

## END USER LICENCE AGREEMENT (EULA)

This end-user licence agreement (the "EULA") is concluded between **UX3D GmbH**, (registered number HRB 236081, Amtsgericht München [Local Court of Munich]) whose registered office is at Neumarkter Str. 21 81673 Munich, Germany (the "Licensor"); and **You** (the "Licensee").

By clicking accept, subscribing to a License, downloading or using the Software, you agree to all of these terms. You may not use the Software or its features, if you do not accept and comply with these terms.

### 1. DEFINITIONS AND INTERPRETATION

In this EULA:

1.1 the following words and expressions have the following meanings unless the context otherwise requires:

<b>"Commercial Use"</b>	the use of the Software for purposes that are predominantly in exercise of the Licensee's or the User's trade, business or profession
<b>"Costs"</b>	all costs (on a full indemnity basis) including legal and other professional costs and costs of enforcement
<b>"Defect"</b>	a material error, fault or defect affecting any element or part of the Software which causes that element or part to fail to materially comply with the relevant specification and which arises through the default of the Licensor
<b>"Device"</b>	physical or virtual hardware systems which are capable of executing the Software. A hardware partition or a blade are considered devices for the purpose of this EULA.
<b>"Documentation"</b>	such user manuals, online help and guides for the Software on any media, which relate to the use and operation of the Software, including the specification, as provided by the Licensor or made available to the Licensee for the use of the Software
<b>"Export Laws"</b>	(a) any laws of the United States of America, the United Kingdom, the European Union or of any of its Member States that relate to the control of export or import of goods or services from any of those jurisdictions to other jurisdictions (b) any controls administered by the US Department of Commerce and/or the US Department of State and (c) any other export or import controls or restriction imposed or adopted by any government, state or regulatory authority in a country in which the Software or Documentation is to be used or accessed or a country in which the services are to be performed or supplied
<b>"Fees"</b>	the Licence Fee(s) for the use of the Software

<b>“Licence Metric”</b>	as specified in <b>clause 3</b> being the basis on which the Software is licensed to the Licensee under and in accordance with the terms of this EULA
<b>“Losses”</b>	all losses and damages including all direct and indirect and consequential losses and damages
<b>“Original Serial key”</b>	a <b>serial key</b> is a segment of letters or numbers that is used to activate the Software to enable its use. A serial key is only considered original, if it was originally issued by the Licensor
<b>“Sanction”</b>	any economic, financial, trade or other sanction, embargo, import or export ban, prohibition on transfer of funds or assets or on performing services or equivalent measure imposed by any competent authority or by the laws of any state or any union of states
<b>“Software”</b>	the Software Gestaltor and any Software Update made available to the Licensee by the Licensor from time to time under this EULA.  Be aware that the Software is not fault-tolerant and is not designed or intended for use in hazardous environments that require fail-safe performance, including without limitation, in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, weapons systems, direct life-support machines, or any other application in which the failure of the Software could lead directly to death, personal injury, or severe physical or property damage.
<b>“Software Update” or “Update”</b>	any updates and upgrades to, and revisions, new releases and new versions of the Software and any patches or bug-fixes issued by the Licensor in relation to the Software
<b>“Start Date”</b>	the date the Software is made available to the Licensee
<b>“Termination Date”</b>	the date on which this EULA expires or terminates for whatever reason
<b>“UrhG”</b>	German Act on Copyright and Related Rights (Urheberrechtsgesetz – UrhG)
<b>“User”</b>	any person who accesses or uses the Software or Documentation including the persons described or designated as “Users” and “Designated End Users”.

**1.2** unless the context otherwise requires:

- 1.2.1 references to the singular include the plural and vice versa and references to any gender include every gender;
- 1.2.2 references to a “person” include any individual, body corporate, association, partnership, firm, trust, organisation, joint venture, government, local or municipal authority, governmental or supra-governmental agency or department, state or agency

of state or any other entity (in each case whether or not having separate legal personality);

- 1.3 references to a release do not include or refer to a new item of software;
- 1.4 any words following the words "include", "includes", "including", "in particular" or any similar words or expressions will be construed without limitation and accordingly will not limit the meaning of the words preceding them;
- 1.5 references to "in writing" or "written" include facsimile and e-mail but no other methods of electronic messaging;

## 2. LICENCE

2.1 With effect from the Subscription Date and subject to payment of the Fees – where applicable -, the Licensor grants to the Licensee a licence only to install, run and execute the Software and to use the Documentation for the duration of the Subscription Term.

2.2 Subject to any provisions to the contrary, the licence granted by this EULA:

- 2.2.1 is limited, revocable, non-exclusive and non-transferable (other than if permitted by and in accordance with **clause 11**);
- 2.2.2 does not permit any right to sub-licence;
- 2.2.3 in relation to the Documentation extends only for the purpose of supporting the Licensee's use of the Software.

2.3 The licence granted by this EULA is subject to the following obligations and restrictions:

- 2.3.1 the Licensee must hold one valid Licence per device on which the Software is run or executed.
- 2.3.2 the use of the Software is subject to prior activation with an Original serial key. The Original serial key may only be used to activate the Software on one device. After the complete removal of the Software from a device, the Original serial key may be used again for another device.
- 2.3.3 the Licensee will not copy or reproduce in any way the whole or any part of the Software, except that the Licensee may make one back up copy, and the provisions of this **clause 2** will apply to that back up copy.
- 2.3.4 save to the extent expressly permitted by law, the Licensee will not modify, alter, adapt, make error corrections to or in any way interfere with the Software or merge it with or incorporate it into other data, programs or systems or attempt to do any of these things;
- 2.3.5 save to the extent expressly permitted by law, the Licensee will not decompile, reverse engineer, decode and/or disassemble the Software; also, Licensee will not translate it into any other computer language and/or attempt to do any of these things;
- 2.3.6** the Software will not be installed, run and executed other than in accordance with the Licence Metric in **clause 3**;
- 2.3.7 the Licensee will not permit any other person to access or use the Software;
- 2.3.8 the Licensee will not assign, novate, sub-licence, rent, lease, sell, pledge, charge, transfer or otherwise dispose of or grant rights over or out of the licence granted by this EULA or the Software or Documentation or purport or attempt to do any of the same; and

2.3.9 the Licensee will notify the Licensor as soon as it becomes aware of any unauthorised access or use of the Software or Documentation by any person.

2.4 The Licensee is responsible for all acts and omissions of any User.

### **3. LICENCE METRIC**

The Licence Metric determines the scope and further restrictions on the usage rights as follows:

3.1 A Community Licence may not be used for Commercial Use.

3.2 A Professional Licence may be used for Commercial Use.

3.3 An Evaluation Licence may be used for Commercial Use.

3.3.1 The License Term is limited to 30 days from the day of the acceptance of this EULA.

3.3.2 Each Licensee may only be granted one Evaluation Licence. The licence cannot be renewed.

### **4. DOCUMENTATION**

4.1 The Licensee will use any Documentation for the purpose of using the Software in accordance with the terms and conditions of this EULA only and will not permit any other person to use the Documentation in any way whatsoever.

4.2 The Licensee will not copy or reproduce in any way the Documentation or any part of it without the Licensor's prior written consent, except that the Licensee may copy Documentation only insofar as is reasonably necessary in connection with the Licensee's use of the Software permitted by this EULA.

4.3 The Licensee will not disclose the Documentation to any other person unless and only to the extent required by law or to those of its officers, directors and employees who need access to the Documentation to use the Software. This does not apply for Documentation

4.3.1 that is or becomes available in the public domain or generally at the time the Licensee was provided with such information (except by reason of any breach of this EULA by the Licensee);

4.3.2 was already legitimately in the possession of the Licensee and not subject to a duty of confidentiality; or

4.3.3 the Licensee had received from a third party who was entitled to disclose this Documentation without restriction.

### **5. LIABILITY AND DAMAGES**

5.1 The Licensor shall be liable under the terms of this Agreement only in accordance with the provisions set out under **clauses 5.1.1 to 5.1.5**:

5.1.1 The Licensor shall be unrestricted liable for Losses caused intentionally or with gross negligence by the Licensor, its legal representatives or senior executives and for Losses caused intentionally by other vicarious agents; in respect of gross negligence of other assistants in performance the Licensor's liability shall be as set forth in the provisions for simple negligence in **clause 5.1.5** below.

5.1.2 The Licensor shall be unrestricted liable for death, personal injury or damage to health caused by the intent or negligence of the Licensor, its legal representatives or assistants in performance.

- 5.1.3 The Licensor shall be liable for Losses arising from the lack of any warranted characteristics up to the amount which is covered by the purpose of the warranty and which was foreseeable for the Licensor at the time the warranty was given.
- 5.1.4 The Licensor shall be liable in accordance with the German Product Liability Act in the event of product liability.
- 5.1.5 The Licensor shall be liable for Losses caused by the breach of its primary obligations by the Licensor, its legal representatives or assistants in performance. Primary obligations are such basic duties which form the essence of the Agreement, which were decisive for the conclusion of the Agreement and on the performance of which the Licensee may rely. If the Licensor breaches its primary obligations through simple negligence, then its ensuing liability shall be limited to the amount which was foreseeable by the Licensor at the time the respective service was performed.
- 5.2 The Licensor shall be liable for loss of data only up to the amount of typical recovery costs which would have arisen had proper and regular data backup measures been taken.
- 5.3 Any more extensive liability of the Licensor is excluded on the merits.

## 6. EXPORT CONTROL

The Licensee will comply with all Export Laws and Sanctions.

## 7. AUDIT RIGHTS

- 7.1 The Licensor and its auditors have the right to audit the Licensee's and Users' access to or usage of the Software to confirm compliance with the terms of this EULA.
- 7.2 Any such audit is subject to reasonable advance notice by the Licensor and the Licensor agrees that it will not unreasonably interfere with the Licensee's business activities.
- 7.3 The Licensee will provide the Licensor with any support required to perform such audit and will, without prejudice to any other rights of the Licensor, rectify any non-compliance identified by the audit.

## 8. TERM AND TERMINATION

- 8.1 If a party:
  - 8.1.1 commits a material breach of this EULA which cannot be remedied; or
  - 8.1.2 commits a material breach of this EULA which can be remedied but fails to remedy that breach within 14 days of a written notice referring to this **clause 8.1**, setting out the breach and requiring it to be remedied being given by the other party,

the other party may terminate this EULA by giving not less than 14 days' written notice to that effect to the party in breach provided that the notice to terminate is given within six months from the date of the material breach occurring or the party terminating this EULA becoming aware of it, whichever is the later.

- 8.2 Subject to **clause 8.3**, the Licensor may terminate this EULA by giving not less than 7 days' written notice to that effect to the Licensee if the Licensee fails to make any payment due to the Licensor under this EULA within 14 days after the due date.
- 8.3 The right of termination set out in **clause 8.2** will not arise in respect of any failure to make payment of any sum if the amount of such sum is and remains the subject of a bona fide dispute between the Licensee and the Licensor (where any sum which is not part of the bona fide dispute has been paid in accordance with this EULA) and for a period of 7 days following resolution of such dispute.

- 8.4 The Licensor may terminate this EULA with immediate effect by giving notice to the Licensee if:
- 8.4.1 any Sanction is imposed in respect of any country or territory from which the Software, Documentation or services are exported or provided or into which they are imported or in which they are received;
  - 8.4.2 a Sanction is made in respect of the Licensee or any User or in respect of any country in which the Licensee or any User is incorporated or operates;
  - 8.4.3 the Licensor has reasonable cause to believe that the continued licensing of the Software or performance of any of the services is or would be in violation of or a breach of any Sanction or Export Law; or
  - 8.4.4 the Licensor has reasonable cause to believe that the Licensee or any User has breached or is likely to breach any Sanction or Export Law.
- 8.5 The parties acknowledge and agree that if, at any time, a party is entitled to exercise more than one right of termination under this EULA, such party may, at its sole discretion, elect which (if any) termination right or rights it wishes to exercise.

## 9. **CONSEQUENCES OF EXPIRY OR TERMINATION**

9.1 Following the Termination Date:

- 9.1.1 the following provisions will continue in force: **clauses 1, 5, 6, 7, 9, 14** together with any other provisions which expressly or impliedly continue to have effect after expiry or termination of this EULA; and
- 9.1.2 all other rights and obligations will immediately cease (including, without limitation, the licences granted in **clause 2**) without prejudice to any rights, obligations, claims (including claims for damages for breach) and liabilities which have accrued prior to the Termination Date.

9.2 Within 30 days after the Termination Date:

- 9.2.1 the Licensee will delete or return to the Licensor all copies of the Software and of the Documentation in its possession or control, whether those copies are authorised or unauthorised; and
- 9.2.2 the Licensor will return to the Licensee or delete all copies of Licensee data in its possession or control unless the Licensor is required to keep copies for any regulatory purpose in which case the Licensee has the burden of proof.

## 10. **SEVERANCE**

If any term of this EULA is found by any court or body or authority of competent jurisdiction to be illegal, unlawful, void or unenforceable, such term will be deemed to be severed from this EULA and this will not affect the remainder of this EULA which will continue in full force and effect.

## 11. **ASSIGNMENT**

- 11.1 The Licensee will not be entitled to assign, transfer, charge, hold on trust for any person or deal in any other manner with any of its rights under this EULA. This does not apply for the assignment of monetary claims of the Customer if the Customer is a merchant.
- 11.2 The Licensor will be entitled in its sole discretion to assign, transfer, charge, hold on trust for any person and deal in any other manner with any of its rights under this EULA.

## 12. **SUB-CONTRACTING**

- 12.1 The Licensee will not be entitled to sub-contract any of its obligations under this EULA.

12.2 The Licensor will be entitled to sub-contract any of its obligations under this EULA. The Licensor will ensure that any such sub-contractor is bound by contractual terms substantially equivalent to those which apply to the Licensor's obligations under this EULA.

13. **WAIVER**

A delay in exercising or failure to exercise a right or remedy under or in connection with this EULA will not constitute a waiver of, or prevent or restrict future exercise of, that or any other right or remedy, nor will the single or partial exercise of a right or remedy prevent or restrict the further exercise of that or any other right or remedy. A waiver of any right, remedy, breach or default will only be valid if it is in writing and signed by the party giving it and only in the circumstances and for the purpose for which it was given and will not constitute a waiver of any other right, remedy, breach or default.

14. **GOVERNING LAW AND JURISDICTION**

14.1 This EULA and any non-contractual obligations arising out of or in connection with it will be governed by the laws of Germany. The United Nations convention on contracts for the international sale of goods shall not apply.

14.2 The courts for the Licensor's registered office shall have exclusive jurisdiction over all disputes under and in connection with this EULA, provided that Licensee is a merchant within the meaning of the German Commercial Code or if upon the commencement of legal proceedings, the Licensee has no place of business or ordinary residence in the Federal Republic of Germany.