

## Prototype Development Agreement

Between

**Headup GmbH**  
Nordstr. 102  
52353 Düren  
Germany

- Hereinafter referred to as "Headup" -

and

**Creactstudios UG**  
Neumatt 19  
77704 Oberkirch  
Germany

- Hereinafter referred to as "Developer" -

### Preamble

Developer is engaged in the business of developing interactive Product titles for PC and other platforms. Headup is engaged in the business of publishing, marketing, porting and distribution of interactive Product titles in the Territory as well as in the field of research & development of new gaming ideas and mechanics.

Headup now wishes Developer to develop the Product "BrummBrumm" (WIP title), based on the general design pitch created by Headup, for PC (Windows), whereas the final Product should consist of a prototype which shall be construed as prototype with such level of detail and functionality as if such game prototype is ready to be played by an end-user consumer with only minor bugs or errors in the end-user consumer experience.

This Agreement sets out the terms and conditions on which Developer develops the game ("Work for Hire") and grants Headup all exclusive rights to the Product.

### § 1 Product

Developer shall serve as a contractor of Headup and shall design and develop the game "BrummBrumm" (WIP title) (the "Product") according to the proposed design and as more fully set forth in this Agreement and Exhibit 1. Developer acknowledges that it has been contracted for this specific task, and that it shall report all findings and make all recommendations directly to the management of Headup. The Product, including all versions in object code form, shall be delivered to Headup via a build deployed on Steam or in unprotected format as not later than 31.10.2023.

### § 2 Ownership of Product

Developer agrees that the development of the Product is "work made for hire" within the meaning of the Copyright Act of 1976, and that the Product shall be the sole property of Headup in object code form. Developer hereby assigns to Headup, without further compensation, all of its right, title and interest in and to the Product and any and all related patents, patent applications, copyrights, copyright applications, trademarks and trade names in the United States and elsewhere. Developer will keep and maintain adequate and current written records with respect to the Product which records shall be available to and remain the sole property of Headup at all times. All versions of the Product shall contain Headup's conspicuous notice of copyright. As far as economically reasonable, Developer will assist Headup in obtaining and enforcing patent, copyright and other forms of legal protection for the Product in any country. Upon request, Developer will sign all applications, assignments, instruments and papers and perform all acts necessary or desired by Headup to assign the Product fully and completely to Headup and to

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enable Headup, its successors, assigns and nominees, to secure and enjoy the full and exclusive benefits and advantages thereof. The rights are granted without any territorial or timed limitation.

The source code of the Product shall at all times remain the property of Developer or the developer of the source code as the case may be. Notwithstanding § 69 e of the German Copyright Act, Headup shall not have the right to obtain or decode the source code of the Product by way of reverse engineering, disassembly, de-compilation or otherwise reduce the Product of the Product to human readable form. Headup shall not at any time use or employ the Product in any manner except as permitted in this agreement. Notwithstanding the above, Headup shall be allowed to port the project to the contractually included platforms within the scope of this agreement.

### **§ 3 Compensation**

(a) Headup shall pay Developer 64.000,- € as follows:

Milestone 1: upon full signature of this agreement	10.666,67 €
Milestone 2: 01.06.2023	10.666,66 €
Milestone 3: 01.07.2023	10.666,66 €
Milestone 4: 01.08.2023	10.666,66 €
Milestone 5: 01.09.2023	10.666,66 €
Milestone 6: upon delivery of the final & approved prototype build	10.666,66 €

(b) All amounts shall be payable in Euro plus VAT, if applicable, upon receipt of a valid invoice.

### **§ 4 Independent Contractor**

Developer is acting as an independent contractor with respect to the services provided to Headup. Neither Developer nor the employees of the Developer performing services for Headup will be considered employees or agents of Headup. Headup will not be responsible for Developer's acts or the acts of Developer's employees while performing services under this Agreement. Nothing contained in this Agreement shall be construed to imply a joint venture, partnership or principal-agent relationship between the parties, and neither party by virtue of this Agreement shall have any right, power or authority to act or create any obligation, express or implied, on behalf of the other party.

### **§ 5 Development Staff-Monitoring**

Developer will utilize employees and/or contractors capable of designing and implementing the Product to be developed hereunder. All work shall be performed in a professional and workmanlike manner. Developer shall arrange for such employees and/or contractors, if any, to execute and deliver any document or instrument reasonably requested by Headup to reflect Headup's ownership of the Product or in connection with any application for patent or copyright.

Headup shall have the right to reasonably observe and monitor all aspects of the performance by Developer of its obligations hereunder and Developer shall use reasonable efforts to facilitate such observation and monitoring. Information, functions and operations of Developer not directly related to its obligations hereunder shall not be subject to observation and monitoring.

### **§ 6 Change in Specifications**

Change in Specifications. Headup may, in its sole discretion, request that changes be made to the Specifications, or other aspects of the Agreement and tasks associated with this Agreement. If Headup requests such a change, Developer will use its best efforts to implement the requested change at no additional expense to Headup and without delaying delivery of the Product as far as economically reasonable. In the event that the proposed change will, in the reasonable opinion of Developer, require a delay in delivery of the Product or would result in additional expense to Headup, then Headup and Developer shall confer and Headup shall, in its discretion, elect either

to withdraw its proposed change or require Developer to deliver the Product with the proposed change and subject to the delay and/or additional expense.

## **§ 7 Confidentiality**

All information concerning each party to this Agreement, including without limitation, all commercial, marketing, technical, and financial information, which is proprietary to both parties is hereby deemed to be the proprietary and confidential information of such respective party to this Agreement. All confidential information of one party shall be kept in strict confidence by the other party and shall not be used by the other party for its benefit, or for the benefit of any other person, or for any purpose other than strictly for the purpose of this Agreement. Notwithstanding the above, either party may disclose information which would otherwise be confidential information if and of the extent:

- (c) required by law or a regulatory body provided that prior to disclosing such information the disclosing Party shall where practicable give the other party at least 10 days' notice;
- (d) the information has come into the public domain through no fault of the disclosing party;
- (e) it is required to be disclosed in connection with any action or other dispute related to this Agreement;
- (f) it is known to the other party prior to this Agreement without any restriction upon its dissemination or disclosure and can be shown by that party to have been so known;
- (g) disclosed to the professional advisers of the party for legitimate business purposes.

## **§ 8 Supplementing Assets**

Developer shall supply Headup with elements for the promotion of the Product. (Hi-Res layered PSD files). Developer will furnish Headup with art work of the Product and additional graphical elements for the creation of marketing materials. (e.g. Appicon, Screenshots, Interstitial artwork, product description, trailer video footage). The minimum scope shall consist of:

- Game logo
- Desktop shortcut icon
- Basic Product description
- Key visual
- 5 quality screenshots
- Raw material to enable Headup to create a Trailer video

Headup shall have the unlimited, unrestricted and exclusive right to use the above-mentioned materials during the Term and in the Territory regarding all such assets.

Developer will also use best efforts to support Headup when deriving and creating the communication to the end consumers and will be available to Headup's further staff such as Community Managers, Label Managers etc., enabling them to effectively be involved in the creation process of the Product.

## **§ 9 Warranties**

1. Developers warrants it has full power and authority to enter into and fully perform this Agreement.
2. Developers warrants that during the Term of this Agreement, it shall not make any agreement that is in conflict with this Agreement.
3. Developers guarantees that the rights granted to Licensee under this Agreement and/or the sale of the Product in the Territory do not and will not infringe or breach any right (including any intellectual property right), title or interest of any person or third party ("IP Infringement Claims").

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Developers shall bear all liabilities alone and shall defend, indemnify and hold harmless Licensee, its parent, affiliated companies and partners and their respective officers, directors, employees and agents from and against any and all liabilities, damages, costs and fees (including reasonable attorney's fees) for such IP Infringement Claims.

**§ 10**  
**Legal lines & Copyrights**

As far as necessary Developer will provide Headup with any required legal lines, boiler plates & copyright to be used in any communication regarding the Product. (PR, advertising, websites)

**§ 11**  
**Term & Termination**

This Agreement shall commence upon the effective date and continue until all of the obligations of the parties have been performed or until earlier terminated as provided herein. The rights to the Product are granted infinitely.

**§ 12**  
**Tax**

Headup shall be entitled to deduct tax (corporate income tax as well as solidarity surcharge, hereinafter collectively the "Withholding Tax") at the applicable statutory rate and pay such amount to the German tax authorities from any payment, unless Headup is furnished with a certificate of exemption (Freistellungsbescheinigung) by Developer of such payment before Headup executes the respective payment, certifying that Headup may refrain from withholding any Withholding Tax. If Headup missed to deduct Withholding Tax but is required to pay such Withholding Tax to the tax authorities, the creditor of the payments will upon presentation of appropriate documentation of the effected payment and the underlying facts immediately refund the Withholding Tax amount to Headup. In this respect, Headup reserves his rights to offset its refund claim against any and all of creditor's claims hereunder and creditor waives its right to object.

**§ 13**  
**No Waiver**

The failure of a party to require strict performance of any provision of this Agreement by the other, or the forbearance to exercise any right or remedy, shall not be construed as a waiver by such party of any such right or remedy or preclude any other or further exercise thereof or the exercise of any other right or remedy.

**§ 14**  
**Assignment**

The rights, duties and privileges of Developer shall not be transferred or assigned by it, in whole or in part, without the prior written consent of Headup.

**§ 15**  
**Entire Agreement**

This Agreement constitutes the entire agreement between parties as to the subject matter hereof and supersedes all prior understandings or agreements whether oral or written. This Agreement may be modified only by written instrument signed by the parties hereto.

**§ 16**  
**Successors**

This Agreement shall be binding upon and insure to the benefit of the successors and permitted assigns of the parties hereto.

**§ 17**  
**First Option for Full Production**

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If Headup decides to move from the prototype into a full production of a video game based on the prototype, Headup and Developer shall use best efforts to negotiate a Development agreement between the two parties for the full production. Due to the nature of Headup's business, both parties agree that the IP rights shall lie with Headup in this case. Developer agrees not to negotiate or self-publish a game based on the prototype.


If however six months after the delivery of the prototype Headup has not offered such an agreement to Developer, Developer shall be at full liberty to look for any other means of commercialization of the Product. If Developer commercializes a Product based on the prototype created with Headup, Developer shall reimburse Headup for all payments connected to this agreement. With the full reimbursement of these costs, Headup automatically reverts all rights of this agreement back to Developer and Developer shall be free of all further obligations.


## **§ 18 Governing Law**

The rights and obligations of the parties shall be governed by, and this Agreement shall be construed and enforced in accordance with, the laws of the Federal Republic of Germany, excluding any rules that would apply the law of another jurisdiction. Venue is Cologne.

## **§ 19 Additional Terms**

1. A Party's failure or delay to exercise a power or right is not a waiver of that right and the exercise of a power or a right does not preclude the future exercise of that or any other power or right.
2. This Agreement is the entire Agreement between the Parties as to its subject matter. It supersedes all prior agreements, representations, conduct, understandings and verbal statements on the Products. The Parties acknowledge that they have not relied on any representation or conduct in deciding whether to enter into this Agreements, other than expressly set out in this Agreement.
3. In the event that any provision of this Agreement (or any portion thereof) shall be held by a court to be invalid, illegal or unenforceable, such provisions shall be replaced by provisions the Parties would have taken with economic consideration, if they had recognised the invalid, illegal or unenforceable provisions. The remaining portions of this Agreement shall remain in full force and effect.
4. This Agreement may not be changed, modified, amended or supplemented, except in writing signed by all Parties to this Agreement. Exhibit 1 is part of this Agreement.
5. IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized representatives on the dates below written

Düren, 25.4.2023  
  
Dieter Schoeller  
CEO  
Headup GmbH

Oberkirch, 24.04.2023  
  
Name: Simon Blasen  
Position: CEO  
Company: Creactstudios UG

## Exhibit 1

### Products

1. Title: BrummBrumm (WIP title)  
Platform: PC Windows
  - 1) Onboarding Tutorial for vehicle building
  - 2) Driving arena with derby area
  - 3) Simple matchmaking with online multiplayer
  - 4) Juicy sound design
  - 5) General juice for driving & crashing

**Exhibit 2 - Confirmation of Developer concerning Music Rights**

Herewith Developer confirms that Utilization and Exploitation Rights for the Product have been transferred to Headup GmbH, Germany, according to the Licensing Agreement.

Moreover, the Developer confirms that:

The Product contains music titles which do not have to be registered with a collecting agency. The copy right owner of the music is not a member of a collecting agency. The Utilization and Exploitation Rights for the music or sound elements have been licensed to Headup within the framework of the licensing agreement mentioned above.

Oberkirch, on 24.04.2023

**Developer**  
represented by



Name: Simon Blasen