction in The Netherlands.

11. THE PARTICIPANT'S DUTIES

The Participant agrees to report any flaws, errors or imperfections discovered in any software or other materials where the Participant has been granted access to the Closed Beta. The Participant understands that prompt and accurate reporting is the purpose of the Closed Beta and undertakes to use best efforts to provide frequent reports on all aspects of the product both positive and negative and acknowledges that any improvements, modifications and changes arising from or in connection with the Participants contribution to the Project, remain or become the exclusive property of the Disclosing Party.

12. RISKS

The Participant understands that the Closed Beta is incomplete and is provided "as is" and may contain faults or errors that result in unexpected consequences. The Participant accepts and acknowledges that use of the software is entirely at the the Participant's own risk and is without Warranty, implied or otherwise. In no event will the Disclosing Party be liable for any damages whatsoever or any consequential damages whether resulting from impaired or lost data or software or system failure, or any other cause, or from any other claim by a Participant or any third party.

13. TERMINATION

This Agreement is effective until terminated. The Participant may terminate this Agreement at any time by: (i) removing the data from their system; and (ii) notifying the Disclosing Party of their intention to terminate this Agreement. The Disclosing Party may terminate this Agreement at its sole discretion for any reason or no reason. In such an event, the Participant must immediately remove the data from their system.