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acquisition, merger, sale, operation of law, or otherwise), in whole or in part, without the prior written consent of SideFX (which consent may be withheld by SideFX in its sole and absolute discretion).

**11.5 Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes and replaces all prior or contemporaneous understandings or agreements, written or oral, regarding such subject matter and there are no representations, warranties, conditions or other agreements between the parties in connection with the subject matter hereof except as specifically set forth herein.

**11.6 Binding Arbitration.** Unless otherwise agreed in writing by the parties, all disputes relating to this Agreement shall not be submitted to the courts for resolution, but may be submitted to final and binding arbitration by either party pursuant to the *Arbitration Act, 1991* (Ontario) (the "**Arbitration Act**"). The arbitration shall be treated as confidential and will be held in Toronto, Canada. The arbitral tribunal shall be composed of one arbitrator (the "**Arbitrator**"). The party that wishes to initiate the arbitration (the "**Applicant**") shall deliver a notice to that effect (the "**Notice to Arbitrate**") to the other party, which notice shall nominate an individual to act as the Arbitrator. Within thirty (30) days of the date of receipt of the Notice to Arbitrate (the "**Response Date**") the other party (the "**Respondent**") shall, by notice to the Applicant, either signify its acceptance of the nominee or, in the alternative, propose an alternative individual to act as the Arbitrator (the "**Response**"). If the Respondent fails to provide a Response by the Response Date, the Respondent shall be deemed to have accepted the Applicant's nominee for Arbitrator. If the Respondent provides a Response by the Response Date suggesting an alternative individual to act as Arbitrator, the Applicant shall within thirty (30) days of the date of receipt of the Response, by notice to the Respondent, signify either its acceptance or rejection of the Respondent's nominee for Arbitrator. If the Applicant fails to provide notice by such date, the Applicant shall be deemed to have accepted the Respondent's nominee for Arbitrator. If the Applicant provides notice by such date signifying its rejection of the Respondent's nominee for Arbitrator, the parties shall use commercially reasonable efforts to cause their respective nominees to select the Arbitrator. Any costs associated with same shall be borne equally by the parties. If such selection does not occur within thirty (30) days of the date of the Applicant's rejection notice, then the Applicant may apply to the Superior Court of Justice of Ontario for the appointment of an arbitrator pursuant to the provisions of the Arbitration Act. The costs of the application shall be borne equally by the parties. The parties agree that they will act reasonably and in good faith to ensure the selection of an Arbitrator who is objective, independent and suitably qualified to deal with the dispute. Upon failure, refusal or inability of the Arbitrator to act, his or her successor shall be appointed in the same manner. The costs of the Arbitration shall be in the discretion of the Arbitrator.

**11.7 Governing Law and Jurisdiction for Resolving Claims.** Subject to Section 11.6, this Agreement shall be governed by the laws of the Province of Ontario, Canada and the federal laws of Canada applicable therein and the parties irrevocably submit to the non-exclusive jurisdiction of the Ontario courts. The parties expressly disclaim the application of the *United Nations Convention for the International Sale of Goods*.

**11.8 Headings: Sections.** The division of this Agreement into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. References herein to Sections are to sections of this Agreement.

**11.9 Interpretation of "including".** Where the word "include", "includes" or "including" is used in this Agreement, it means "include", "includes" or "including", in each case, "without limitation".

**11.10 Non-Exclusive Remedies.** All remedies provided for under this Agreement are non-exclusive and are in addition, and without prejudice, to any other rights as may be available to SideFX, whether in law or equity. By electing to pursue a remedy, SideFX does not waive its right to pursue any other available remedies.

**11.11 Export Compliance.** Each party shall comply with the export laws and regulations of Canada, the United States, and other applicable jurisdictions in its provision and, in the case of Licensee, its downloading, installation and Use of, the Software. Without limiting the foregoing: (i) each of SideFX and Licensee represents that it is not named on any

U.S. government list of person or entities prohibited from receiving exports; and (ii) Licensee shall not permit any Person to Use the Software in violation of any U.S. export embargo, prohibition, or restriction.

**11.12 Publicity.** Neither party may issue press releases relating to this Agreement without the other party's prior written consent, or use in any manner the name(s), logo(s) or trade-mark(s) of the other party without such other party's prior written consent. Each party hereby consents to the inclusion of its name and logo by the other party among at least three other companies in lists of customers or vendors in accordance with the other party's standard guidelines.

**11.13 Language.** The parties acknowledge that they have required this Agreement to be written in English. Les parties aux présentes reconnaissent qu'elles ont exigé que la présente entente soit rédigée en anglais.

**11.14 Notice.** Any notice, demand or other communication (in this Section, a "notice") required or permitted to be given or made under this Agreement will be in writing and will be sufficiently given or made if: (i) delivered in person during normal business hours of the recipient on a Business Day and left with a receptionist or other responsible employee of the recipient; (ii) except during any period of actual or imminent interruption of postal services due to strike, lockout or other cause, sent by registered mail; or (iii) sent by facsimile transmission or other electronic means which produces a written record of successful transmission, or by email if receipt is confirmed by the sender's email system. Notices to Licensee shall be sent to the most recent address, facsimile number or email address provided by Licensee to SideFX and to the attention of the contact person on file with SideFX. Notices to SideFX shall be sent to Suite 1401, 123 Front Street West, Toronto, Ontario, M5J 2M2, or (416) 504-6648 or notices@sidefx.com, to the attention of Chief Financial Officer. Each notice sent in accordance with this Section will be deemed to have been received: (iv) on the day it was delivered; (v) on the seventh (7<sup>th</sup>) Business Day after it was mailed (excluding each day on which there is any interruption of postal services due to strike, lockout or other cause); (vi) on the same day that it was sent by facsimile transmission or email provided that it was sent during normal business hours of the recipient on a Business Day, otherwise, on the first Business Day thereafter. Contact information for notice may be changed by giving notice in accordance with this Section. "**Business Day**" means any day of the week except Saturday, Sunday or any statutory or civic holiday observed in Toronto, Ontario.

## 12. DEFINITIONS

When used in this Agreement, each of the following terms has the meaning given to such term below, and grammatical variations of such terms have corresponding meanings.

**"Affiliate"** of a party means any Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by such party, or is Controlled by a Person who also Controls such party.

**"Agreement"** means this SideFX Software License Agreement, as may be amended in accordance with its terms.

**"Applicant"** has the meaning set out in Section 11.6.

**"Arbitrator"** has the meaning set out in Section 11.6.

**"Arbitration Act"** has the meaning set out in Section 11.6.

**"Authorized Subcontractors"** means third parties sub-contracted by Licensee to create content for Licensee.

**"Authorized Users"** means: (i) in the case of all License Types other than a Global Access License and a Project License, Licensee Personnel; and (ii) in the case of a Global Access License and Project License (A) Licensee Personnel, and (B) Licensee Affiliate Personnel and employees of Authorized Subcontractors, provided that Licensee has given SideFX notice of such Affiliates and Authorized Subcontractors, and provided that such Licensee Affiliate Personnel and employees of Authorized Subcontractors are Using the Software solely to create content for Licensee.

**"Certification Authority"** has the meaning set out in Section 10.1.

**"Change of Control"** of Licensee means a change of the Person or Persons that directly or indirectly Control Licensee.

**"Client Computers"** has the meaning set out in Section 3.3.

**"Cloud Service"** means a third party service that provides access to a pool of Computers for installation, hosting, processing and/or storage of software and/or data, where such Computers are outside of the direct physical control

and/or ownership of the Person obtaining the service and where such Computers may or may not be shared by other Persons.

**"Commercial"** means any activity carried on with the intention of, or with a view to, generating revenue or other compensation, directly or indirectly, or that actually generates revenue or other compensation, directly or indirectly.

**"Commercial License"** means any License other than a Non-Commercial License, including a License that is any of the following License Types: Commercial Workstation License, Indie License, Local Access License, Global Access License and Project License.

**"Computer"** means: (i) an electronic device containing one or more central processing units that runs an operating system and accepts information in digital or similar form and manipulates the information for a specific result based on a sequence of instructions; or (ii) a software implementation of such a device (including virtual machines and other emulation technology); in each case that is owned, leased, rented or borrowed by Licensee or the Authorized User.

**"Control"** means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of an entity, whether through the ownership of voting securities, by contract or otherwise.

**"Entitlement"** means a string of data residing on SideFX' systems that the Licensee can redeem (i.e. trade in exchange for a License) or un-redeem, using the tools provided as part of the Software.

**"Indie User"** has the meaning set out in Section 6.2.

**"License"** means a string of data that is issued upon the redemption of an Entitlement, or issued by SideFX directly, and that, when installed on a Computer, allows the Software to be Used on that Computer.

**"License Server"** has the meaning set out in Section 3.3.

**"License Type"** has the meaning set out in Section 3.1.

**"Licensee"** has the meaning set out in Section 1.1.

**"Licensee Affiliate Personnel"** means the (i) employees (including contract employees) of the applicable Licensee Affiliate, (ii) third parties subcontracted by the applicable Licensee Affiliate to create content for Licensee, (iii) co-op and other students engaged by and otherwise working with the applicable Licensee Affiliate, and (iv) interns of the applicable Licensee Affiliate.

**"Licensee Personnel"** means: (i) if Licensee is an individual, that individual; or (ii) if Licensee is an Organization (A) Licensee's employees (including contract employees), (B) independent contractors engaged by Licensee, (C) co-op and other students engaged by and otherwise working with or for Licensee, and (D) Licensee's interns.

**"Network Installation"** has the meaning set out in Section 3.3.

**"Non-Commercial License"** means a License that is any of the following License Types: Apprentice License, Education License and Evaluation License.

**"Notice to Arbitrator"** has the meaning set forth in Section 11.6.

**"Open Source Software"** and **"Open Source Licenses"** have the respective meanings set out in Section 3.11.

**"Orbolt Website"** has the meaning set out in Section 3.10.

**"Organization"** has the meaning set out in Section 1.1.

**"Person"** includes an individual, corporation, partnership, joint venture, trust, unincorporated organization, the Crown or any agency or instrumentality of the foregoing or any other judicial entity recognized by law.

**"Related Materials"** means all materials related to the software being installed and all Upgrades, including documentation, user manuals, training videos, tutorials and files, provided directly or indirectly by SideFX, whether on-line or otherwise.

**"Response"** has the meaning set out in Section 11.6.

**"Response Date"** has the meaning set out in Section 11.6.

**"Respondent"** has the meaning set out in Section 11.6.

**"SideFX"** has the meaning set out in the preamble to this Agreement.

**"Software"** has the meaning set out in the preamble to this Agreement.

**"Taxes"** means any direct or indirect local, state, provincial, federal or foreign taxes, levies, duties or similar government charges or assessments of any nature, including sales taxes, value-added taxes and withholding taxes, exigible on the transaction contemplated by this Agreement.

**"Territory"** means: (a) the country, state, province, municipality or other jurisdiction specified in the Transaction Confirmation; (b) where no Transaction Confirmation is provided to Licensee and Licensee obtains Entitlements(s) through the online process, the Territory will be the province (in the case of Canada), state (in the case of the United States) or equivalent administrative division (in the case of some other country) that corresponds with the address confirmed as part of the online purchase verification; (c) if no country, state, province, municipality or other jurisdiction is specified in the Transaction Confirmation or the online purchase verification, the Territory shall be the province (in the case of Canada), state (in the case of the United States) or equivalent administrative division (in the case of some other country) where Licensee originally installed the License(s). In the case of a Global Access License, the Territory will be the world. With respect to non-interactive Use of the Software in the case of a Network Installation, the Territory will be the world.

**"Third Party Rendering Software"** has the meaning set out in Section 3.7.

**"Transaction Confirmation"** means an invoice issued by SideFX to Licensee in respect of Licensee's licensing of the Software or, where no invoice is issued, the email, quotation or other communication provided by SideFX to Licensee, setting out certain particulars in respect of the licensing of the Software to Licensee, which may include: (i) Licensee's name and contact information; (ii) the Software product being licensed; (iii) the applicable License Type(s); (iv) the fees payable to SideFX; (v) the applicable Territory; (vi) the number of Entitlements and/or Licenses issued or to be issued; (vii) the locations from which the Software may be Used; (viii) the applicable term(s) and/or termination date(s); and/or (xix) any additional restrictions on Use of the Software.

**"Updated Agreement"** has the meaning set out in Section 1.3.

**"Upgrades"** means all updated and/or upgraded versions of the software being installed that SideFX provides or makes available to Licensee from time to time.

**"Usage Purpose"** means: (i) where Licensee is engaged primarily in Commercial activities, the internal requirements of Licensee's business in the ordinary course of such business; and (ii) where Licensee is engaged primarily in non-Commercial activities, the internal requirements of Licensee's ordinary course activities. Notwithstanding the forgoing, the Usage Purpose shall not in either case include the Use of the Software by any Licensee Personnel of an Organization for any personal projects where it is reasonably expected that revenue may be earned.

**"Use", "Used" or "Using"** means: (i) to access, initiate, execute, run, display, view and operate the Software, including to author, modify and run digital assets; and (ii) in the case of the Related Materials only, to review and print.

**"Work Station Installation"** has the meaning set out in Section 3.4.

## APPENDIX A

### Terms and Conditions of License Types

(capitalized terms used below are defined in the Agreement)

#### **Trial License Type**

##### Permitted Use

The Software may be Used only for non-Commercial purposes. The Software may not be Used to generate any work product that will be used in any Commercial manner.

Only Licensee Personnel can Use the Software.

##### Installation

For each License issued, Licensee may install the License and Use the Software only pursuant to a Workstation Installation.

##### License Relocation

No relocating of the License is permitted.

##### Dedicated Computer / License Server Relocation

No relocations permitted.

Term

Fifteen (15) days from the License Activation Date.

**Education License Type**Permitted Use

The Software may be Used only for: (A) purposes directly related to learning, teaching, training and research that are part of the instructional functions performed by a formal educational institution, such as a degree-granting or certificate-granting college or university, or any other dedicated learning, teaching or training facility; or (B) training and education purposes by a Licensee engaged in Commercial activities. The Software may not be Used to generate any work product that will be used in any Commercial manner.

Only Licensee Personnel can Use the Software.

Installation

Licensee may (A) for each License issued, install the License and Use the Software pursuant to a Workstation Installation, or (B) if multiple Licenses are issued for the purpose of usage on a network, install the Licenses and Use the Software pursuant to a Network Installation.

License Relocation

Licensee may relocate the License from the dedicated Computer or a License Server, as applicable, to another Computer (in which case such Computer would then be the dedicated Computer or the License Server, as applicable) only (A) within the Territory, (B) within a one hundred (100) kilometre radius of where the dedicated Computer or License Server was located when the License was originally installed, and (C) upon prior written notice to SideFX. A maximum of one (1) such relocation is permitted without paying the applicable relocation fee to SideFX. (\*)

Dedicated Computer / License Server Relocation

Licensee may relocate the dedicated Computer only (A) within the Territory, (B) to a location within a one hundred (100) kilometre radius of where the dedicated Computer was located when the License was originally installed, and (C) upon the prior written consent of SideFX (which consent may be withheld by SideFX in its sole and absolute discretion).

Term

Three hundred and sixty five (365) days from the License Activation Date.

**Evaluation License Type**Permitted Use

The Software may be Used only for purposes of internal evaluation and demonstration of the capabilities of the Software by and to Authorized Users. The Software may not be Used to generate any work product that will be used in any Commercial manner.

Only Licensee Personnel can Use the Software, unless otherwise agreed by SideFX and set out in the Transaction Confirmation.

Installation

Licensee may (A) for each License issued, install the License and Use the Software pursuant to a Workstation Installation, or (B) if multiple Licenses are issued for the purpose of usage on a network, install the Licenses and Use the Software pursuant to a Network Installation.

License Relocation

Licensee may relocate the License from the dedicated Computer or a License Server, as applicable, to another Computer (in which case such Computer would then be the

dedicated Computer or the License Server, as applicable) only (A) within the Territory, and (B) upon prior written notice to SideFX. A maximum of one (1) such relocation is permitted without paying the applicable relocation fee to SideFX. (\*)

Dedicated Computer / License Server Relocation

Licensee may relocate the dedicated Computer only (A) within the Territory, and (B) upon the prior written consent of SideFX (which consent may be withheld by SideFX in its sole and absolute discretion).

Term

Thirty (30) days from the License Activation Date.

**Commercial Workstation License Type**

Permitted Use

The Software may be Used for Commercial or non-Commercial purposes.

Only Licensee Personnel can Use the Software.

The number of Licenses available to Licensee and its Affiliates is limited to a maximum of five (5), unless otherwise agreed by SideFX.

Installation

For each License issued, Licensee may install the License and Use the Software only pursuant to a Workstation Installation.

License Relocation

Licensee may relocate the License from the dedicated Computer to another Computer (in which case such Computer would then be the dedicated Computer) only (A) within the Territory, (B) within a one hundred (100) kilometre radius of where the dedicated Computer was located when the License was originally installed, and (C) upon prior written notice to SideFX. A maximum of two (2) such relocations in any rolling seven hundred and fifty (750) day period is permitted without paying the applicable relocation fee to SideFX. (\*)

Dedicated Computer / License Server Relocation

Licensee may relocate the dedicated Computer only (A) within the Territory, (B) to a location within a one hundred (100) kilometre radius of where the dedicated Computer was located when the License was originally installed, and (C) upon the prior written consent of SideFX (which consent may be withheld by SideFX in its sole and absolute discretion).

Notwithstanding the foregoing paragraph and part (b) of Section 2.1 of the Agreement, if Licensee is an individual freelance worker who is self-employed and does not have an affiliation or long-term (i.e. longer than nine (9) months) contractual arrangement with any particular Organization, Licensee may relocate the dedicated Computer and Use the Software anywhere in the world in order to provide freelance services to third parties.

Term

Starting from the License Activation Date and ending on: (i) the termination date as set out in the Transaction Confirmation; or (ii) if there is no Transaction Confirmation, the termination date selected upon purchase of the applicable License.

**Indie License Type**

Permitted Use

The Software may be Used for Commercial purposes, subject to the revenue limitations set out in Section 6.2 of the Agreement.

An Indie User and its Affiliates and related individuals, collectively, may have or Use a maximum of three (3) purchased Indie Licenses at any given time.

SideFX may elect to issue one supplementary License with each purchased Indie License in order to enable the Indie User to use The Software on a dual-boot Computer or a second Computer. The supplementary License may only be Used by the same Indie User using the corresponding purchased Indie License.

#### Installation

For each License issued, Licensee may install the License and Use the Software only pursuant to a Workstation Installation.

#### License Relocation

Licensee may relocate the License from the dedicated Computer to another Computer (in which case such Computer would then be the dedicated Computer) only (A) within the Territory, and (B) within a one hundred (100) kilometre radius of where the dedicated Computer was located when the License was originally installed. A maximum of one (1) such relocation is permitted without paying the applicable relocation fee to SideFX. (\*)

#### Dedicated Computer / License Server Relocation

Licensee may relocate the dedicated Computer only (A) within the Territory, and (B) to a location within a one hundred (100) kilometre radius of where the dedicated Computer was located when the License was originally installed.

Notwithstanding the foregoing paragraph and part (b) of Section 2.1 of the Agreement, if Licensee is an individual freelance worker who is self-employed and does not have an affiliation or long-term (i.e. longer than nine (9) months) contractual arrangement with any particular Organization, Licensee may relocate the dedicated Computer and Use the Software anywhere in the world in order to provide freelance services to third parties.

#### Term

Three hundred and sixty five (365) days or seven hundred and thirty (730) days from the License Activation Date.

### **Local Access License Type**

#### Permitted Use

The Software may be Used for Commercial or non-Commercial purposes.

Only Licensee Personnel can Use the Software.

#### Installation

Licensee may install the Licenses and Use the Software only pursuant to a Network Installation.

#### License Relocation

Licensee may relocate the Licenses from a License Server to another Computer (in which case such Computer would then be the License Server) only (A) within the Territory, (B) within a one hundred (100) kilometre radius of where the License Server was located when the License was originally installed, and (C) upon prior written notice to SideFX. A maximum of two (2) such relocations in any rolling seven hundred and fifty (750) day period is permitted without paying the applicable relocation fee to SideFX, and is permitted solely when the License Server is being replaced or upgraded. (\*)

#### Dedicated Computer / License Server Relocation

Licensee may relocate a License Server only (A) within the Territory, (B) to a location within a one hundred (100) kilometre radius of where the License Server was located

when the License was originally installed, and (C) upon the prior written consent of SideFX (which consent may be withheld by SideFX in its sole and absolute discretion).

Licensee may relocate a Client Computer only (A) within the Territory, (B) to a location within a one hundred (100) kilometre radius of where the License Server, and (C) upon the prior written consent of SideFX (which consent may be withheld by SideFX in its sole and absolute discretion). Part (B) of this paragraph shall not apply to any Client Computer that is used solely for non-interactive Use of the Software.

Term

Starting from the License Activation Date and ending on the termination date as set out in the Transaction Confirmation.

**Global Access License Type**

Permitted Use

The Software may be Used for Commercial or non-Commercial purposes.

The Software can be Used by (A) Licensee Personnel, and (B) Licensee Affiliate Personnel and employees of Authorized Subcontractors (subject to the additional requirements and limitations set out in the definition of Authorized Users in Section 12 of the Agreement).

Installation

Licensee may install the Licenses and Use the Software only pursuant to a Network Installation.

License Relocation

No restrictions on the relocation of Licenses.

Dedicated Computer / License Server Relocation

No restrictions on the relocation of License Servers or Client Computers.

Term

Starting from the License Activation Date and ending on the termination date as set out in the Transaction Confirmation.

**Project License Type**

Permitted Use

The Software may be Used for Commercial or non-Commercial purposes and solely for purposes of creating content for the project as described in the Transaction Confirmation (the "Project") by up to the number of Authorized Users set out in the Transaction Confirmation.

The Software can be Used by (A) Licensee Personnel, and (B) Licensee Affiliate Personnel and employees of Authorized Subcontractors (subject to the additional requirements and limitations set out in the definition of Authorized Users in Section 12 of the Agreement).

Installation

Licensee may install the Licenses and Use the Software only pursuant to a Network Installation.

License Relocation

No restrictions on the relocation of Licenses.

Dedicated Computer / License Server Relocation

No restrictions on the relocation of License Servers or Client Computers.

Term



Starting from the License Activation Date and ending on the earlier of: (A) the date that the Project is completed as evidenced by the film, game or other product being made Commercially available; and (B) the outside date set out in the Transaction Confirmation.

(\*) For greater certainty, SideFX reserves the right to decline to consent to any relocation of the License from the dedicated Computer or License Server beyond the number expressly permitted above, in its sole and absolute discretion.

(\*\*) For all License Types, interactive use of the Software is permitted only on a non-concurrent basis (as further described in Section 3.6 of the Agreement) and Use of the Software is otherwise subject to the restrictions and limitations set out in Sections 3 and 4 of the Agreement.

(\*\*\*) Note: The terms "Agreement", "Authorized Users", "Commercial", "Computer", "License(s)", "License Activation Date", "Licensee Personnel", "Software", "Territory", "Transaction Confirmation", and "Used" have the meaning set out in Section 12 of the Agreement. The terms "License Server" and "Network Installation" have the meaning set out in Section 3.3 of the Agreement. The term "Workstation Installation" has the meaning set out in Section 3.4 of the Agreement. The terms "Licensee" and "Organization" have the meaning set out in Section 1.1 of the Agreement. The term "SideFX" has the meaning set out in the preamble to the Agreement.