



Liminal VR Pty Ltd (ABN: 95 604 859 289)

www.liminalvr.com

Agreed terms

Version: 3

Prepared: 19 July 2021

Application of these Agreed Terms

1.1 These Agreed Terms apply when expressly incorporated into a Contract between Liminal and a Client.

2. Term

2.1 This Contract between Liminal and the Client commences on the Commencement Date and ends upon receipt of all outstanding Fees in relation to all Products or Services to be provided by Liminal, unless terminated earlier in accordance with these Agreed Terms.

3. Non-Exclusive Appointment

3.1 Nothing in this Contract shall prevent Liminal from providing services or products of the same or similar in nature to any other person.

4. Priority of Documents

4.1 Any Contract between Liminal and the Client will be comprised of the following documents (in descending order of precedence):

- (a) these Agreed Terms;
- (b) any agreement executed by the parties which expressly incorporates these Agreed Terms;
- (c) any quotation which expressly incorporates these Agreed Terms;
- (d) any other document attached to, referenced in, or prepared pursuant to the documents set out in clauses 4.1(b) and (c)..

4.2 In the event and to the extent of any inconsistency between the documents listed in clause 4.1, the provisions of the earlier mentioned document will prevail to the extent of the inconsistency.

5. Specifications

5.1 The Client acknowledges that Liminal is completely reliant on the quality and timeliness of information provided by the Client in developing the Product and warrants and agrees that the information provided and each and every Specification):

- (a) is accurate and complete and that there are no additional features for the Product that are not outlined in the Specifications; and
- (b) will not in any way give rise to an action for breach of any law (whether under statute or common law), including under the Australian Consumer Law.

5.2 Liminal may, in its sole discretion, make reasonable assumptions about details or features of the Product to the extent that those details or features are not specified in a Specification, such assumptions forming part of the Specification;

6. Services

6.1 Consultancy Services. To the extent specified in any document set out in clause 4.1(b) to (d), Liminal will provide Consultancy Services at the Rates or Fees specified in this Contract.

6.2 Development Services. To the extent specified in any document set out in clause 4.1(b) to (d), Liminal will conduct Development Services at the Rates or Fees specified in this Contract.

6.3 Support Services

(a) If an error in a Product arises and the error has been caused by:

- (i) misuse of the Product by the Client, its Personnel or any other person who is not Personnel of Liminal in a manner that is not recommended or endorsed by Liminal;
- (ii) any alteration of the Product by the Client;
- (iii) failure of the Client's hardware or incorrect hardware; or
- (iv) failure of the Client to meet any obligations under the Contract,

Liminal may provide rectification work (including travel time and on-site support) at the Rates.

(b) Liminal will, at its own expense, rectify a material defect in relation to a Product where the material defect has been directly caused by Liminal.

6.4 Training Services. To the extent specified in any document set out in clause 4.1(b) to (d), Liminal will provide Training Services in accordance with a Specification at the Rates or Fees specified in this Contract.

7. Acceptance

7.1 The Client must Accept all Products delivered by Liminal to the Client that substantially complies with the Specification.

7.2 Acceptance by the Client of a Product will be deemed if the Client does not advise Liminal whether or not it Accepts the Product within 10 Business Days of delivery.

7.3 Acceptance by the Client is conclusive evidence that the Product has been developed in accordance with the Specification.

8. Client's Responsibilities

8.1 The Client must:

- (a) provide any resources, assets, sound files, reference materials, information, equipment, specifications and/or facilities in accordance with the Contract, or as otherwise necessary to enable Liminal to fulfil its obligations;
- (b) respond promptly to any queries provided Liminal in relation to any Services or Product to be provided by Liminal;
- (c) provide full cooperation with Liminal to enable Liminal to provide any Service or Product; and
- (d) at all times act in good faith.

8.2 The Client must not:

- (a) modify, adapt, alter, translate or create derivative works from any Product;
- (b) merge Product with other software or materials; and
- (c) reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code or object code from any Product.

9. Delays

9.1 Where a delay is caused or contributed to by the Client, any due dates affected by a delay will be extended by an amount of time that is equivalent to the delay.

10. Meetings

10.1 Attendance of meetings will be by prior appointment and at the discretion of Liminal.

- 10.2 If a Liminal representative is required to travel interstate or overseas to attend meetings or events, the Client must pay any reasonable costs of travel, meals and accommodation incurred by Liminal.
- 10.3 The Client must provide Liminal with contact details of any person involved in the preparation of the Specification or Acceptance of the Product (including any client of the Client). Liminal may contact such persons at any time for the purposes of clarifying the Specification and will endeavour to keep the Client informed of any clarification provided.

11. Fees and Invoicing

- 11.1 The Rates and Fees payable by the Client for Products or Services are as set out in the Contract.
- 11.2 The Client must pay an invoiced amount upon receipt of the Tax Invoice for the Fees and Rates due in respect of the Services or Product. If the Client disputes the invoiced amount, it must pay the undisputed amount and pay the disputed amount on resolution of the dispute.
- 11.3 **Suspension of Services.** Liminal may, in its sole discretion, take measures (including inserting a watermark in the Product, suspension of Services, temporarily disabling of a Product or imposing other access controls) at any time until the Client has paid Liminal all Fees, Rates and other charges.

12. Taxes

- 12.1 Unless otherwise expressly stated, all Fees, Rates or other sums payable or consideration to be provided under or in accordance with this Contract are exclusive of GST. The Client must pay an amount equivalent to GST payable in addition to such amounts.

13. Warranties

- 13.1 Liminal does not warrant that any Product:
- (a) shall provide any function or contain any feature or specification not within the scope of the Specification;
 - (b) will be approved on any platform, including the App Store, Google Play, Gear VR Store, Oculus Store, Steam VR, Daydream Store, Vive Wave or any other platform; and
 - (c) will perform in an environment or on a platform or hardware other than any platform or hardware upon which the Product was expressly designed and tested.
- 13.2 Except as set forth in this clause and to the maximum extent permitted by law, all Products, Liminal Background Materials and Services are provided 'as is' and Liminal and its licensors hereby disclaim all warranties, express, implied or statutory, regarding such Products, Liminal Background Materials and Services, including any warranties of merchantability, fitness for a particular purpose, title and non-infringement of third party rights.

14. Intellectual Property

- 14.1 **Client Background Materials.** Intellectual Property Rights in all Client Background Materials used and identified to Liminal by the Client in connection with the provision of the Services remain the property of Client.
- 14.2 The Client hereby irrevocably and unconditionally grants to Liminal, free of additional charge, a non-exclusive, worldwide perpetual, transferable licence (including the right to sublicense) to use, reproduce, adapt, modify, exploit, publish, distribute and communicate any Client Background Materials and Third Party Materials to the extent necessary to enable Liminal to provide the Services and develop any product.
- 14.3 The Client warrants and agrees that any use by Liminal of Client Background Materials and Third Party Materials will not infringe the Intellectual Property Rights or Moral Rights of any third parties, including in any plans, specifications, drawings, Asset, artistic work or representations, source code, object code, documentation or other materials or information provided by the Client to Liminal.
- 14.4 **Developed Materials.** The ownership of Intellectual Property Rights in any Developed Materials and any Components shall vest in Liminal upon the time of its creation.

14.5 **Liminal Background Materials.** Intellectual Property Rights in all Liminal Background Materials used and identified to the Client by Liminal in connection with the provision of the Services or the creation of any Product remains the property of Liminal.

15. Liability

15.1 The Client will indemnify, defend and hold Liminal and each of its employees and agents harmless against any Loss which any of them may sustain or incur as a result of or in connection with:

- (a) a claim by a third party in respect of any infringement of the Intellectual Property Rights or any other proprietary right where such claim relates to, or is connected with, a Specification, representation, information, or materials (including Client Background Materials and Third Party Materials) provided by the Client;
- (b) any breach by the Client of this Contract including any warranty under this Contract;
- (c) any claim arising out of an inaccuracy, ambiguity or omission in a Specification or a reasonable interpretation or assumption made as a result of such inaccuracy, ambiguity or omission; or
- (d) any negligence, fraud or deliberate or wilful misconduct of the Client, its Personnel or end users of the Product.

15.2 The liability of a party for Loss sustained by the other party will be reduced proportionately to the extent that such Loss has been caused or contributed to by the other party's failure to comply with its obligations and responsibilities under this Contract and/or the negligence, fraud or deliberate or wilful misconduct of the other party.

15.3 To the maximum extent permitted by law, Liminal will not be liable for Loss associated or connected with any nausea, seizure, sickness, stroke, eye strain, psychological reaction, personal injury, death or any property damage, any physical condition that Liminal could not reasonably have known about at the time of conducting the Services, any decision or action taken in response to or informed by the use of a Product, or any action under tort, the Australian Consumer Law or any foreign law, caused or contributed by the use, distribution or sale of a Product, Developed Materials or Documentation.

15.4 The aggregate liability of Liminal to the Client in respect of all Loss arising from breach of contract, tort (including negligence) or otherwise, in for all claims arising under or in connection with the Contract is limited to the lesser of:

- (a) the cost of replacing or resupplying the Product or Services; or
- (b) the Fees for the supply of the Product or Services to which the claim relates.

16. Confidentiality

16.1 The Client must not, and must ensure that each of its Personnel do not:

- (a) use or reproduce Confidential Information except as necessary to perform its obligations under this Contract; and
- (b) disclose or otherwise make available any Confidential Information to any other person, other than to Personnel of the Client who have a need to know the Confidential Information for the purposes of this Contract.

16.2 The Client must take all reasonable steps protect the Confidential Information from unauthorised use, access, or disclosure.

17. Disputes

17.1 If a dispute arises under this Contract or concerning its subject matter, a party must not commence or maintain a court action or proceeding until the parties have taken all reasonable efforts (including mediation) to resolve the dispute in good faith.

18. Termination

18.1 **Termination for default.** Either party (**First Party**) may terminate this Contract by notice in writing to the other party (**Other Party**) if:

- (a) the Other Party fails to remedy, to the satisfaction of the First Party, any breach of the Contract (which in the reasonable opinion of the First Party is able to be remedied) within 28 days after the date on which the First Party issues the Other Party a written notice requiring the First Party to remedy the breach;
 - (b) the Other Party breaches any material provision of this Contract and in the reasonable opinion of the First Party the breach cannot be remedied; or
 - (c) the Other Party becomes insolvent or undergoes a change in its structure which, in the reasonable opinion of First Party, adversely affects the Other Party's ability to carry out its obligations and duties under this Contract.
- 18.2 **Effect of Termination.** Upon termination or expiration of this Contract by Liminal for any reason, any amounts owed to Liminal will be immediately due and payable.
- 18.3 **Survival.** The following provisions will survive expiration or terminate on of this Contract: Clauses 3, 4, 5, 7**Error! Reference source not found.**, 8.2, 11, 12, 13, 14, 15, 16, 17, 18.2, 18.3, 19.1, 19.3, 19.4, 19.5, 19.7 and 20.

19. General

19.1 Notices

- (a) Any notice given to a party under this Contract is only given if it is in writing and delivered or posted to that party at its address and marked for the attention of the relevant officer (if any) set out in the Contract to which that notice applies.
 - (b) If a party gives the other party three business days' notice of a change of its address, any notice is only given by that other party if it is delivered or posted to the latest address.
 - (c) Subject to clause 19.1(d), any notice is to be treated as given at the following time:
 - (i) if it is delivered, when it is left at the relevant address;
 - (ii) if it is sent by post, two (or, in the case of a notice or communication posted to another country, nine) business days after it is posted; or
 - (d) If any notice is given at the place of the party to whom it is sent, on a day that is not a business day or after 5.00pm on a business day, it is to be treated as having been given at the beginning of the next business day.
- 19.2 **Variations.** No variation of this Contract will be of any force or effect unless it is in writing and signed by both parties to the Contract.
- 19.3 **Implied Terms.** No terms will be implied into this Contract.
- 19.4 **Waiver.** A waiver of any right, power or remedy under this Contract must be in writing signed by the party granting it and only affects the particular obligation or breach for which it is given.
- 19.5 **Force Majeure.** Any delay in the performance of any duties or obligations of either party (except the payment of any Fees or Rates) will not be considered a breach of this Contract if such delay is caused by an:
- (a) act of God (such as, but not limited to, lightning, storm, flood, fire, earthquake, explosion, cyclone, or tidal wave);
 - (b) act of public enemy, war (declared or undeclared), act or terrorism, sabotage, blockade, revolution, riot, insurrection, civil commotion or epidemic, or any decision by any government authority,
- provided that such party uses reasonable efforts, in the circumstances, to notify the other party of the circumstances causing the delay and resume performance as soon as possible.
- 19.6 **No Agency.** Except as expressly provided in this Contract, neither party is an agent, representative, trustee, employee or partner of the other party by virtue of the Contract and neither party may represent itself as such in any circumstances.

19.7 Severability. If any provision of this Contract is unenforceable and remains incapable of resolution by reading down, the inconsistent provisions will be severed from the document and the remaining provisions will continue in full force and effect.

19.8 Counterparts. This Contract may be executed in counterparts.

19.9 Jurisdiction. This Contract is governed by the laws applicable in the State of Victoria.

19.10 Entire Agreement. This Contract constitutes the entire agreement between the parties regarding its subject matter and supersedes all prior or contemporaneous agreements, understandings and communications, whether written or oral.

20. Definitions and Interpretation

20.1 Definitions

In this Contract, unless the contrary intention appears:

Acceptance means sign off by the Client in acknowledgment that agreed acceptance test criteria have been satisfied in respect of an Asset, Application, Service or Product.

Agreed Terms means these terms and conditions.

Application means software to be developed or provided by Liminal, including an executable file to launch the software and any source code, object code or script that forms part of the software, any software integration work or database.

Asset means assets to be created or used by Liminal for use in conjunction with an Application, including 3D models, room geometry, wireframes, textures, rigs, artistic features, audio files, music files, UX features, renders, videos, photographs, animations, characters, method of navigation or interactivity, lighting effects, haptic feedback, or any other observable feature of a virtual reality experience, augmented reality experience, video, photograph, 2D render or other audiovisual product.

Australian Consumer Law has the same meaning as set out in the *Australian Consumer Law and Fair Trading Act 2012 (Vic)*.

Client means the party that has engaged Liminal under any Contract, including any assigns or successor body.

Client Background Materials means any Intellectual Property Rights in any materials provided by the Client to Liminal under this Contract.

Commencement Date means the date this Contract comes into effect that being, the date that the Client pays a Fee to commence the Services.

Components means the underlying components of Software or a Product, including any underlying source code, object code, configuration, tools, Assets, object libraries and methodologies owned by Liminal or licensed to Liminal, which is used in connection with a Product.

Confidential Information means any technical, marketing, scientific, commercial, financial or other information of, about or in any way related to Liminal, including:

- (a) Intellectual Property of Liminal or research, methodologies, or knowhow made available to the Client by Liminal;
- (b) the terms and conditions set out in this Contract, including the Fees and Rates, and these Agreed Terms;
- (c) any quote provided by Liminal;
- (d) any processes, policies, procedures, templates, or methodologies concerning the product development process of Liminal (including any Specification);
- (e) any Components;
- (f) any information designated by Liminal as confidential, which is disclosed, made available, communicated or delivered to the Client in connection with this Contract.

Consultancy Services means any services of a professional nature, including services relating to technical matters, psychological matters, business analytics, the preparation of Specifications, or other consultancy services (as the case may be) to be provided by Liminal to the Client under clause 6.1 of the Agreed Terms.

Contract means either:

- (a) a contract executed between the Client and Liminal that expressly incorporates these Agreed Terms; or
- (b) if there is no contract executed in accordance with subclause (a), a quote (including any supporting documentation) or email that has been provided by Liminal that expressly incorporates these Agreed Terms which has been accepted by the Client and for which either:
 - (i) Services have commenced; or
 - (ii) an Fee has been paid by the Client to Liminal.

Developed Materials means anything created by Liminal under this Contract, which may include a Product.

Development Services means the development and testing of a Product by Liminal in accordance with a Contract.

Documentation means any document, plans, instructions, methodologies, supporting documentation and other materials provided by Liminal to the Client in accordance with this Contract.

Fees means the Fees set out in this Contract.

Intellectual Property Rights means copyright, trade mark, design, patent, semiconductor or circuit layout rights, trade, business or company names, or other proprietary rights, or any rights to registration of such rights existing in Australia, whether created before, on or after the Commencement Date.

Liminal means Liminal VR Pty Ltd (ACN 95 604 859 289).

Liminal Background Materials means any Intellectual Property Rights in any works, items, templates, methodologies, software, Components, Documentation or systems owned or created by Liminal prior to the Commencement Date or developed independently of a Contract entered into between Liminal and the Client.

Loss means losses, damages, liability, costs, expenses, suits and claims (whether direct, indirect or consequential), including legal costs on a full indemnity basis.

Moral Rights means moral rights under and in accordance with the *Copyright Act 1968* (Cth).

Personnel includes officers, employees, agents, assigns, directors, shareholders, contractors and consultants.

Product means a deliverable under this Contract which may include but which is not limited to an Asset, Application, Developed Materials, software, hardware, database and/or Documentation to be supplied by Liminal to the Client, and includes any data generated by a Product .

Rates means any rates payable on a time and materials basis set out in this Contract or agreed by the parties.

Service means a service (which may include but which is not limited to Consultancy Services, Development Services, Support Services and Training Services) to be supplied under this Contract by Liminal to the Client.

Specification means technical or descriptive specifications of functional, operational, performance or other characteristics required of a Service or Product appended to, or referred to, in this Contract,.

Support Services means the support services provided in relation to a Product provided in accordance with this Contract and clause 6.3 of these Agreed Terms.

Third Party Materials means any third party materials used, identified or provided by the Client to Liminal for the purposes of this Contract.

Training Services means any training services to be provided by Liminal in accordance with clause 6.4.

20.2 Interpretation

In the interpretation of this Contract and these Agreed Terms, the following provisions apply unless the context otherwise requires:

- (a) headings are inserted for convenience only and do not affect the interpretation of this Contract;
- (b) a reference in this Contract to a "business day" is a reference to a day other than a Saturday or Sunday on which banks are open for business generally in Melbourne, Victoria;
- (c) if the day on which any act, matter or thing is to be done under this Contract is not a business day, the act, matter or thing must be done on the next business day;
- (d) a reference in this Contract to "dollars" or "\$" means Australian dollars and all amounts payable under this Contract are payable in Australian dollars;
- (e) a reference in this Contract to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision;
- (f) a reference in this Contract to any document or agreement is to that document or agreement as amended, novated, supplemented or replaced;
- (g) a reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Contract;
- (h) an expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency;
- (i) where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning;
- (j) a word which indicates the singular also indicates the plural, a word which indicates the plural also indicates the singular, and a reference to any gender also indicates the other gender;
- (k) a reference to the word "include" or "including" is to be interpreted without limitation; and
- (l) a reference to the word 'Contract' includes a reference to these Agreed Terms.