

## END USER LICENSE AGREEMENT (EULA)

PLEASE READ THIS EULA CAREFULLY BEFORE ORDERING OR DOWNLOADING OR USING ANY SOFTWARE PRODUCTS OF FOUNDRY. YOUR ATTENTION IS PARTICULARLY DRAWN TO: (A) CLAUSES 13 AND 14 WHERE WE LIMIT OUR LIABILITY TO USERS OF OUR SOFTWARE PRODUCTS; AND (B) CLAUSE 17.2 REGARDING THE DATA WE MAY COLLECT AND HOW WE MAY USE IT.

IMPORTANT NOTICE TO ALL USERS: BY DOWNLOADING AND/OR USING THIS SOFTWARE YOU ACKNOWLEDGE THAT YOU HAVE READ THIS EULA, UNDERSTAND IT AND AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS. IF YOU DO NOT AGREE TO THE TERMS OF THIS EULA DO NOT DOWNLOAD, INSTALL, COPY OR USE THE SOFTWARE.

IMPORTANT NOTICE TO CONSUMERS WHO PURCHASE SOFTWARE PRODUCTS DIRECT FROM FOUNDRY: YOU HAVE THE RIGHT TO CANCEL YOUR CONTRACT AND OBTAIN A FULL REFUND IN ACCORDANCE WITH CLAUSE 9. HOWEVER YOU WILL LOSE THIS RIGHT ONCE YOU INSTALL THE SOFTWARE OR LOGIN TO A LOGIN-BASED LICENSE. THIS DOES NOT AFFECT YOUR CONSUMER RIGHTS IN RELATION TO DEFECTIVE PRODUCTS OR SERVICES.

This END USER LICENSE AGREEMENT ("**EULA**") is, in cases where you purchase our product(s) direct from Foundry, incorporated into the agreement between The Foundry Visionmongers Ltd a company registered in England and Wales with company number 4642027 and whose registered office is at 5 Golden Square, London W1F 9HT, ("**Foundry**"), and you, as either an individual or a single company or other legal entity ("**Licensee**") on the terms of which you will purchase the products and services of Foundry (the "**Agreement**"). In cases where you purchase our product(s) from one of our resellers, the use of the term "**Agreement**" in this EULA refers to the arrangements between Foundry and Licensee on which Licensee is permitted to use Foundry's product(s), including this EULA.

Foundry reserves the right to refuse to grant a License (as defined in clause 1.1) to any Licensee who has failed to pay any sum due either to Foundry or to a reseller of Foundry, in connection with the Agreement, in connection with any other software license to use any Software product(s) of Foundry and/or in connection with any Maintenance and Support Agreement as defined in clause 9.

### 1. GRANT OF LICENSE

- 1.1 Subject to terms and the scope of the applicable licence model as set out in clause 2, the limitations of clause 3 and all the other terms of the Agreement, Foundry grants to Licensee a limited, non-transferable (subject to clause 2.1(b) below) and non-exclusive license to download, install and use a machine readable, object code version (subject to clauses 3 and 4 below) of the software program(s) purchased by Licensee (the "**Software**") and any accompanying user guide and other documentation (the "**Documentation**"), solely for Licensee's own internal purposes (the "**License**"); provided, however, that Licensee's right to download, install and use the Software and the Documentation is limited to those rights expressly set out in this EULA.
- 1.2 Some types of license models set out in clause 2.1 limit the installation and use of the Software to the country in which Licensee is based at the date of purchase (the "**Home Country**"), unless otherwise agreed in writing. Notwithstanding such limits, Licensee may still use the Software outside the Home Country if traveling or working outside the Home Country on a temporary basis provided that such use does not exceed 70 days in aggregate

in any rolling twelve month period or, in the case of any license which lasts for less than twelve months, does not exceed the number of days representing 20% of the term of the license.

- 1.3 Only to the extent that is proportionate to, and reasonably necessary to support, Licensee's licensed use of the Software in accordance with the Agreement, Licensee may (provided valid license keys or license entitlements have been obtained) install the Software on more than one computer, provided always that Licensee's concurrent use of different installations of the Software does not exceed the number of valid Licenses that Licensee has paid for or licensed (as applicable).

## 2. LICENSE MODELS

- 2.1 For each Software product that you purchase from Foundry, the product will be licensed (and not sold) to you on the terms of one or more of the license models set out in this clause 2.1 and clause 2.2 as specified in Foundry's invoice or order confirmation (as applicable), and subject to the other terms and conditions of this EULA. Please note that some licensing models set out below do not apply to certain Software products of Foundry. Whichever licensing model applies, Licensee shall not at any one time use more copies of the Software than the total number of valid licenses purchased by Licensee.

(a) **"Node Locked License"**

If Licensee purchases a Node Locked License, Licensee will install and use only a single copy of the Software on only one computer at a time, which may be located anywhere in the Home Country.

(b) **"Individual License"**

If Licensee purchases an Individual License, Licensee warrants and represents that Licensee is a natural person and that only Licensee will use the Software. Licensee may transfer or assign ("**transfer**") the Individual License to another natural person ("**Assignee**") subject to Licensee: (i) notifying Foundry of such transfer and obtaining Foundry's express written consent, (ii) paying an administrative fee with respect to such transfer as may be required by Foundry, and (iii) after transferring a single copy of the Software to the Assignee, deleting any copies of the Software that Licensee may have in Licensee's possession, custody or power. An Individual License entitles Licensee to use the Software on only one computer at a time, which may be located anywhere and is not restricted to the Home Country.

(c) **"Floating License"**

If Licensee purchases a Floating License, use of the Software may be at any site in the Home Country.

(d) **"Login-Based License"**

If Licensee purchases a Login-Based License, Licensee warrants and represents that Licensee is a natural person and that only Licensee shall use the Software. Licensee will be issued with log in details and may use the Software on any number of computers (but not simultaneously).

(e) **"Rental Licence"**

If Licensee has purchased a Licence on a rental basis, the License shall be limited to the

term of the rental as agreed in writing with Foundry after which it shall automatically expire.

(f) **“Educational License”**

If Licensee has purchased the Software on the discounted terms of Foundry’s Educational Policy published on its website (the “Educational Policy”), Licensee warrants and represents to Foundry as a condition of the Educational License that: (i) (if Licensee is a natural person) he or she is a part-time or full-time student at the time of purchase and will not use the Software for any commercial, professional or for-profit purposes; (ii) (if the Licensee is not a natural person) it is an organization that will use the Software only for the purpose of training and instruction, and for no other purpose, and (iii) Licensee will at all times comply with the Educational Policy (as such policy may be amended from time to time). Unless the Educational License is a Floating License, Licensee shall use the Software on only one computer at a time.

(g) **“Non-Commercial License”**

If the License is a Non-Commercial License, Licensee warrants and represents that Licensee is a natural person, that they will only access and/or use one copy of a Non-Commercial License for personal, recreational and non-commercial purposes and that only Licensee will use the Software. Under a Non-Commercial License, Licensee will not use the Software: (a) in conjunction with any other copies or versions of the Software, under any type of License model; (b) for any commercial, professional, for-profit and/or on-sale purpose or otherwise to provide any commercial service(s) to a third party (whether or not for financial or other reward and including for education, instruction of or demonstration to any third party for commercial purposes); (c) in the course of any employment or business undertaking of Licensee; (d) on any commercial premises during business hours (except where use of the Software is solely for a personal, recreational, educational or other non-commercial purpose); and/or (e) to create any commercial tools or plug ins.

(h) **“Modo Steam Edition”**

A version of Modo with limited functionality as described in the Documentation is available to purchase on discount terms through Valve Corporation’s Steam store. If Licensee has purchased such version, Licensee warrants and represents to Foundry as a condition of the Agreement that: (i) Licensee is a natural person; and (ii) Licensee will use the Software strictly through Steam and only for personal, recreational and non-commercial use, except only that if Licensee uses the Software to create assets and content Licensee may sell such assets and content through Valve’s Steam Workshop.

(i) **“Modo indie” and “Mari indie”**

Variants of Modo and Mari with limited functionality as described in the Documentation are available to purchase on discount terms through Valve Corporation’s Steam store. If Licensee has purchased such a variant, Licensee warrants and represents to Foundry as a condition of the Agreement that: (i) Licensee is a natural person; or (ii) Licensee is an entity in the direct ownership of a single natural person; (iii) Licensee will only access and/or use one copy of either variant; and (iv) only Licensee will use the Software.

(j) **“Trial License”**

Licensee may register for a “Trial License” of the Software (not available for all products or in all regions or markets). A Trial License lasts a limited specified period on the expiry of which

the Software will automatically cease to function. Licensee will use the Software on only one computer at a time.

- 2.2 If Licensee has purchased a License that permits “non-interactive” use of the Software (“**Headless Rendering**”), Licensee is authorized to use a non-interactive version of the Software for rendering purposes only (i.e. without a user, in a non-interactive capacity) and shall not use such Software on workstations or otherwise in a user-interactive capacity. Headless Rendering is not available on all products. In all cases except Modo (in respect of which there is no limit on the amount of Headless Rendering allowed), Headless Rendering licenses are limited to one computer such that the number of computers on which Headless Rendering can be carried out is limited to the number of valid Licenses that have been purchased.

### 3. RESTRICTIONS ON USE

Please note that in order to guard against unlicensed use of the Software, a license key is required to access and enable the Software. Licensee is authorized to use the Software in machine readable, object code form only (subject to clause 4), and Licensee shall not: (a) assign, sublicense, sell, distribute, transfer, pledge, lease, rent, lend, share or export the Software, the Documentation or Licensee's rights under this EULA; (b) alter or circumvent the license keys or other copy protection mechanisms in the Software or reverse engineer, decompile, disassemble or otherwise attempt to discover the source code of the Software; (c) (subject to clause 4) modify, adapt, translate or create derivative works based on the Software or Documentation; (d) use, or allow the use of, the Software or Documentation on any project other than a project produced by Licensee (an “**Authorized Project**”) or to provide a service (whether or not any charge is made) to any third party; (e) allow or permit anyone (other than Licensee and Licensee's authorized employees to the extent they are working on an Authorized Project) to use or have access to the Software or Documentation; (f) copy or install the Software or Documentation other than as expressly provided for in this EULA; or (g) take any action, or fail to take action, that could adversely affect the trademarks, service marks, patents, trade secrets, copyrights or other intellectual property rights of Foundry or any third party with intellectual property rights in the Software (each, a “**Third Party Licensor**”). For purposes of this clause 3, the term “Software” shall include any derivatives of the Software.

Unless Licensee has purchased an Individual License or a Login-Based License, if the Software is moved from one computer to another, the issuing of replacement or substituted license keys is subject to and strictly in accordance with Foundry's License Transfer Policy, which is available on Foundry's website and which requires a fee to be paid in certain circumstances. Foundry may from time to time and at its sole discretion vary the terms and conditions of the License Transfer Policy.

### 4. SOURCE CODE

Notwithstanding that clause 1 defines “Software” as an object code version and that clause 3 provides that Licensee may use the Software in object code form only:

- 4.1 if Foundry has agreed to license to Licensee (including by way of providing SDKs, upgrades, updates or enhancements/customization) source code or elements of the source code of the Software, the intellectual property rights in which belong either to Foundry or to a Third Party Licensor (“**Source Code**”), Licensee shall be licensed to use the Source Code as Software on the terms of this EULA and: (a) notwithstanding clause 3 (c), Licensee may use

the Source Code at its own risk in any reasonable way for the limited purpose of enhancing its use of the Software solely for its own internal business purposes and in all respects in accordance with this EULA; (b) Licensee shall in respect of the Source Code comply strictly with all other restrictions applying to its use of the Software under this EULA as well as any other restriction or instruction that is communicated to it by Foundry at any time during the Agreement (whether imposed or requested by Foundry or by any Third Party Licensor);

- 4.2 to the extent that the Software links to any open source software libraries ("**OSS Libraries**") that are provided to Licensee with the Software, nothing in the Agreement shall affect Licensee's rights under the licenses on which the relevant Third Party Licensor has licensed the OSS Libraries, as stated in the Documentation. To the extent that Third Party Licensors have licensed OSS Libraries on the terms of v2.1 of the Lesser General Public License issued by the Free Software Foundation (see <http://www.gnu.org/licenses/lgpl-2.1.html>) (the "**LGPL**"), those OSS Libraries are licensed to Licensee on the terms of the LGPL and are referred to in this clause 4.2 as the LGPL Libraries. Foundry will at any time during the three year period starting on the date of the Agreement, at the request of Licensee and subject to Licensee paying to Foundry a charge that does not exceed Foundry's costs of doing so, provide Licensee with the source code of the LGPL Libraries (the "**LGPL Source**") in order that Licensee may modify the LGPL Libraries in accordance with the LGPL, together with certain object code of the Software necessary to enable Licensee to re-link any modified LGPL Library to the Software (the "**Object**"); and
- 4.3 notwithstanding any other term of the Agreement, Foundry gives no express or implied warranty, undertaking or indemnity whatsoever in respect of the Source Code, the OSS Libraries (including the LGPL Libraries), the LGPL Source or the Object, all of which are licensed on an "as is" basis, or in respect of any modification of the Source Code, the OSS Libraries (including the LGPL Libraries) or the LGPL Source made by Licensee ("**Modification**"). Licensee may not use the Object for any purpose other than its use of the Software in accordance with this EULA. Notwithstanding any other term of the Agreement, Foundry shall have no obligation to provide support, maintenance, upgrades or updates of or in respect of any of the Source Code, the OSS Libraries (including the LGPL Libraries), the LGPL Source, the Object or any Modification. Licensee shall indemnify Foundry against all liabilities and expenses (including reasonable legal costs) incurred by Foundry in relation to any claim asserting that any Modification infringes the intellectual property rights of any third party.

## 5. BACK-UP COPY

Licensee may store one copy of the Software and Documentation off-line and off-site in a secured location within the Home Country that is owned or leased by Licensee in order to provide a back-up in the event of destruction by fire, flood, acts of war, acts of nature, vandalism or other incident. In no event may Licensee use the back-up copy of the Software or Documentation to circumvent the usage or other limitations set forth in this EULA.

## 6. OWNERSHIP

Licensee acknowledges that the Software (including, for the avoidance of doubt, any Source Code that is licensed to Licensee) and Documentation and all related intellectual property rights and other proprietary rights are and shall remain the sole property of Foundry and the Third Party Licensors.

Licensee shall not remove, or allow the removal of, any copyright or other proprietary rights notice included in and on the Software or Documentation or take any other action that could adversely affect the property rights of Foundry or any Third Party Licensor. To the extent that Licensee is authorized to make copies of the Software or Documentation under this EULA, Licensee shall reproduce in and on all such copies any copyright and/or other proprietary rights notices provided in and on the materials supplied by Foundry hereunder. Nothing in the Agreement shall be deemed to give Licensee any rights in the trademarks, service marks, patents, trade secrets, confidential information, copyrights or other intellectual property rights of Foundry or any Third Party Licensor, and Licensee shall be strictly prohibited from using the name, trademarks or service marks of Foundry or any Third Party Licensor in Licensee's promotion or publicity without Foundry's prior express written approval.

Subject to clause 4.3, Foundry undertakes (the "**Undertaking**") to defend Licensee or at Foundry's option settle any claim brought against Licensee alleging that Licensee's possession or use of the Software or Documentation in accordance with the Agreement infringes the intellectual property rights of a third party in the same country as Licensee ("**Claim**") and shall reimburse all reasonable losses, damages, costs (including reasonable legal fees) and expenses incurred by or awarded against Licensee in connection with any such Claim, provided that the Undertaking shall not apply where the Claim in question is attributable to possession or use of the Software or Documentation other than in accordance with the Agreement, or in combination with any hardware, software or service not supplied or specified by Foundry. The Undertaking is conditional on Licensee giving written notice of the Claim to Foundry as soon as reasonably possible, cooperating in the defence of the Claim and not making any admission of liability or taking any step prejudicial to the defence of the Claim. If any Claim is made, or in Foundry's reasonable opinion is likely to be made, against Licensee, Foundry may at its sole option and expense (a) procure for Licensee the right to continue using the Software, (b) modify the Software so that it ceases to be infringing, (c) replace the Software with non-infringing software, or (d) terminate the Agreement immediately by notice in writing to Licensee and refund the License Fee (less a reasonable sum in respect of Licensee's use of the Software to the date of termination) on return of the Software and all copies by Licensee. The Undertaking constitutes Licensee's exclusive remedy and Foundry's only liability in respect of any Claim.

## **7. LICENSE FEE**

- 7.1 Licensee acknowledges that the rights granted to Licensee under this EULA are conditional on Licensee's timely payment of the license fee payable to Foundry in connection with the **Agreement** or, as the case may be, payable to Foundry's reseller (the "**License Fee**"). The License Fee shall be payable in full as one single payment.
- 7.2 In the cases of Nuke Non-Commercial or Trial Licenses for the avoidance of doubt, the fact that no License Fee may be payable shall not be construed as a waiver by Foundry of any right or remedy available to it in relation to any breach by Licensee of this EULA or the Agreement, or of any other right or remedy arising under applicable law, all of which are expressly reserved.

## **8. CANCELLATIONS**

- 8.1 Licensee may cancel a License within 14 days of the original purchase date to obtain a full refund and Licensee will no longer be able to use the Software from the cancellation date. Licensee's right to obtain a refund will be lost once the Software has been installed.

- 8.2 Refunds are not payable for cancellations made after such date.
- 8.3 Cancellations and requests for refunds can be made by contacting Foundry's Sales Support team at [licenses@foundry.com](mailto:licenses@foundry.com).

## 9. MAINTENANCE AND SUPPORT

If the Licensee has purchased maintenance and support services from Foundry for any Product licensed under this EULA, then Foundry shall provide those services subject to the terms of its Maintenance and Support Agreement available on its website. Foundry may from time to time and at its sole discretion vary the terms and conditions of the Maintenance and Support Agreement.

## 10. TAXES AND DUTIES

Licensee agrees to pay, and indemnify Foundry from claims for, any local, state or national tax (exclusive of taxes based on net income), duty, tariff or other impost related to or arising from the transaction contemplated by the Agreement.

## 11. LIMITED WARRANTY

- 11.1 Subject to clause 11.3, Foundry warrants that, for a period of ninety (90) days after Licensee first downloads the Software ("**Warranty Period**"): (a) the Software will, when properly used on an operating system for which it was designed, perform substantially in accordance with the functions described in the Documentation; and (b) that the Documentation correctly describes the operation of the Software in all material respects. If, within the Warranty Period, Licensee notifies Foundry in writing of any defect or fault in the Software as a result of which it fails to perform substantially in accordance with the Documentation, Foundry will, at its sole option, either repair or replace the Software, provided that Licensee makes available all the information that may be necessary to identify, recreate and remedy the defect or fault. This warranty will not apply to any defect or fault caused by unauthorised use of or any amendment made to the Software by any person other than Foundry. If Licensee is a consumer, the warranty given in this clause is in addition to Licensee's legal rights in relation to any Software or Documentation that is faulty or not as described.
- 11.2 Foundry does not warrant that the Software or Documentation will meet Licensee's requirements or that Licensee's use of the Software will be uninterrupted or error free.
- 11.3 If Licensee purchases a license of the Software that is of a fixed term duration, the Warranty Period in clause 11.1 shall apply only to Licensee's first purchase of such license and not to any subsequent renewal(s) even if a renewal involves another download.

## 12. INDEMNIFICATION

Licensee agrees to indemnify, hold harmless and defend Foundry, the Third Party Licensors and Foundry's and each Third Party Licensor's respective affiliates, officers, directors, shareholders, employees, authorized resellers, agents and other representatives from all claims, defence costs (including, but not limited to, legal fees), judgments, settlements and other expenses arising from or connected with any claim that any authorised or unauthorised modification of the Software or Documentation by Licensee or any person connected with Licensee infringes the intellectual property

rights or other proprietary rights of any third party.

### **13. LIMITATION OF LIABILITY TO BUSINESS USERS**

This clause applies where Licensee is a business user. Licensee acknowledges that the Software has not been developed to meet its individual requirements, and that it is therefore Licensee's responsibility to ensure that the facilities and functions of the Software as described in the Documentation meet such requirements. The Software and Documentation is supplied only for Licensee's internal use for its business, and not for any re-sale purposes or for the provision of the Software (whether directly or indirectly) to third parties. Foundry shall not under any circumstances whatever be liable to Licensee, its affiliates, officers, directors, shareholders, employees, agents or other representatives, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Agreement for loss of profits, sales, business, or revenue, business interruption, loss of anticipated savings, loss or corruption of data or information, loss of business opportunity, goodwill or reputation or any indirect or consequential loss or damage. In respect of any other losses, Foundry's maximum aggregate liability under or in connection with the Agreement whether in contract, tort (including negligence) or otherwise, shall in all circumstances be limited to the greater of US\$5,000 (five thousand USD) and a sum equal to the License Fee. Nothing in the Agreement shall limit or exclude Foundry's liability for death or personal injury resulting from our negligence, fraud or fraudulent misrepresentation or for any other liability that cannot be excluded or limited by applicable law. This EULA sets out the full extent of our obligations and liabilities in respect of the supply of the Software and Documentation. Except as expressly stated in this EULA, there are no conditions, warranties, representations or other terms, express or implied, that are binding on Foundry. Any condition, warranty, representation or other term concerning the supply of the Software and Documentation which might otherwise be implied into, or incorporated in, the Agreement, whether by statute, common law or otherwise, is excluded to the fullest extent permitted by law.

### **14. LIMITATION OF LIABILITY TO CONSUMERS**

This clause applies where Licensee is a consumer. Licensee acknowledges that the Software has not been developed to meet Licensee's individual requirements, and that it is therefore Licensee's responsibility to ensure that the facilities and functions of the Software as described in the Documentation meet such requirements. The Software and Documentation are only supplied for Licensee's domestic and private use. Licensee agrees not to use the Software and Documentation for any commercial, business or re-sale purposes, and Foundry has no liability to Licensee for any loss of profit, loss of business, business interruption, or loss of business opportunity. Foundry is only responsible for loss or damage suffered by Licensee that is a foreseeable result of Foundry's breach of the Agreement or its negligence but Foundry is not responsible for any loss or damage that is not foreseeable. Loss or damage is foreseeable if they were an obvious consequence of a breach or if they were contemplated by Licensee and Foundry at the time of forming the Agreement. Our maximum aggregate liability under or in connection with the Agreement, whether in contract, tort (including negligence) or otherwise, shall in all circumstances be limited to a sum equal to the greater of US\$5,000 (five thousand USD) and a sum equal to the License Fee. Nothing in the Agreement shall limit or exclude Foundry's liability for death or personal injury resulting from our negligence, fraud or fraudulent misrepresentation or for any other liability that cannot be excluded or limited by applicable law.

### **15. TERM; TERMINATION**

15.1 The Agreement is effective upon Licensee's download of the Software, and the Agreement



will remain in effect until termination or expiry. Licensee may terminate the Agreement on written notice to Foundry if Foundry is in breach of this Agreement and fails to cure the breach within 10 (ten) working days of receiving notice of such breach. If Licensee breaches the Agreement, Foundry may terminate the License immediately by notice to Licensee.

- 15.2 If the Agreement expires or is terminated, the License will cease immediately and Licensee will immediately cease use of any Software and Documentation and either return to Foundry all copies of the Software and Documentation in Licensee's possession, custody or power or, if Foundry directs in writing, destroy all such copies. In the latter case, if requested by Foundry, Licensee shall provide Foundry with a certificate confirming that such destruction has been completed.
- 15.3 Foundry reserves the right to terminate and/or suspend the License as it deems reasonable in its sole discretion by notice to Licensee if it becomes aware that Licensee has failed to pay any sum due either to Foundry or to a reseller of Foundry either in connection with the Agreement or in connection with any other Software license to use any product(s) of Foundry, in connection with any Maintenance and Support Agreement or if the Licensee is otherwise in breach of or fails to comply with any term of the Agreement.
- 15.4 Foundry may also terminate this EULA if Licensee becomes subject to bankruptcy proceedings, becomes insolvent, or makes an arrangement with Licensee's creditors. This EULA will terminate automatically without further notice or action by Foundry if Licensee goes into liquidation.

## 16. CONFIDENTIALITY

Licensee agrees that the Software (including, for the avoidance of doubt, any Source Code that is licensed to Licensee) and Documentation are proprietary to and the confidential information of Foundry or, as the case may be, the Third Party Licensors, and that all such information and any related communications (collectively, "**Confidential Information**") are confidential and a fundamental and important trade secret of Foundry and/or the Third Party Licensors. If Licensee is a business user, Licensee shall disclose Confidential Information only to Licensee's employees who are working on an Authorized Project and have a "need-to-know" such Confidential Information, and shall advise any recipients of Confidential Information that it is to be used only as expressly authorized in the Agreement. Licensee shall not disclose Confidential Information or otherwise make any Confidential Information available to any other of Licensee's employees or to any third parties without the express written consent of Foundry. Licensee agrees to segregate, to the extent it can be reasonably done, the Confidential Information from the confidential information and materials of others in order to prevent commingling. Licensee shall take reasonable security measures, which measures shall be at least as great as the measures Licensee uses to keep Licensee's own confidential information secure (but in any case using no less than a reasonable degree of care), to hold the Software, Documentation and any other Confidential Information in strict confidence and safe custody. Foundry may request, in which case Licensee agrees to comply with, certain reasonable security measures as part of the use of the Software and Documentation. This clause shall not apply to any information that is in or comes into the public domain, or was in Licensee's lawful possession before receipt or which Licensee develops independently and without breach of this clause. Licensee acknowledges that monetary damages may not be a sufficient remedy for unauthorized disclosure of Confidential Information, and that Foundry shall be entitled, without waiving any other rights or remedies, to such injunctive or other equitable relief as may be deemed proper by a court of competent jurisdiction.

## 17. INSPECTION AND INFORMATION

- 17.1 Unless Licensee is a consumer, Licensee shall advise Foundry on demand of all locations where the Software or Documentation is used or stored. Licensee shall permit Foundry or its authorized agents to audit all such locations during normal business hours and on reasonable advance notice.
- 17.2 The Software may include mechanisms to collect limited information from Licensee's computer(s) and transmit it to Foundry, including the ability to locally cache such information on Licensee's computer. Such information (the "Information") may include details of Licensee's hardware, details of the operating system(s) in use on such hardware, the location of the Licensee's computer(s) and the profile and extent of Licensee's use of the different elements of the Software and other Foundry software. Foundry may use the Information to (a) model the profiles of usage, hardware and operating systems in use collectively across its customer base in order to focus development and support, (b) to provide targeted support to individual customers, (c) to ensure that the usage of the Software by Licensee is in accordance with the Agreement and does not exceed any user number or other limits on its use, and (d) to advise Licensee about service issues such as available upgrades and maintenance expiry dates. To the extent that any Information is confidential to Licensee it shall be treated as such by Foundry when so notified or identified by Licensee when the Information is first provided to Foundry (whether verbally or in written form). To the extent that any Information constitutes personal data for the purposes of the Data Protection Act 1998 it shall be processed by Foundry in accordance with that Act and with Foundry's Privacy Policy as updated from time to time (see <https://www.thefoundry.co.uk/EULA/TFPrivacyCookiesPolicy.pdf>). Licensee undertakes to make all of users of the Software aware of the uses which Foundry will make of the Information and of the terms of Foundry's Privacy Policy.

## 18. U.S. GOVERNMENT LICENSE RIGHTS

All Software, including all components thereof, and Documentation qualify as "commercial items," as that term is defined at Federal Acquisition Regulation ("FAR") (48 C.F.R.) 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in FAR 12.212. Consistent with FAR 12.212 and DoD FAR Supp. 227.7202-1 through 227.7202-4, and notwithstanding any other FAR or other contractual clause to the contrary in any agreement into which this Agreement may be incorporated, a government end user will acquire the Software and Documentation with only those rights set forth in this Agreement. Use of either the Software or Documentation or both constitutes agreement by the government that all Software and Documentation are "commercial computer software" and "commercial computer software documentation," and constitutes acceptance of the rights and restrictions herein. The Software is the subject of the following notices:

\* Copyright © 2001 - 2017 Foundry Visionmongers Ltd. All Rights Reserved.

\* Unpublished-rights reserved under the Copyright Laws of the United Kingdom.

## 19. SURVIVAL

Clause 6, clause 7 and clauses 12 to 22 inclusive shall survive any termination or expiration of the Agreement.

## 20. IMPORT/EXPORT CONTROLS

To the extent that any Software made available under the Agreement is subject to restrictions upon export and/or re-export from the United States, Licensee agrees to comply with, and not act or fail to act in any way that would violate, applicable international, national, state, regional or local laws and regulations, including, without limitation, the U.S. Export Administration Act and the Export Administration Regulations, the regulations of the U.S. Department of Treasury Office of Foreign Assets Control, and the International Traffic in Arms regulations (collectively, “**U.S. Export Laws**”), and the United States Foreign Corrupt Practices Act, as those laws may be amended or otherwise modified from time to time, and neither Foundry nor Licensee shall be required under the Agreement to act or fail to act in any way which it believes in good faith will violate any such laws or regulations. Without limiting the foregoing, Licensee agrees that it will not export or re-export, directly or indirectly, Foundry’s Software or related products and services, or any commodity, technology, technical data, software or service that incorporates, contains or is a direct product of Foundry’s Software, products and/or services, (i) in violation of the U.S. Export Laws; (ii) to any country for which an export license or other governmental approval is required at the time of export, without first obtaining all necessary export licenses or other approvals; (iii) to any country, or national or resident of a country, to which trade is embargoed by the United States; (iv) to any person or firm on any government agency’s list of blocked, denied or barred persons or entities, including but not limited to the U.S. Department of Commerce’s Denied Persons List and Entities List, and the U.S. Treasury Department’s Specially Designated Nationals List; or (v) for use in any nuclear, chemical or biological weapons, or missile technology end-use unless authorized by the U.S. Government by regulation or specific license.

## 21. MISCELLANEOUS

Unless Licensee is a consumer, the Agreement is the exclusive agreement between the parties concerning its subject matter and supersedes any and all prior oral or written agreements, negotiations, or other dealings between the parties concerning such subject matter. Licensee acknowledges that Licensee has not relied upon any representation or collateral warranty not recorded in the Agreement inducing it to enter into the Agreement.

The Agreement may be modified only in writing, by Foundry, at any time.

The failure of either party to enforce any rights granted under the Agreement or to take action against the other party in the event of any such breach shall not be deemed a waiver by that party as to subsequent enforcement of rights or subsequent actions in the event of future breaches.

The Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including, unless Licensee is a consumer, non-contractual disputes or claims) shall be governed by, and construed in accordance with English Law and the parties irrevocably submit to the non-exclusive jurisdiction of the English Courts, subject to any right that a consumer may have to bring proceedings or to have proceedings brought against them in a different jurisdiction.

If Foundry fails to insist that Licensee performs any obligation under the Agreement, or delays in doing so, that will not mean that Foundry has waived its rights.

Unless Licensee is a consumer, Licensee agrees that Foundry may refer to Licensee as a client or a user

of the Software, may display its logo(s) for this purpose and may publish quotations and testimonials from Licensee, its directors, partners, officers or employees. Foundry agrees to promptly cease any such use on Licensee's written request.

Foundry and Licensee intend that each Third Party Licensor may enforce against Licensee under the Contracts (Rights of Third Parties) Act 1999 (the "Act") any obligation owed by Licensee to Foundry under this EULA that is capable of application to any proprietary or other right of that Third Party Licensor in or in relation to the Software. Foundry and Licensee reserve the right under section 2(3)(a) of the Act to rescind, terminate or vary this EULA without the consent of any Third Party Licensor.

**Email Address for Notices.** Licensee shall notify Foundry of an email address for the provision of any notices and correspondence in connection with this Agreement and shall notify Foundry via [licenses@foundry.com](mailto:licenses@foundry.com) of any change(s) to that email address. Please note, the email address you provide is important for the provision of notices to you. It is your responsibility to provide and maintain an up to date email address. Foundry shall store details of and may use the email address to notify you in accordance with the terms of this Agreement.

## **22. COMPLAINTS & ONLINE DISPUTE RESOLUTION PLATFORM**

We hope that you are satisfied with any Software purchase made or service received from Foundry, but if you have a complaint, in the first instance, please contact us on [licenses@foundry.com](mailto:licenses@foundry.com) or through our Support Portal: <https://support.foundry.com/hc/en-us> (for technical support and bug reports), or you can request a call back from the Sales team here: <https://www.foundry.com/contact-us>. We will do our best to resolve the issue but if you are still not happy with our response, you may seek to resolve it using the Online Dispute Resolution Platform at [www.ec.europa.eu/consumers/odr/](http://www.ec.europa.eu/consumers/odr/).

Last updated 24 March, 2017.

**Copyright © March 2017 The Foundry Visionmongers Ltd.**  
All Rights Reserved. Do not duplicate.