**Terms of Service and Licence Agreement for Skyral**

**Agreed terms**

**1. Interpretation**

1.1 The definitions and rules of interpretation in this clause apply in this licence.

**Affiliate**: includes, in relation to either party, each and any subsidiary or holding company of that party and each and any subsidiary of a holding company of that party **OR** any business entity from time to time controlling, controlled by, or under common control with, either party.

**Business Day:** a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

**Contract Year:** each anniversary of the Commencement Date during the Licence Term.

**Criteria Categories:** Are as defined in Schedule E to the MSA and set out in the Licence Particulars

**Evaluation Licence:** a licence of the Skyral Platform pursuant to these terms and conditions for the purpose of testing and evaluating the Skyral Platform including the Procuring Party developing and testing its own software products using the Skyral Platform.

**Fair Use Policy:** the document set out in Schedule 3

**Fee**: the licence fee payable by the Procuring Party to the Contractor under 5.

**Hosting Environments:** any environment and its associated infrastructure which the Skyral platform and related applications being hosted. This includes but is not limited to commercial public cloud environments, disconnected environments, edge commute and private cloud environments in which dedicated servers or a network of connected virtual and physical cloud servers. These environments are managed by the Procuring Party or by a pre-agreed third party vendor on behalf of the Procuring Party.

**Heightened Cybersecurity Requirements**: any laws, regulations, codes, guidance (from regulatory and advisory bodies, whether mandatory or not), international and national standards, industry schemes and sanctions, which are applicable to either the Procuring Party or its Procuring Party's (but not the Supplier) relating to security of network and information systems and security breach and incident reporting requirements, which may include the Network and Information Systems Regulations 2018 (*SI 506/2018*), all as amended or updated from time to time.

**Intellectual Property Rights**: patents, utility models, rights to inventions, copyright and related rights, trademarks and service marks, trade names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer Skyral Platform, database rights, rights to preserve the confidentiality of information (including know-how and trade secrets) and any other intellectual property rights, including all applications for (and rights to apply for and be granted), renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist, now or in the future, in any part of the world.

**Licence Term:** the term of the Licence granted hereunder as set out in the Licence Particulars.

**Licencing Level:** the Licensing Level calculated in accordance with Schedule E to the MSA and set out in the Licence Particulars.

**Licence Type:** an Evaluation Licence or a Standard Licence as applicable and set out in the Licence Particulars.

**MSA:** the Master Services Agreement entered into between the parties on [*insert date*]

**Open-Source Software**: any software programs which are licensed under any form of open-source licence meeting the Open Source Initiative's open source definition from time to time.

**Project:** a project as detailed in the Licence Particulars

**Skyral Platform:** the suite of licensable features and services set out in Appendix 1 licenced pursuant to this Licence Agreement and which form part of the Synthetic Environment Development Platform provided by the Contractor.

**Site**: the premises from which the Procuring Party carries out its business as notified to the Contractor in writing from time to time.

**Source Code Materials**: the source code of the Skyral Platform, and all technical information and documentation required to enable the Procuring Party to modify and operate it.

**Standard Licence:** a licence of the Skyral Platform pursuant to these terms and conditions for operational and commercial use

1.2 This Licence is entered into pursuant to the terms of the MSA and subject always to clause 1.7 of this Agreement, the terms of the MSA shall apply to all Licences granted pursuant to this Agreement.

1.3 **Holding company** and **subsidiary** mean a "holding company" and "subsidiary" as defined in section 1159 of the Companies Act 2006 [and a company shall be treated, for the purposes only of the membership requirement contained in subsections 1159(1)(b) and (c), as a member of another company even if its shares in that other company are registered in the name of (a) another person (or its nominee), whether by way of security or in connection with the taking of security, or (b) its nominee]. In the case of a limited liability partnership which is a subsidiary of a company or another limited liability partnership, section 1159 of the Companies Act 2006 shall be amended so that: (a) references in subsections 1159(1)(a) and (c) to voting rights are to the members' rights to vote on all or substantially all matters which are decided by a vote of the members of the limited liability partnership; and (b) the reference in section 1159(1)(b) to the right to appoint or remove a majority of its board of directors is to the right to appoint or remove members holding a majority of the voting rights.

1.4 Clause, Appendix and paragraph headings shall not affect the interpretation of this agreement.

1.5 Unless the context otherwise requires:

(a) words in the singular shall include the plural and in the plural shall include the singular;

(b) A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time **OR** it is in force as at the date of this agreement;

(c) a reference to one gender shall include a reference to the other genders; and

(d) any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.6 In the case of conflict or ambiguity between any provision contained in the body of this licence and any provision contained in the Appendices, the provision in the body of this licence shall take precedence.

1.7 In the event and to the extent of any conflict or inconsistency between any of:

(a) a term in these licence terms and conditions;

(b) a term in any Appendix; and

(c) any term in any document included by reference into this agreement including the Master Services Agreement entered into between the parties,

the term falling into the category first appearing in the list above shall take precedence.

1.8 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns.

1.9 References to clauses and Appendices are to the clauses and Appendices of this agreement and references to paragraphs are to paragraphs of the relevant Appendix.

1.10 The Appendices form part of this licence and shall have effect as if set out in full in the body of this licence. Any reference to this licence includes the Appendices.

**2. Deployment**

2.1 The Contractor shall deploy the Skyral Platform into the Procuring Party's Hosting Environment(s).

2.2 The Contractor will require design diagrams, infrastructure schematics, access to personnel knowledgeable of the Hosting Environment(s), and appropriate access and authentication for their assigned employees to facilitate this deployment.

2.3 The Procuring Party is ultimately responsible for the security, maintenance, and operation of the Hosting Environment.

**3. Licence**

3.1 In consideration of the Fee paid by the Procuring Party to the Contractor, receipt of which the Contractor hereby acknowledges, the Contractor grants to the Procuring Party a non-exclusive, worldwide licence for the Licence Term to use the Technology Items solely in relation to a Project as set out in the Licence Particulars.

3.2 In relation to scope of use:

(a) for the purposes of 3.1, use of the Skyral Platform shall be restricted to use of the Skyral Platform in object code form in accordance with the Licensing Level and the Licence Type for the purpose of the Project as set out in the Licencing Particulars.

(b) Evaluation Licences may only be used for testing and evaluation purposes and the Procuring Party shall not be entitled to use any such Evaluation Licences:

(i) For any marketing or commercial purposes;

(ii) To inform competitive product direction;

(iii) To support any work that goes beyond the basic assessment and evaluation of the suitability of the Platform or for use in an operational environment; or

(c) Standard Licences may be used to support development, deployment, production use and in-service support of the Skyral Platform; the Procuring Party shall not be entitled to use any such Standard Licences:

(i) To inform competitive product direction

(d) The Procuring Party may not use the Skyral Platform other than as specified in 3.1 without the prior written consent of the Contractor, and the Procuring Party

acknowledges that additional fees may be payable on any change of use approved by the Contractor.

(e) The Procuring Party must not use the Skyral Platform in any way which breaches the Fair Use Policy at Appendix 3.

(f) The Procuring Party may make backup copies of Skyral Platform as may be necessary for its lawful use. The Procuring Party shall record the number and location of all copies of the Skyral Platform and take steps to prevent unauthorised copying.

(g) except as expressly stated in this 3, the Procuring Party has no right (and shall not permit any third party) to copy, adapt, reverse engineer, decompile, disassemble, modify, adapt or make error corrections to the Skyral Platform in whole or in part except to the extent that any reduction of the Skyral Platform to human readable form (whether by reverse engineering, decompilation or disassembly) is necessary for the purposes of integrating the operation of the Skyral Platform with the operation of other software or systems used by the Procuring Party, unless the Contractor is prepared to carry out such action at a reasonable commercial fee or has provided the information necessary to achieve such integration within a reasonable period, and the Procuring Party shall request the Contractor to carry out such action or to provide such information (and shall meet the Contractor's reasonable costs in providing that information) before undertaking any such reduction.

(h) The Procuring Party undertakes not to use the Skyral Platform in any way that could negatively damage the Contractor’s brand, commercial position or Skyral product line

3.3 The Procuring Party may not use any such information provided by the Contractor or obtained by the Procuring Party during any such reduction permitted under 3.2(f) to create any software whose expression is substantially similar to that of the Skyral Platform nor use such information in any manner which would be restricted by any copyright subsisting in it.

3.4 The Procuring Party is expected to sublicense the Skyral Platform to it’s partner ecosystem that is being used to deliver the Project, but shall not:

(a) sub-license, assign or novate the benefit or burden of this licence in whole or in part;

(b) allow the Skyral Platform to become the subject of any charge, lien or encumbrance; and

(c) deal in any other manner with any or all of its rights and obligations under this agreement,

without the prior written consent of the Contractor, such consent not to be unreasonably withheld or delayed.

3.5 Where the Procuring Party sub-licences this Skyral Platform Licence Agreement in accordance with clause 3.4; the Procuring Party shall ensure that the terms of this Skyral Platform Licence Agreement are flowed down to its sub-licensee and shall procure the compliance by the sub-licensee of such terms. For the avoidance of doubt, the Procuring Party shall remain liable for all breaches of this Skyral Platform Licence Agreement by any of its sub-licensees.

3.6 There may also be times when the Skyral Platform (or any part of it) is not available for technical or maintenance related reasons, whether on a scheduled or unscheduled basis. Where possible the Contractor will try to give notice in advance of any planned downtime

3.7 The Contractor may at any time sub-license, assign, novate, charge or deal in any other manner with any or all of its rights and obligations under this licence, provided it gives written notice to the Procuring Party.

3.8 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

3.9 Notwithstanding 3.7, a party assigning any or all of its rights under this agreement may disclose to a proposed assignee any information in its possession that relates to this agreement or its subject matter, the negotiations relating to it and the other party which is reasonably necessary to disclose for the purposes of the proposed assignment, provided that no disclosure pursuant to this 3.7 shall be made until notice of the identity of the proposed assignee has been given to the other party.

3.10 The Procuring Party shall:

(a) ensure that the Skyral Platform is used in accordance with the applicable Licence Level;

(b) keep a complete and accurate record of the Procuring Party's copying and disclosure of the Skyral Platform and notify the Contractor as soon as it becomes aware of any unauthorised use of the Skyral Platform by any person;

(c) pay, for broadening the scope of the licences granted under this licence to cover the unauthorised use, an amount equal to the fees which the Contractor would have levied (in accordance with its normal commercial terms then current) had it licensed any such unauthorised use on the date when such use commenced.

3.11 The Contractor shall monitor the Procuring Party's use of the Skyral Platform including the user metrics against the defined Criteria Categories and shall notify the Procuring Party as soon as reasonably practicable if it is likely that its use will cause a change in the Licensing Level.

3.12 In the event that the Procuring Party's use of the Skyral Platform:

(a) is one Licence Level above the contracted Licence Level set out in the Licence Particulars for over 3 consecutive months or any 6 months in a rolling 12 month period ; or

(b) at any time falls within a Licensing Level which is two levels or more above the contracted Licencing Level set out in the Licence Particulars;

(c) the Contractor shall be entitled to amend the Licence Level accordingly for the remainder of the Term and charge the End User for any increase in Fees. The Licence Particulars shall be deemed to be amended accordingly.

3.13 In the event the Procuring Party uses a Skyral Platform Licence in breach of clause 3.2(b) or 3.2(c), the Contractor shall be entitled to terminate the Licence with immediate effect and the Procuring Party shall indemnify on demand the Contractor for all losses arising as a result of such breach.

3.14 Regarding the Procuring Party's products and services made available via the Skyral Platform, the Procuring Party is solely and exclusively responsible for: (i) all legal and regulatory compliance; and (ii) any consumer matters, and the Procuring Party acknowledges that the Contractor has no responsibilities, obligations or liabilities whatsoever regarding the same. This includes (but is not limited to) applicable consumer protection, data protection and other regulatory matters. In relation to data protection matters, the Procuring Party will be the data controller and the Contractor will be the data processor. The Procuring Party shall be responsible for the use of and entry into any applicable end-user licence, privacy policy, acceptable use policy and other applicable documentation ("Terms of Service") between the Procuring Party and end-users .

## 4. Support and Maintenance

4.1 The Skyral Platform technology items procured by the Procuring Party under this Licence are set out in Appendix 1. The Parties recognise that the Skyral Platform is enhanced continuously by the Contractor with new versions being released once a quarter. Notwithstanding the release of such new versions, the Contractor shall:

(a) Continue to provide the Skyral Platform technology items set out in Appendix 1 at the version identified in Appendix 1 for the duration of the Licence Term, or for three (3) years following the Commencement Date of this Licence, whichever is the shorter;

(b) Provide support services for the Skyral Platform technology items at the version identified at Appendix 1 for the duration of the Licence Term, or for three (3) years following the Commencement Date of this Licence, whichever is the shorter.

(c) Notify the Procuring Party of its intention to deprecate any of the Skyral Platform technology items recorded in Appendix 1 save that no such technology items shall be deprecated during the Licence Term without the consent of the Procuring Party, such consent not to be unreasonably withheld or delayed.

4.2 Any Skyral Platform Technology items that have been identified as being subject to deprecation by the Contractor shall not be available for use by the Procuring Party upon the expiry of the Licence Term.

4.3 The Procuring Party shall be entitled to support services in relation to the Licences at the SLA Package Level as set out in the Licence Particulars. The Contractor shall supply the support services in accordance with the SLA set out in Appendix 2.

## 5. Fees

5.1 The Procuring Party shall pay to the Contractor the Licence Fee as set out in the Licence Particulars.

5.2 Licences with a monthly Term shall be payable in monthly instalments; all other Licences shall be payable in quarterly instalments as set out in the Payment Terms of the Licence Particulars.

5.3 All sums payable under this licence are exclusive of VAT or any relevant local sales taxes, for which the Procuring Party shall be responsible.

5.4 If the Procuring Party fails to make any payment due to the Contractor under this agreement by the due date for payment, then, without limiting the Contractor's remedies under clause 12, the Procuring Party shall pay interest on the overdue amount at the rate of 4% per annum above Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgement. The Procuring Party shall pay the interest together with the overdue amount.

## 6. Confidentiality and publicity

6.1 Each party shall, during the term of this licence and thereafter, keep confidential all, and shall not use for its own purposes (other than implementation of this licence) nor without the prior written consent of the other disclose to any third party (except its professional advisors or as may be required by any law or any legal or regulatory authority) any, information of a confidential nature (including trade secrets and information of commercial value) which may become known to such party from the other party and which relates to the other party or any of its Affiliates, unless that information is public knowledge or already known to such party at the time of disclosure, or subsequently becomes public knowledge other than by breach of

this licence, or subsequently comes lawfully into the possession of such party from a third party. Each party shall use its reasonable endeavours to prevent the unauthorised disclosure of any such information.

6.2 Both Parties expect to generate publicity from the agreement of this licence for the mutual benefit of the both Parties, however no party shall make, or permit any person to make, any public announcement concerning this agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.

**7. Export and compliance with policies**

7.1 Neither party shall export, directly or indirectly, any technical data acquired from the other party under this agreement (or any products, including Skyral Platform, incorporating any such data) in breach of any applicable laws or regulations (**Export Control Laws**), including United States export laws and regulations, to any country for which the government or any agency thereof at the time of export requires an export licence or other governmental approval without first obtaining such licence or approval.

7.2 Each party undertakes:

(a) contractually to oblige any third party to whom it discloses or transfers any such data or products to make an undertaking to it in similar terms to the one set out above; and

(b) if requested, to provide the other party with any reasonable assistance, at the reasonable cost of the other party, to enable it to perform any activity required by any competent government or agency in any relevant jurisdiction for the purpose of compliance with any Export Control Laws.

**8. Contractor's warranties**

8.1 The Procuring Party acknowledges that the Skyral Platform will continue to be developed. Therefore, there may be missing or incomplete features, bugs or errors which may be subject to further testing, development, patches and/or updates in Contractor’s sole discretion. Contractor does not make any promises, warranties or representations of any kind about (or accept any liability for) the Skyral Platform, what it does, how it does it, or about future content. The Skyral Platform is provided by Contractor as is and without warranty or representation, express, implied or statutory, including without limitation warranty as to satisfactory purpose, merchantability, fitness for any particular purpose or availability for use; nor are there any warranties created by course of dealing or course, performance or trade usage. All implied and/or statutory representations, conditions or warranties are excluded to the extent permissible by law.

8.2 The Contractor does not warrant that the use of the Skyral Platform will be uninterrupted or error-free or that it will meet any Heightened Cybersecurity Requirements.

8.3 The Procuring Party accepts responsibility for the selection of the Skyral Platform to achieve its intended results and acknowledges that the Skyral Platform has not been developed to meet the individual requirements of the Procuring Party.

8.4 The Procuring Party acknowledges that any Open-Source software provided by the Contractor is provided "as is" and expressly subject to the disclaimer in 8.5.

8.5 All other conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into this licence or any collateral contract, whether by statute, common law or otherwise, are hereby excluded, including the implied conditions, warranties

or other terms as to satisfactory quality, fitness for purpose or the use of reasonable skill and care.

**9. Limits of liability**

9.1 Except as expressly stated in 9.2:

(a) the Contractor shall not in any circumstances have any liability for any losses or damages which may be suffered by the Procuring Party (or any person claiming under or through the Procuring Party), whether the same are suffered directly or indirectly or are immediate or consequential, and whether the same arise in contract, tort (including negligence) or otherwise howsoever, which fall within any of the following categories:

(i) special damage even if the Contractor was aware of the circumstances in which such special damage could arise;

(ii) loss of profits;

(iii) loss of anticipated savings;

(iv) loss of business opportunity;

(v) loss of goodwill;

(vi) loss or corruption of data,

provided that this 9.1(a) shall not prevent claims for loss of or damage to the Procuring Party's tangible property that fall within the terms of clause 9.1(b) or any other claims for direct financial loss that are not excluded by any of categories (i) to (vi) inclusive of this 9.1(a);

(b) the total liability of the Contractor, whether in contract, tort (including negligence) or otherwise and whether in connection with this licence or any collateral contract, shall in no circumstances exceed a sum equal to the Fee; and

(c) the Procuring Party agrees that, in entering into this licence, either it did not rely on any representations (whether written or oral) of any kind or of any person other than those expressly set out in this licence or (if it did rely on any representations, whether written or oral, not expressly set out in this licence) that it shall have no remedy in respect of such representations and (in either case) the Contractor shall have no liability in any circumstances otherwise than in accordance with the express terms of this licence.

9.2 The exclusions in 8.4 and 9.1 shall apply to the fullest extent permissible at law, but the Contractor does not exclude liability for:

(a) death or personal injury caused by the negligence of the Contractor, its officers, employees, contractors or agents;

(b) fraud or fraudulent misrepresentation;

(c) breach of the obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or

(d) any other liability which may not be excluded by law.

(e) infringement of third party intellectual property

9.3 All dates supplied by the Contractor for the deployment of the Skyral Platform shall be treated as approximate only. The Contractor shall not in any circumstances be liable for any loss or damage arising from any delay in deployment beyond such approximate dates.

9.4 All references to "the Contractor" in this clause 9 shall, for the purposes of this clause and clause19 only, be treated as including all employees, subcontractors and suppliers of the

Contractor and its Affiliates, all of whom shall have the benefit of the exclusions and limitations of liability set out in this clause, in accordance with clause 19.

**10. Intellectual property rights**

10.1 The Procuring Party acknowledges that all Intellectual Property Rights in the Skyral Platform and any subsequent version updates to the Skyral Platform technology items in Appendix 1 belong and shall belong to the Contractor, and the Procuring Party shall have no rights in or to the Skyral Platform other than the right to use it in accordance with the terms of this licence. To the extent the Procuring Party makes any modifications to, or any derivative works from the Skyral Platform, the Procuring Party shall hereby assign to Contractor all right, title and interest in and to all such modifications and derivative works and the Procuring Party agrees to do all such things and take all actions as Contractor reasonably requires in order to transfer such modifications and derivative works and the Intellectual Property in them to the Contractor.

10.2 The Contractor undertakes at its own expense to defend the Procuring Party or, at its option, settle any claim or action brought against the Procuring Party alleging that the possession or use of the Skyral Platform (or any part thereof) in accordance with the terms of this licence infringes the UK Intellectual Property Rights of a third party (**Claim**) and shall be responsible for any reasonable losses, damages, costs (including legal fees) and expenses incurred by or awarded against the Procuring Party as a result of or in connection with any such Claim. For the avoidance of doubt, clause 10.2 shall not apply where the Claim in question is attributable to possession or use of the Skyral Platform (or any part thereof) by the Procuring Party other than in accordance with the terms of this licence, use of the Skyral Platform in combination with any hardware or software not supplied or specified by the Contractor if the infringement would have been avoided by the use of the Skyral Platform not so combined, or use of a non-current release of the Skyral Platform.

10.3 If any third party makes a Claim, or notifies an intention to make a Claim against the Procuring Party, the Contractor's obligations under clause 10.2 are conditional on the Procuring Party:

(a) as soon as reasonably practicable, giving written notice of the Claim to the Contractor, specifying the nature of the Claim in reasonable detail;

(b) not making any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of the Contractor (such consent not to be unreasonably conditioned, withheld or delayed);

(c) giving the Contractor and its professional advisers access at reasonable times (on reasonable prior notice) to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of the Procuring Party, so as to enable the Contractor and its professional advisers to examine them and to take copies (at the Contractor's expense) for the purpose of assessing the Claim; and

(d) subject to the Contractor providing security to the Procuring Party to the Procuring Party's reasonable satisfaction against any claim, liability, costs, expenses, damages or losses which may be incurred, taking such action as the Contractor may reasonably request to avoid, dispute, compromise or defend the Claim.

10.4 If any Claim is made, or in the Contractor's reasonable opinion is likely to be made, against the Procuring Party, the Contractor may at its sole option and expense:

(a) procure for the Procuring Party the right to continue to use the Skyral Platform (or any part thereof) in accordance with the terms of this licence;

(b) modify the Skyral Platform so that it ceases to be infringing;

(c) replace the Skyral Platform with non-infringing Skyral Platform; or

(d) terminate this licence immediately by notice in writing to the Procuring Party and refund any of the Fee paid by the Procuring Party as at the date of termination (less a reasonable sum in respect of the Procuring Party's use of the Skyral Platform to the date of termination) on return of the Skyral Platform and all copies thereof,

provided that if the Contractor modifies or replaces the Skyral Platform, the modified or replacement Skyral Platform must comply with the warranties contained in clause 8.1 and the Procuring Party shall have the same rights in respect thereof as it would have had under those clauses had the references to the date of this licence been references to the date on which such modification or replacement was made.

10.5 This clause 10 constitutes the Procuring Party's exclusive remedy and the Contractor's only liability in respect of Claims and, for the avoidance of doubt, is subject to 9.1.

**11. Data protection**

11.1 If, during the Term, either party agrees to process personal data (as defined by EC Regulation 2016/679) on behalf of the other for the purposes of this Agreement, the parties shall cooperate in good faith to agree a suitable data processing agreement in respect of this processing.

**12. Termination and Suspension**

12.1 Contractor may suspend the Licences granted pursuant to a Licence Agreement in the following circumstances:

(a) If the Procuring Party is using the Licences for purposes other than the purpose of the Project as set out in the Licensing Particulars;

(b) If the Procuring Party’s use of the Skyral Platform is two or more levels higher than the Licence Level as set out in the Licensing Particulars

12.2 The Parties shall meet to agree any appropriate amendments to the Licensing Particulars to reflect the change in use (including the scope of the Project and/or the Licensing Level) and the Fee payable thereunder and the Licences shall be reinstated upon the signature of an amendment agreement reflecting the same. The Fees payable for the remainder of the Licence Term shall be at the rate agreed and set out in the amendment agreement.

12.3 Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other party if:

(a) the other party fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment;

(b) the other party commits a material breach of any other term of this agreement and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;

(c) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 ;

(d) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

(e) the other party applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;

(f) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

(g) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company, partnership or limited liability partnership);

(h) the holder of a qualifying floating charge over the assets of that other party (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;

(i) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;

(j) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;

(k) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 12.1(c) to clause 12.1(j) (inclusive);

(l) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or

(m) the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this agreement is in jeopardy.

12.4 Any provision of this agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this agreement shall remain in full force and effect.

12.5 Termination or expiry of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.

12.6 On termination for any reason:

(a) all rights granted to the Procuring Party under this licence shall cease;

(b) the Procuring Party shall cease all activities authorised by this licence;

(c) the Procuring Party shall immediately pay to the Contractor any sums due to the Contractor under this licence up to the date of termination; and

(d) The Procuring Party shall immediately destroy or return to the Contractor (at the Contractor's option) all copies of the Skyral Platform then in its possession, custody or control and, in the case of destruction, certify to the Contractor that it has done so.

12.7 Any provision of this agreement which expressly or by implication is intended to come into or continue in force on or after termination of this agreement shall remain in full force and effect.

**13. Waiver**

No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

**14. Remedies**

Except as expressly provided in this agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

**15. Entire agreement**

15.1 This licence, the schedules and the appendices to this licence or otherwise referred to herein together with the MSA together with the MSA contain the whole agreement between the parties relating to the subject matter hereof and supersede all prior agreements, arrangements and understandings between the parties relating to that subject matter.

15.2 Each party acknowledges that, in entering into this licence, it does not rely on any statement, representation, assurance or warranty (whether it was made negligently or innocently) of any person (whether a party to this licence or not) (**Representation**) other than as expressly set out in this licence.

15.3 Each party agrees that the only rights and remedies available to it arising out of or in connection with a Representation shall be for breach of contract as expressly provided in this licence.

15.4 Nothing in this clause shall limit or exclude any liability for fraud.

**16. Variation**

16.1 No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

**17. Severance**

17.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.

17.2 If any provision or part-provision of this agreement is deemed deleted under clause 18.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

**18. Counterparts**

18.1 This agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

**19. Third-party rights**

19.1 A person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement, but this does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

**20. No partnership or agency**

20.1 Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

20.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

**21. Force Majeure**

21.1 Neither party shall be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for 3 months, the party not affected may terminate this agreement by giving 30 days' written notice to the affected party.

**22. Notices**

22.1 Any notice given to a party under or in connection with this contract shall be in writing and shall be:

(a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or

(b) sent by email to the Commercial Director (Capture and Partnerships), Contractor with a copy to legal@improbable.io.

22.2 Any notice shall be deemed to have been received:

(a) if delivered by hand, at the time the notice is left at the proper address;

(b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting;

(c) if sent by email, at 9.00 am on the next Business Day after sending.

22.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

**23. Disputes**

23.1 Any disputes shall be resolved by the parties in accordance with the governance process set out in the MSA.

## 24. Governing law and jurisdiction

24.1 This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

24.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

24.3 This licence has been entered into on the date stated at the beginning of it.

**Appendix 1 - Skyral Platform Technology Items**

*[Insert Details of the Skyral Platform Technology items procured]*

**Appendix 2 - Support Services**

*[Insert Details of SLA Package procured]*

## Appendix 3 FAIR USE POLICY

The Procuring Party agrees not to, and to not allow their sub-licensees, to use the Skyral Platform to:

- probe, scan or test the IP from other vendors within the Skyral Platform or supporting services;
- use the Skyral Platform in an attempt to reverse engineer any IP that exists within the Skyral Platform ecosystem;
- breach or otherwise circumvent any security or authentication measures;
- access, tamper with or use non-public areas or parts of the Skyral Platform, or shared areas of the Skyral Platform to which you do not have access rights;
- generate, distribute, publish or facilitate unsolicited mass email, promotions, advertisements or other solicitations (“spam”) or false source-identifying information (“spoofing” or “fishing”);
- copy, sublicence, resell or distribute the Skyral Platform;
- modify, merge, distribute, translate, reverse engineer, decompile, disassemble, create derivative works of, hack or interfere with the Skyral Platform or any part of them;
- use the Skyral Platform, or upload content to the Contractor’s servers in any way which: (i) is illegal or infringes third party Intellectual Property Rights; (ii) is related to gambling and/or adult content; (iii) is defamatory, racist, discriminatory, offensive or inappropriate; or (iv) that may be harmful to Improbable, its operations and/or reputation;
- intercept, mine or otherwise collect data or information from the Skyral Platform or other Contractor systems using unauthorised third-party software or otherwise;
- post or upload any files that contain any malicious code, including viruses, spyware, Trojan horses, worms, time bombs or intentionally corrupted data;
- access the Skyral Platform in any manner that is intended to avoid incurring fees due under this or any other agreement;
- upload to the Improbable Servers anything which causes damage to or affects the operation of the Skyral Platform.

| | | |
|---|---|---|
| Signed by [NAME OF DIRECTOR] | …….……..…..…. | |
| for and on behalf of [**Skyral Defence Limited**] | Director | |
| Signed by [NAME OF DIRECTOR] | | …….……..…..…. |
| for and on behalf of [NAME OF **Procuring Party**] | | Director |