

## STATEMENT OF WORK # 4

This Statement of Work #4 (“SOW”) between \_\_\_\_\_ Inc. (“\_\_\_\_\_”) and GameUp Online, Inc. (“Service Provider”) is effective as of April 1, 2019 (the “SOW Effective Date”), and is governed by and is incorporated into the Master Services Agreement by and between \_\_\_\_\_ and Service Provider, effective as of January 28, 2019 (the “Agreement”), by this reference. All different and additional terms contained in this SOW are applicable solely to this SOW and will not be applicable to any other Statement of Work entered into between the parties unless expressly stated otherwise in writing. Capitalized terms used but not defined in this SOW will have the respective meanings set forth in the Agreement.

### A. Definitions.

1. “Documentation” means the manuals, guides, online help files and other supporting materials that Service Provider generally makes available to its customers with the Software, including without limitation, the guide available at: <https://heroiclabs.com/docs/install-configuration/#cluster>.
2. “Game Title” means either a \_\_\_\_\_ Application or a Partner Application or collectively, all \_\_\_\_\_ Applications and Partner Applications.
3. “Launch” means the \_\_\_\_\_ Games Platform is available for End Users to access and use on the \_\_\_\_\_ application as distributed via the Apple App Store or the Google Play store.
4. “Partner Applications” means those certain web and mobile gaming applications that are developed by \_\_\_\_\_ Gaming Partners, hosted on the Private Cloud, and that operate and are distributed on the \_\_\_\_\_ Games Platform.
5. “Private Cloud” means \_\_\_\_\_ secure and distinct cloud environment that \_\_\_\_\_ operates and supports to provide the Games Platform and for purposes of permitting Service Provider to provide the Services and Software hereunder and for hosting and distributing each Game Title.
6. “Production” means a Game Title is available to End Users via the \_\_\_\_\_ Games Platform.
7. “\_\_\_\_\_ Applications” means \_\_\_\_\_ and its Affiliates’ web and mobile applications that are developed by \_\_\_\_\_, hosted on the Private Cloud, and that operate and are distributed on the \_\_\_\_\_ Games Platform.
8. “\_\_\_\_\_ Games Platform” means the gaming platform that \_\_\_\_\_ makes available through the \_\_\_\_\_ Platform.
9. “\_\_\_\_\_ Gaming Partner” means those third-party developers of Partner Applications who have signed up with \_\_\_\_\_ to use the \_\_\_\_\_ Gaming Platform.
10. “Software” means Service Provider’s proprietary software binaries of its Nakama Enterprise software project as further described in the Documentation.
11. “Updates” means the patches, enhancements, updates, upgrades and new versions of the Software that Service Provider makes generally commercially available to all customers of the Software.

### B. Scope and Nature of the Services and Software.

Service Provider will perform and provide the following Services and Software for \_\_\_\_\_ :

#### 1. DESCRIPTION OF SERVICES AND SOFTWARE

Subject to the terms of the Agreement, Service Provider will provide \_\_\_\_\_ with the Services and Software as described below as well as Management and Support Services as described in Exhibit A attached hereto. For avoidance of doubt, all such Services and Software will be provided directly to \_\_\_\_\_ and not to \_\_\_\_\_ Gaming Partners.

License. During the SOW Term and in accordance with the terms and conditions herein and in the Agreement, Service Provider grants \_\_\_\_\_ a non-exclusive, non-transferrable, revocable, worldwide, royalty-free license to install, integrate, implement, reproduce, access and use the Software and Documentation solely as deployed on the Private Cloud and only for the purpose of providing the \_\_\_\_\_ Applications and the Partner Applications to its end users (“End Users”). End Users will not access and use the Software other than through use of the \_\_\_\_\_ Applications and Partner Application. Service Provider will provide the Maintenance and Support Services (as further described in Exhibit A hereto) in order to maintain and support the Private Cloud in order for \_\_\_\_\_ to provide the \_\_\_\_\_ Games Platform. As part of the registration process, \_\_\_\_\_ will identify an administrative username and password for \_\_\_\_\_ account. Service Provider reserves the right to refuse registration of or cancel passwords that it deems inappropriate.

Service Provider will provide and implement Updates of the Software when Services Provider makes such Updates available throughout the Term of the Agreement.

\_\_\_\_\_ may, in its sole and absolute discretion, agree to let certain \_\_\_\_\_ Gaming Partners host their Partner Applications on the Private Cloud. For each Partner Application, \_\_\_\_\_ and Service Provider will mutually agree in writing (via email acceptable) whether Service Provider will provide Management Services for Supported Partner Applications (as defined in Exhibit A) to \_\_\_\_\_ for the Partner

Application (each a “**Supported Partner Application**”) or if \_\_\_\_\_ will support and manage such Partner Application on the \_\_\_\_\_ Games Platform.

During the SOW Term, Service Provider may access and use the \_\_\_\_\_ Materials for the sole purpose of providing the Services and Software to \_\_\_\_\_ in accordance with the terms and conditions of this Agreement. For the purpose of this Agreement, “**Materials**” means any and all text, multimedia, graphics, audio, video, data, software, applications, and other information or content provided by \_\_\_\_\_ to Service Provider. For the avoidance of doubt, \_\_\_\_\_ Materials are included within the definition of \_\_\_\_\_ Data.

**2. RESTRICTIONS AND RESPONSIBILITIES**

\_\_\_\_\_ will not, directly or indirectly, nor allow any third party (including without limitation, a \_\_\_\_\_ Gaming Partner) to: (i) reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas, know-how or algorithms relevant to the Software, (ii) modify, translate, or create derivative works based on the Software (except to the extent expressly permitted by Service Provider or authorized within the Software) or the Documentation, (iii) except for End Users who access and use the Software through the use of \_\_\_\_\_ Applications, license, rent, transfer, assign or use the Software for timesharing, resale or service bureau purposes or otherwise for the benefit of a third party, (iv) or remove any proprietary notices or labels, (v) access the Software or the Documentation in order to build a competitive product or service separate from its own infrastructure on which the Applications are built. The Software is provided to \_\_\_\_\_ for use on the Private Cloud. For the avoidance of doubt, the Software (including without limitation all Updates) and Documentation are Service Provider Property and will remain the sole property of Service Provider. The license set forth in this SOW and not the license in Section 5.3 of the Agreement will govern with respect to \_\_\_\_\_ use of the Software and Documentation. \_\_\_\_\_ will use the Software only in compliance with the Documentation, and all applicable laws and regulations.

**3. ADDITIONAL TERMS**

**Open Source Components.** The Software contains open source components (“**Open Source Components**”). As a result, in addition to the proprietary code that \_\_\_\_\_ is licensing under this Agreement, \_\_\_\_\_ use of the Open Source Components in the Software may be subject to certain open source licenses and \_\_\_\_\_ agrees to comply with the terms of such open source licenses. Service Provider represents and warrants that \_\_\_\_\_ use of the Software in accordance with this Agreement and the Documentation and the applicable open source licenses will not subject \_\_\_\_\_ to any obligations that would require that the \_\_\_\_\_ Property be disclosed or freely distributed.

**Obligations.** \_\_\_\_\_ agrees that \_\_\_\_\_ is responsible for procuring and making available the computer hardware and third-party software configuration appropriate for use of the Software. \_\_\_\_\_ will be responsible for procuring maintenance for the \_\_\_\_\_-side hardware and software throughout the SOW Term. For the avoidance of doubt, Service Provider will not be responsible for any issues arising out of or relating to any hardware or third-party software or applications or \_\_\_\_\_ acts and omissions as they relate to the support and maintenance of the Private Cloud or the \_\_\_\_\_ Games Platform. Without limiting the generality of the foregoing, Service Provider will specify the minimum approved hardware and third-party software configuration required in order to operate the Software. Service Provider uses commercially reasonable efforts to ensure that such specifications remain current.

For avoidance of doubt, no custom development that \_\_\_\_\_ desires to be deemed a “work for hire” or to fall under Section 5.2 of the MSA is contemplated under this SOW and any such development will be mutually agreed upon and set forth in a separate SOW.

C. **Term.** The Services will be performed and provided as of the SOW Effective Date and will continue for a period of twelve months (“**SOW Initial Term**”), unless earlier terminated by the terms of the Agreement. This SOW will automatically renew for additional one year periods (each, a “**SOW Renewal Term**,” and collectively with the SOW Initial Term, the “**SOW Term**”), unless either party provides the other party with written notice of its intent not to renew at least 60 days prior to the end of the then current Term.

**D. Payment of Service Fees and Service Expenses.**

Service Provider may only issue invoices to \_\_\_\_\_ for the Fees identified in the table below. For fees that are due monthly, Service Provider will invoice \_\_\_\_\_ at the beginning of each month for the applicable fees. This SOW is inclusive of all professional fees and expenses for the Services set forth herein and \_\_\_\_\_ is not responsible for payment of any amount in excess of the Fees identified below.

Services or Software	Due Date	Fee
Fee for the Software license and Support Services for Game Title (i.e., the 1 <sup>st</sup> Game Title)	Monthly starting upon Launch	\$ _____ /month
Fee for Service Provider’s Management and Support Services for each Game Title.	Monthly starting upon Launch	<ul style="list-style-type: none"> <li>• \$ _____ per month for the 2<sup>nd</sup> Game Title,</li> <li>• \$ _____ per month for each of the 3<sup>rd</sup> and 4<sup>th</sup> Game Title,</li> <li>• \$ _____ per month for the 5<sup>th</sup> Game Title and</li> </ul>

		each Game Title thereafter.
Pre-Production Support Services	Commencing on the SOW Effective Date and ending once there are five Game Titles launched and in production on the Games Platform	\$ per month

E. **Designated Persons.**

1. Service Provider Representative:
2. Representative:

F. **Right of First Negotiation.**

G. **Escrowed Materials.**

2. Processing of Data. Service Provider will only process Data in accordance with the terms of this Agreement or as authorized by in writing or as required to provide the Services.

3. Compliance with Law. Each party agrees it will comply with its obligations under Applicable Law in respect of any Data it processes under or in relation to the Agreement. Without prejudice to the foregoing, Service Provider will not process Data, and will not request Service Provider to process Data in a manner that will, or is likely to, result in breaching its obligations under Applicable Law.

4. Disclosure. Service Provider acknowledges that may disclose this Section of the Agreement and any other relevant data protection and privacy provisions to the U.S. Department of Commerce, the Federal Trade Commission, European data protection authority, or any other judicial or regulatory body upon their request.

5. Equitable Relief. Each party's obligations under this Section are reasonable and essential to protect and its business. Due to the unique nature of Confidential Information and Data, monetary damages may be inadequate to compensate the Discloser for any breach. Accordingly, except for equitable relief against Systems, Property, or the Platform, the parties agree that any threatened or actual breach may cause irreparable harm to the Discloser and – in addition to any other remedies that may be available – the Discloser will be entitled to injunctive relief against the threatened or continued breach of this Section.

IN WITNESS WHEREOF, THE AUTHORIZED REPRESENTATIVES OF THE PARTIES HAVE EXECUTED THIS SOW AS OF THE SOW EFFECTIVE DATE.

INC.

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

GAMEUP ONLINE, INC.

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

DocuSigned by:  
*Chris Moloizian*  
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Chris Moloizian

CEO

**EXHIBIT A**  
**MANAGEMENT AND SUPPORT SERVICES**

**Support Services:** Service Provider will provide up to 20 hours per week of commercially reasonable support services to [redacted] for the Software as deployed on the Private Cloud, excluding Critical Issues where Service Provider will provide all reasonable support required to resolve the Critical Issue.

The Support Services include, at a minimum, the following services:

- Access to Service Provider support engineers who will be available to answer technical questions. This includes dedicated email support, 09:00-19:00 UTC-8 access to engineers via email or chat (e.g., Hangouts or private Slack channel), 1 hour response SLA for Critical Issues during all hours of the day, a private Slack channel for direct communication, and hot fixes/patches for any Critical Issues as determined by Service Provider engineers. **“Critical Issues”** means an issue where a Game Title (on the Private Cloud) is experiencing visible downtime and loss of operability by end users.
- Remote assistance with ongoing operational and technical support as it pertains to the use of Software or the open source version of the Software.

**Management Services:**

When providing Management Services for a [redacted] Gaming Partner, Service Provider will comply with the standard terms governing any services [redacted] uses as part of its infrastructure for the Private Cloud; provided that such terms are provided to Service Provider. Service Provider acknowledges and agrees that its access and use of the [redacted] infrastructure for the Private Cloud is (a) subject at all times to all then-current and reasonable [redacted] policies, including, but not limited to all security, privacy, information technology, legal, and business conduct policies that are provided to Service Provider and that Service Provider agrees to in writing (via email acceptable), and (b) for the purpose of performing the Services and providing the Software. Service Provider will notify [redacted] if there are any issues or concerns with such policies and the parties will work in good faith to discuss and resolve such concerns. In no event will Service Provider access or make use of [redacted] infrastructure except to perform the Services and provide the Software.

Service Provider acknowledges and agrees that any and all data on the Private Cloud constitutes [redacted] Data under the Agreement. To the extent Service Provider receives, processes, or otherwise has access to any EU Personal Data of [redacted] or any [redacted] Gaming Partner during the course of providing Management Services, Service Provider and [redacted] will enter into a data processing addendum with respect to the processing of such data in conformance with EU Data Protection Law.

**“EU Data Protection Law”** means those all laws applicable to the processing of data including the EU Data Protection Directive (95/46/EC) as implemented in each jurisdiction (except to the extent repealed by GDPR), GDPR, the UK Data Protection Act 1998, the EU Privacy and Electronic Communications Directive (2002/58/EC) as implemented in each jurisdiction, and any amending or replacement legislation from time to time related to the processing of EU Personal Data under the Agreement. **“EU Data”** means Personal Data (i) originating from or located in the EEA, or (ii) is Personal Data of EEA data subjects, or any combination of the foregoing. **“Personal Data”** means any information relating to an identified or identifiable natural person; an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural, or social identity of that natural person.

For the avoidance of doubt, as between [redacted] and Service Provider, all infrastructure costs associated with hosting the Private Cloud, and thus hosting of the Software and Game Titles, will be borne by [redacted].

**Management Services for Supported Partner Application(s):** For those certain Supported Partner Applications, Service Provider will provide the Management Services and the following services to [redacted]:

- Support Services
- Validation of scalable partner design via direct load and performance testing, whereby Service Provider will send [redacted] an email report that includes the Supported Partner Application’s server code implementation; provided that [redacted] performs the actual scale tests
- Set up, operation, and maintenance of the Partner Application on the Private Cloud so that it functions properly on the Game Platform in accordance with mutually agreed upon performance requirements.

Service Provider acknowledges and agrees that when providing Management Services for a Supported Partner Application, the Private Cloud must conform to any reasonable guidelines and requirements provided by \_\_\_\_\_ that are mutually agreed upon by \_\_\_\_\_ and Service Provider in writing (via email acceptable), including but not limited to the following performance requirements:

**Pre-Production Support Services:** From the SOW Effective Date until the end of the SOW Term, Service Provider will provide Support Services to cover up to 20 hours per week of general pre-Production support for all Game Titles and support of the Software deployed on the Private Cloud. For avoidance of doubt, Service Provider is not required to provide more than 20 hours of Support Services or Pre-Production Support Services in a given week, excluding Support Services required for Critical Issues.

For avoidance of doubt, all development services related to the Software that is requested by \_\_\_\_\_ and mutually agreed upon by Service Provider will be set forth in a separate SOW.

**Excluded Problems:** Notwithstanding anything herein, Service Provider will not be liable for errors, issues, failure, or problems to the extent any of the foregoing results from an Excluded Problem. “**Excluded Problem**” means any error, issues, failure or problem to the extent resulting from (in whole or in part): (i) misuse by \_\_\_\_\_ of the Private Cloud or Software or use of the Private Cloud or Software that is not in accordance with the Documentation or in a manner not permitted under this Agreement, (ii) services (including without limitation \_\_\_\_\_ access to, management of, and use of the Private Cloud), software or systems or other resources (including without limitation the Game Titles) that are contributed, controlled, or provided by \_\_\_\_\_, a Gaming Partner, a third party on behalf of \_\_\_\_\_ or a \_\_\_\_\_ Gaming Partner or the provider of the Private Cloud, (iii) \_\_\_\_\_ updating, modifying, or otherwise changing the configurations or customizations of the Open Source Components, or open source version of the Software, or \_\_\_\_\_ adding or implementing new database server technologies, (iv) \_\_\_\_\_ or any third party on its behalf splitting out the Software into discrete subsystems, (v) \_\_\_\_\_ updating, modifying, or otherwise changing the Software’s client libraries, (vi) a Partner Application that is not Supported Partner Applications, or (vii) Service Provider complying with or following instructions, policies, requests or requirements, provided that there was no other reasonable method of compliance that Service Provider could have chosen that would have avoided the Excluded Problem. For avoidance of doubt, Service Provider will not be responsible for providing a fix or workaround to a Critical Issue that is also an Excluded Problem, but will use reasonable efforts to provide support services to resolve such Critical Issue.