

INTRODUCTION

- (a) **Terms of Agreement.** This Agreement consists of:
 - (i) any terms in this document;
 - (ii) any terms in an Order; and
 - (iii) any terms in a Quote;
- (b) **Inconsistency.** If there is an inconsistency between a provision of the documents set out in **clause 1** then the provision in this document in **clause 1** will take precedence.

1. QUOTES, ORDERS and OTHER CONTRACTS

- (a) **Quotes** provided by us to you are valid and open for acceptance for a period as stated in the quote.
- (b) **Amended Quotes.** We reserve the right to amend any Quote before completion of an Order to account for:
 - (i) any change in your original Order; and
 - (ii) any change to the cost of completing the Order.

We will notify you of any amendment as soon as practicable, at which point the amended quotation will be the Quote for the purposes of this Agreement.
- (c) **Process for ordering.** You can submit an Order Request to sales@flaimsistemas.com or to an authorised FLAIM sales representative. Your Order request should specify the Goods and Services you require.
- (d) **Order Confirmation.** Upon receiving an Order Request, or after speaking with you, we will send you an Order Confirmation, Quotation or Pro-Forma Invoice setting out the commercial details and other terms on which we will supply you with the Goods and Services.
- (e) **Acceptance.** If you wish to accept an Order Confirmation issued by us, you must promptly confirm in writing via email attaching the Order Confirmation or Quote.
- (f) **Separate contract.** Each time that an Order Confirmation or Quote is accepted by you, a separate contract is formed between the Parties for the supply of the Goods and Services (each an **Order**) as set out in the Order Confirmation or Quote.
- (g) **Order Terms.** Each Order is governed by the agreed terms and conditions in:
 - (i) the relevant Order Confirmation or Quote; and
 - (ii) this Agreement; and
 - (iii) Any other Services Agreement that accompanies the relevant Order Confirmation or Quote.
- (h) **Commencement and term.** Each Order commences on the date that the relevant Order Confirmation Form is received by us and continues indefinitely until the Order is terminated in accordance with this Agreement.

2. PROVISION OF GOODS AND SERVICES

- (a) **Deployment.** For each Order, we will supply the Goods and Services as specified in the Order

Confirmation or Quote in accordance with this Agreement.

- (b) **Shipping and Delivery.** We will deliver to you the agreed quantity of Goods and Services in accordance with the shipping and delivery terms as stated in the Order Confirmation, Quote or Services Agreement.

3. LICENCE TO INSTALL AND USE FLAIM™ SYSTEM

- (a) **Use of System.** You must install and use the System in accordance with the terms of this Agreement and any applicable User Manual provided by FLAIM. Your use of the System is subject to any conditions and qualifications set out in this Agreement and the User Manual.
- (b) **Proprietary Software.** Subject to this Agreement we grant a non-exclusive and non-transferrable licence (with no right to sublicense) to install and use the Proprietary Software for the Term of the System Subscription, unless otherwise determined in a Services Agreement.
- (c) **Third Party Software.** The System incorporates Third Party Software, as listed in the User Manual. You agreed to comply with any terms and conditions that a Third Party may impose in relation to the use of that Third Party Software. Our sole and exclusive liability and responsibility for the Third Party Software is limited to passing through to you the benefit of any warranty obtained from the relevant provider in respect of the Third Party Software, such pass-through to be subject to such terms conditions and limitations as specified by the Third Party Software provider.

4. SCENARIO LIBRARY

- (a) **Licence to FLAIM™ Scenario Library.** If indicated in the Order, and subject to this Agreement, we grant you a non-exclusive and non-transferrable licence (with no right to sublicense) to access FLAIM™ Scenario Library.
- (b) **Modifications to the FLAIM™ Scenario Library.** We reserve the right to, at any time and without liability or notice to you:
 - (i) discontinue or modify any aspect of the FLAIM™ Scenario Library (including its functionality);
 - (ii) modify any scenario available on the FLAIM™ Scenario Library; and
 - (iii) remove any scenario from the FLAIM™ Scenario Library.
 - (iv) limit access to the Scenario Library in line with any access restrictions stipulated at the time your software licence commences or is renewed.
- (c) **Unauthorised access to your FLAIM™ Scenario Library account.** You must not authorise any third parties to use your FLAIM™ Scenario Library account. You must not distribute any material from the FLAIM™ Scenario Library to any third parties. You must ensure that the Service is kept secure from

unauthorised access, use or modification, including by keeping your account login details secure, secret and confidential.

5. SERVICES

- (a) **Services.** Subject to you complying with the terms of this Agreement, we will use our reasonable endeavours to provide the Services in accordance with this Agreement.
- (b) **Delays by Customer.** If you fail to comply with any of your obligations under this Agreement or you delay in performing an action or doing something that impacts on our ability to perform our obligations, then:
 - (i) we are relieved of our obligations under this Agreement to the extent that we cannot perform them because of such failure or delay;
 - (ii) any timetable for the provision of Services will be adjusted to take into account such failure or delay (by way of extension to the time for us to perform our obligation);
 - (iii) you agree to pay any reasonable additional costs or expenses incurred by us as a result of your failure of delay.
- (c) **Subcontracting.** We may engage appropriately skilled and experienced subcontractors to provide the Services provided under this Agreement. We will retain responsibility for any such subcontractor.

6. YOUR OBLIGATIONS

- (a) **Administration.** For each Order, you must notify us of your contacts and their contact details so that we can communicate with you, and you must notify us if these details change.
- (b) **Training.** We provide Training Services on a 'Train the Trainer' model. We will advise you of the training needed for your personnel to use the System. We have no responsibility in relation to the training of these personnel except as set out in this clause. You accept responsibility for the actions of each person that you authorise or enable to use the System.
- (c) **Permitted Purpose.** You must only use the System for the Permitted Purpose.
- (d) **Prohibited uses.** You must not use the System in:
 - (i) operational or actual fire-fighting; or
 - (ii) live fire training using gas fired, carbonaceous or other fuelled fire training;
 - (iii) outside in direct sunlight or wet conditions or where exposed to direct water or other firefighting liquids and agent streams; or
 - (iv) any physical environment or conditions that are reasonably unsafe or prohibited under applicable workplace health and safety laws.
- (e) **Use in accordance with User Manual.** You must only use (and must ensure that your personnel and each person that you authorise or enable to use the Systems only use) the Systems in accordance with the User Manual.
- (f) **Age of users.** You must ensure that the System is not used by any person under the age of 14 under any circumstance or by any person aged between 14 and 18 without the consent of a parent or legal guardian.

- (g) **General Customer Obligations.** You must:

- (i) promptly tell us if you become aware of any problem or defect in the System, provide us with all assistance and cooperation as reasonably requested by us in the performance of the Services, respond in a timely manner to our reasonable queries, and avoid unreasonable delays in making decisions;
- (ii) ensure that materials supplied to us are complete, accurate and in a format agreed by the Parties (if any);
- (iii) appoint and maintain sufficient numbers of appropriately qualified personnel to liaise with us in relation to the performance of this Agreement; and
- (iv) comply with your obligations (if any) under any Order.

- (h) **Restrictions.** You are solely responsible for your actions and the actions of your users while using the Systems or other Services unless expressly stated otherwise in this Agreement and:

- (i) you and your users must not commercially distribute or re-sell the System, or any Services provided under this Agreement;
- (ii) without permission of us, you and your users must not license, sub-license, reproduce, copy, modify, create derivative works of, sell, exploit, rent, lease, transfer, assign, distribute or disclose the System or any Services or any part of them, except as provided in this Agreement;
- (iii) you and your users must not modify, reverse engineer, disassemble, decompile, reverse compile or otherwise try to access or reproduce the operation of the System or Services and must not modify, attack, disrupt or circumvent any software or other material used by us to provide or control access to the System or Services;
- (iv) you and your users must maintain and not alter or remove any copyright, trademark or other protective notice on the System, Services and/or Service Materials or in any copy of or any component of any of them, and
- (v) you must not directly or indirectly assist or permit any other person to do any of these things.

- (i) **Your Environment.** You are responsible for providing the Environment and ensuring the Environment functions properly in order to use the System.

7. FLAIM™ SYSTEM RISK AND WARRANTIES

- (a) **Title and Risk.** Title to a System hardware (not including any IP Rights in the System) will only pass to you on payment of the fees for the System purchase in full. In the case of Loan or Hired Systems, title will remain with us for the duration of the Loan or Hire Contract. Risk of loss of and damage to the System will pass to you upon delivery of the System to you.
- (b) **Limited Warranty.** Subject to the terms of this Agreement, we warrant the Systems you order will materially conform with the User Manual for 12

months after the System is delivered to you or any longer period validly purchased by a Customer in an Order.

- (i) We warrant to maintain the System Software for the duration of an active fully paid Software License by providing regular Software release updates and online support.
- (ii) The Warranty period commences on the sooner of; the date that the System Serial number is activated on FLAIM's registration portal or, on the date of the FLAIM invoice if the Serial number is not activated within 60 days after the date of FLAIM invoice. For the avoidance of doubt the warranty is void if the Serial number is not activated within 90 days of the FLAIM invoice date.
- (iii) FLAIM warrants all System Hardware components provided as part of the System to be free from defects in material and workmanship if used under Normal Use Conditions.
- (c) **Exclusions.** We are not liable for non-conformity of any part of the System where the non-conformity is caused by use of the System for any purpose other than the Permitted Purpose, any Force Majeure Event, use of the System other than as described in the User Manual, use of the System in a manner or for a purpose not reasonably contemplated by this Agreement, modification of the System by a person (including you) not expressly authorised by us (including using the System with unauthorised Third Party components) or damage, corruption or loss of the System (or any part of a System) after delivery to you.
- (d) **Specific Exclusions.**
 - (i) if any of the Serial numbers, or date codes, warranty seals (if used) as the case maybe, has been removed, erased, defaced, or altered, or is illegible;
 - (ii) to consumable parts, such as straps, face masks, cloths or protective coatings that are reasonably expected to diminish over time, unless failure has occurred due to a malfunction;
 - (iii) Power banks and batteries are covered for defects in material and workmanship, power banks and batteries are reasonably expected to diminish over time and their lifespan impacted by the amount of use and frequency of charging cycle's.
 - (iv) to malfunctions caused by batteries if improperly installed, or if the seals of the battery enclosure or the battery back is broken or show evidence of tampering;
 - (v) to malfunctions caused by electrical surges or other electrical current problems that are not the fault of the product;
 - (vi) to use not in accordance with the user manual or not under normal use conditions;
 - (vii) to rough handling; use outdoors; exposure to liquids, liquid damage, dampness or extreme

thermal or environmental conditions or a rapid change in such conditions; corrosion; or oxidation

- (viii) to damage caused by or resulting from modifications or non-warranty repairs;
 - (ix) to accidents, forces of nature, or other actions beyond the reasonable control, including deficiencies in consumable parts, unless the defect was caused directly by a malfunction;
 - (x) to physical damage to the surface of the Headset, including but not limited to cracks or scratches on the surfaces of the Headset, including any screen or lens;
 - (xi) to the Software and Operating System and/or firmware that has been altered, including any failed attempts to alter the Operating System;
 - (xii) to malfunctions caused by unplugging any cable from or otherwise powering off the System during any firmware update;
 - (xiii) to malfunctions caused by the use of the System with or connection to an accessory or product not approved or provided by FLAIM, or used in any way other than its intended use and where such defect is not the fault of the System itself;
 - (xiv) if the payment is not made as per Clause 8;
 - (xv) to the System operated by people under the influence of alcohol or other substances.
 - (e) **Other warranties.** To the best of our knowledge, the System does not include any misappropriated intellectual property or infringe any IP Rights of a Third Party. We further warrant that we have the right to grant any licences required to give effect to this Agreement and to the best of our knowledge using commercially available antivirus programs, the System does not contain any viruses or other harmful components. You acknowledge that we expressly exclude any warranty that the System will be error-free or capable of continuous operation beyond the duration of the Software Licence at the time of Purchase.
- ## 8. PAYMENTS
- (a) **Invoicing.** We will invoice you for the Fees in accordance with the terms set out in the Order Confirmation as accepted by you in your order.
 - (b) **Payment Due Date.** You must pay our invoices within the specified terms of the Order Confirmation.
 - (c) **Interest on Overdue Amounts.** We reserve the right to charge interest on payments more than 30 Business Days overdue (including on disputed amounts which are later agreed or found to have been properly invoiced), calculated at our then-current bank overdraft rate.
 - (d) **Tax.** You must pay or cause to be paid when due and payable all tax applicable to supplies made under this agreement including tax on or in respect of the export, import, delivery and shipment of the System ("**Indemnified Taxes**"). We confirm that unless expressly specified otherwise in an Order, your pricing is exclusive of all applicable taxes and duties.

We are not liable to pay or reimburse you in relation to the Indemnified Taxes and you indemnify us from any liability arising out of or in relation to the Indemnified Taxes.

- (e) **Withholding.** All amounts payable by you to us under this Agreement must be made in full and without any deduction or withholding on account of any tax except as required by law or otherwise by a Government Agency. If you are required by law or otherwise by a government agency to deduct an amount in respect of tax from any amount payable to by you to us, you must deduct the amount of tax and remit the amount of tax to the relevant Government Agency in accordance with the applicable law, promptly provide us with an original receipt for the amount of tax deducted and remitted to the relevant Government Agency and pay an additional amount to us so that, after making the deduction, we receive (at the time payment of the amount otherwise due) the amount we would have received if no deduction was required. In the event that you withhold tax pursuant to this Agreement, then we will reimburse you the amount withheld by you, provided that you have paid us the grossed-up amount and we receive a tax credit from the applicable tax regulator for the amount of the withholding tax paid by you.

9. IP RIGHTS

- (a) **Ownership of IP Rights.** As between us and you, we retain all right, title and interest in and to any and all IP Rights subsisting in the System the User Manual, the Service Materials and any and all modifications, revisions, changes, or improvements to them. We own any and all new IP Rights developed by us in the course of performing our obligations under this Agreement.
- (b) **Acknowledgement.** Without limiting the above clause, you acknowledge and agree that all IP Rights in the System, the User Manual and the Service Materials are owned by us and this Agreement does nothing to alter such ownership, notwithstanding the use of the terms “purchase,” “sale”, or any similar terminology in connection with this Agreement or any Order. Any and all IP Rights (subject to any rights used by Third Parties in Third Party Software) in the System are licensed, not sold and that you have and acquire no right, title or interest in or those IP Rights other than the rights expressly granted by this Agreement. All goodwill or other right, title or interest arising from use of the System are fully owned by us and all rights not expressly granted under this Agreement are reserved to us.
- (c) **No misuse of IP Rights.** You will not (and must ensure that your personnel, contractors, subcontractors, officers, agents, and related entities do not) do any act which may infringe any IP Rights in (or in any way related to) the System, the User Manual, the Service Materials; challenge or in any manner impugn the validity of any of our IP Rights, or our ownership of (or other rights in or to) our IP Rights, or in any way encourage, assist or procure a Third Party to take any of the actions referred to in this clause.

- (d) **Protection rights.** You agree we may protect our rights by seeking urgent injunctive relief.
- (e) **Confidentiality.** Without limiting the terms of any confidentiality agreement in place between us and you (or any other clause of this Agreement), neither Party may disclose or use the other Party's Confidential Information except to its own personnel to the extent necessary for the performance of this Agreement. A Party must ensure that its personnel are aware of the confidential nature of the information before or at the time it is disclosed to them under this clause. Each Party agrees to advise the other if it becomes aware of any misuse or unauthorised disclosure of the other Party's Confidential Information and to assist the other Party with any action the other Party takes. The obligations imposed on a Party under this **clause 9(e)** do not apply to information which, without a breach of confidence, is public knowledge or was in a Party's possession or developed by a Party prior to that Party obtaining that information from the other. If a Party is required by law or the rules of any stock exchange to disclose the other Party's Confidential Information, it may do so, but that information remains Confidential Information for all other purposes.
- (f) **Use of FLAIM™ Branding.** You must not:
 - (i) alter, remove or modify any of the FLAIM™ Branding from the System;
 - (ii) use FLAIM™ Branding in a manner which, in our reasonable opinion, may be prejudicial to us or the FLAIM™ Branding; or
 - (iii) apply to register any trade mark, business name, company name or domain name which includes any FLAIM™ Branding, or which is substantially identical or deceptively similar to any FLAIM™ Branding
- (g) **IP Indemnity.** We will indemnify you against liability under a final judgement that your use of our Proprietary Software as part of a System infringes another person's IP Rights or a settlement of such a claim that is agreed to by us. However, we will have no liability to you if you admit your or our liability; fail to promptly notify us in writing of any relevant proceedings, threats of proceedings or allegations of infringement, refuse to allow us to conduct the relevant defence and settlement negotiations, refuse to provide us with reasonable assistance, at our cost, or if the infringement results from your use of the System other than for the Permitted Purpose or otherwise than as specified in this Agreement or if you refuse to allow us to modify, resupply or substitute the Proprietary Software to render it non-infringing. This clause sets out our sole obligation and liability in respect of allegations or findings that the Proprietary Software infringe another person's IP Rights.

10. LIABILITY

- (a) **Acknowledgement.** We are not a registered training organisation, training provider or accredited trainer and we make no representation or guarantee to the capability, competency or suitability of training as

individuals or in groups to safely and effectively perform the task of firefighting or the use of firefighting or other equipment and systems, or to perform emergency response services, after using the System. You acknowledge that the System provides simulations of emergency situations in a controlled environment and as such, cannot fully prepare you or your personnel for a genuine emergency situation. You acknowledge that the System is designed to complement existing real world training for emergency services personnel and should be implemented in conjunction with other types of emergency personnel training. We do not warrant that any simulation scenarios available for use with or as part of the System (including those that are created by us through the Services) are fit for purpose.

- (b) **Exclusion of Liability.** While we have and will continue to use all reasonable endeavours to minimise the risk of harm to any user of each System, we will not be liable to you or any of your personnel or any person (including any user of any System) for any loss (including, without limitation, any damage to property), damage, cost, expense, personal injury, illness or death which is suffered or sustained (including but not limited to that arising from any person's negligence) in connection with the System including use of the System. To the extent that any liability cannot be excluded by law, that liability is limited to the maximum extent allowable by law.
- (c) **Liability Limited.** Without limiting the above clause, the total cumulative liability of us to you for breach of this Agreement, or in tort (including negligence), or for any other common law or statutory cause of action arising out of the operation of this agreement will be limited to the total fees paid by you to us in the year prior to the breach or act giving rise to the cause of action.
- (d) **Consequential loss excluded.** To the fullest extent permitted by law, under no circumstances, including negligence, will either Party be liable to the other Party or any Third Party for any indirect, incidental, special, exemplary, punitive, Third Party or consequential loss, or for any loss of profits, loss of production, loss of revenue, business interruption, loss of data or loss of business information arising out of, based on or resulting from this Agreement. These limitations and exclusions apply regardless of whether the loss, liability or damages arise from breach of contract, negligence or any other cause of action.
- (e) **Contribution.** A Party's liability to the other Party is reduced to the extent (if any) that the other Party caused or contributed to the relevant loss.
- (f) **Exclusion of warranties.** All conditions, warranties and terms not expressly stated in this Agreement are excluded. However, any term implied by legislation which cannot be lawfully excluded is not excluded. Our sole liability for breach of such an implied term is limited to (at our option) in respect of Goods, the replacement or repair of the Goods or supply of equivalent Goods or payment for replacing or

repairing the Goods or supplying equivalent Goods or in respect of Services, the resupply of the Services or payment for resupply of the Services.

- (g) **Insurance.** You must at your cost take out and maintain at all times for the duration of this Agreement a public liability insurance policy with a reputable insurer. The policy must cover your liability to your personnel and third parties for loss or damage to property and the death of or injury to any person (other than liability which the law requires to be covered under a workers' compensation insurance policy) to a reasonable level.

11. TERMINATION

- (a) **Right to terminate for cause.** A Party may immediately terminate this Agreement and any Order by giving notice in writing to the other Party if the other Party is, becomes, or is at immediate and serious risk of becoming, subject to an Insolvency Event or the other Party is in breach of a material form of this Agreement, and that breach is incapable of remedy, or has not been remedied within 20 Business Days after notification of the breach by the other Party providing details of the breach and requiring it to be remedied within that time.
- (b) **General Consequences of Termination.** On termination of this Agreement, the accrued rights of the Parties are not affected; each Party has the right to repossess any of its property (including Confidential Information) in the other Party's possession, custody or control; and clauses of this Agreement that are expressed to, or by their nature, survive the termination or expiry of this Agreement will survive and continue in effect.

12. GENERAL

- (a) **Dispute resolution.** If a dispute between the Parties arises relating to this Agreement, then the Party claiming the dispute may give the other Party a written notice of the Dispute identifying and providing details of the Dispute (**Notice of Dispute**). Within 10 Business Days after receiving a Notice of Dispute, a senior representative (or his or her nominee) of each Party must meet and attempt to resolve the dispute within 10 Business Days of receipt of the Notice of Dispute. All aspects of every such conference, except the fact of its occurrence, will be privileged. If the dispute is not resolved within the following 10 Business Days (or such other period as agreed), the Parties will endeavour in good faith to settle the dispute by mediation, which will be conducted in accordance with Australian Disputes Centre Mediation Guidelines, before having recourse to arbitration or litigation. The mediation will be carried out in the most convenient manner and forum as agreed by the Parties (for example, via telephone or video conference). A Party must not start court proceedings unless they have first complied with this clause, however, nothing in this clause prejudices the right of a Party to institute proceedings to seek injunctive or urgent declaratory relief.
- (b) **Force Majeure** If a Party is unable to carry out its obligations under this agreement by reason of Force Majeure, that Party must give the other Party prompt

written notice and details of the Force Majeure. The obligations of a Party, so far as they are affected by the Force Majeure event, are suspended during the continuance of the Force Majeure. An affected Party must use its best efforts to remove the Force Majeure as quickly as possible. The obligation by a Party to pay monies due to the other Party is not subject to the provisions of this clause.

- (c) **Privacy** You agree that any personal information provided by you to us will be managed under our Privacy Policy, as updated from time to time.
- (d) **Notices:** The particulars for delivery of notices under this Agreement are set out in an Order Confirmation or Quote, as updated.
- (e) **Legal costs:** Except as expressly stated otherwise in this Agreement, each Party must pay its own legal and other costs and expenses of negotiating, preparing, executing and performing its obligations under this Agreement.
- (f) **Amendment:** This Agreement may be varied by us at any time by update on the Flaim Systems Website.
- (g) **Waiver:** No waiver of a right or remedy under this Agreement is effective unless it is in writing and signed by the Party granting it.
- (h) **Rights cumulative:** Except as expressly stated otherwise in this Agreement, the rights of a Party under this Agreement are cumulative and are in addition to any other rights of that Party.
- (i) **Consents:** Except as expressly stated otherwise in this Agreement, a Party may conditionally or unconditionally give or withhold any consent to be given under this Agreement and is not obliged to give its reasons for doing so.
- (j) **Further steps:** Each Party must promptly do whatever the other Party reasonably requires of it to give effect to this Agreement and to perform its obligations under it.
- (k) **Governing law and jurisdiction:** This Agreement is governed by and is to be construed in accordance with the laws applicable in Victoria, Australia. Each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in Victoria, Australia and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.
- (l) **Assignment:** You may only assign, novate or deal with any right or obligation under this Agreement or an Order with our prior written consent. Any purported dealing in breach of this clause is of no effect. We may assign, novate or deal with any right under this Agreement or an Order where such assignment, novation or dealing is to or with a related entity of us, in the context of a sale or transfer of our business, or to any company that has the financial and technical capacity to support the System, supply the Services under terms agreed with you.
- (m) **Entire understanding:** This Agreement constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all

previous agreements or understandings between the Parties in connection with the relevant subject matter.

- (n) **Relationship of Parties:** This Agreement is not intended to create a partnership, joint venture or agency relationship between the Parties.
- (o) **Other interpretation provisions:** Any reference to taxes in this Agreement or an Order includes any tax, levy, impost, goods and services tax, deduction, charge, rate, compulsory loan, withholding or duty by whatever name called and whether Australian, foreign, state, municipal or local; and any interest, penalty, charge, fine or fee or other amount of any kind assessed, charged or imposed on or in respect of the above.

13. DEFINITIONS

- (a) **Agreement** means each of the documents set out in **clause 1** as well as this document.
- (b) **Business Day** means a day which is not a Saturday, Sunday or bank or public holiday in each of Melbourne Australia and the State and Country in which your head office is located.
- (c) **Confidential Information** means information of a Party disclosed by that Party to the other which is specified as that Party's confidential information, marked as or indicated to be confidential, is by its nature confidential; or which the other Party knows or ought to know is confidential.
- (d) **Customer or "you"** means the person or entity identified in an Order or Quote.
- (e) **Environment** means the systems, networks, servers, equipment, hardware, software and facilities/premises in which, or in connection with which, the System will be used by you.
- (f) **Fees.** Means the fees for the System, Goods and Services as specified in an Order as well as any other fees and costs payable by you under this Agreement.
- (g) **FLAIM™ Branding** means the trade marks (whether registered or unregistered), logos, names, images, and references owned and used by us to identify and promote its business, including FLAIM trade marks.
- (h) **FLAIM Systems Website** means www.flaimsystems.com.
- (i) **Force Majeure Event** means any act of god, strike, lockout, or other industrial disturbance, act of public enemy, war, blockade, public riot, lightning, fire, storm, flood, earthquake, explosion, governmental restraint, or any other event which is not reasonably within the control of a Party relying on it.
- (j) **FLAIM Scenario Library** means the library of simulation scenarios designed to be used on a System.
- (k) **Goods** means hardware, computer systems, components and software (including applications, modules, plugins, mobile devices and APIs), accessories and spare parts supplied by us that form part of the System.
- (l) **Government Agency** means any government, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity.

- (m) **Indemnified Taxes** is defined in **clause 9(d)**.
- (n) **IP Rights** means all registered and unregistered rights throughout the world whenever subsisting (now or in the future) in respect of copyright, trade or service marks, designs, patents, the protection of databases, inventions, discoveries, processes, methods, scientific, technical and product information, utility models, semiconductors or circuit layouts, trade, business or company names, indications of source or appellations of origin, trade secrets, know-how and confidential information, including the right to apply for the registration or grant of any such rights.
- (o) **Insolvency Event** means, in respect of a Party, if that Party is insolvent or otherwise unable to pay its debts as and when they fall due, if a step is taken to enter into an arrangement between that Party and its creditors, if a step is taken by a mortgagee to enter into possession or dispose of the whole or a substantial part of the assets of that Party or if a step is taken to appoint a receiver, liquidator, or administrator or other like person to the whole or a substantial part of the assets of the business of that Party.
- (p) **Laws** means all laws, mandatory instruments and orders including all foreign laws, rules of common law, and rules of equity,
- (q) **Maintenance and Subscription Services** means the subscription to the FLAIM Scenario Library and related software maintenance services as detailed in an Order or Quote.
- (r) **Notice of Dispute** is defined in **clause 12(a)**.
- (s) **Order** means a contract entered into by the Parties as set out in **clauses 1(c)-1(h)** to supply a System, Good or Service.
- (t) **Order Confirmation** means a document setting out details of Goods and Services that we can provide.
- (u) **Order Request** means a request for the supply of Goods and Services.
- (v) **Order Term** means the term of each Order as set out in **clause 1(g)**.
- (w) **Parties** means FLAIM Systems Pty Ltd ABN 71 620 462 946 and the Customer, and **Party** means any one of them as context dictates.
- (x) **Permitted Purpose** means the use of the System:
- (i) for firefighting training for emergency services personnel and first responders (paid and volunteers), and workforce, customer and community engagement conducted by professional first responders, and such other uses as we may authorise in writing.;
 - (ii) in accordance with any reasonable directions given by us from time to time; and
 - (iii) in accordance with all applicable Laws.
- (y) **Proprietary Software** means, the software in which the IP Rights are owned by us and as incorporated into the System.
- (z) **Quote** means a quotation provided for the purposes of defining terms and conditions to be applied to the Order, and to enable acceptance which forms an Order Confirmation.
- (aa) **Services** means any services to be supplied by us under this Agreement.
- (bb) **Service Materials** means any materials (including any documentation, deliverables, modifications, enhancements and derivative works) that are created by us or on our behalf in connection with the System or any Services that we provide to you.
- (cc) **System** means any mixed reality system, supplied by FLAIM, that consists of Hardware and Software, otherwise detailed as the relevant Goods and the Services, described on the FLAIM Systems Website and User Manuals.
- (dd) **Term** means the term of the Agreement as set out in **clause 1(h)**.
- (ee) **Third Party Software** means all software and other materials owned by third parties which is incorporated into the System.
- (ff) **Training Services** means the training services described as such on the Quote or Order.
- (gg) **User Manual** means the user manual, guidelines and specifications for the System supplied by us to you at the time of purchase, and as updated by us from time to time.