

END USER LICENSE AGREEMENT

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- 3.2 Licensee is authorised to:
- a. use each licence key in accordance with the licence grant set out at clause 2;
 - b. use the Software in the form it is supplied, namely object code form only;
 - c. use the Software in accordance with the Documentation and not further or otherwise;
- 3.3 make up to 3 copies of the Software for operational security and back-up purposes. Such copies shall remain the property of Imbalance and you shall ensure that all such copies bear the same proprietary notices as the original. The provisions of this agreement applies to all copies of the Software.
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 - c. alter or circumvent the licence 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;
 - d. implement or use any method or mechanism designed to enable functionality of the Software other than with a licence key issued by Imbalance;
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 - f. take any action, or fail to take action, which could adversely affect the trade marks, service marks, patents, trade secrets, copyrights and/or any other intellectual property rights of Imbalance anywhere around the world, or any third party intellectual property rights vesting in any part of the Software ("**Third Party Licensor**").
- 3.5 Licensee has no entitlement to access and/or receive the source code of the Software.
- 3.6 The Software includes any modified and updated versions of the Software, whether by you or by Imbalance.

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- 4.3 The Software is provided on an "as is" basis and you assume responsibility for the results of use of the Software and for the conclusions drawn from such use.
- 4.4 Except as expressly stated in this agreement, and to the extent permissible by law, all terms, conditions, warranties, undertakings and representations implied by statute, custom, trade usage or otherwise are hereby wholly and expressly excluded.

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- 5.2 Refunds are not payable for cancellations made after such date.
- 5.3 Cancellations and requests for refunds can be made by contacting Imbalance's Sales Support team at licenses@ragdoll dynamics.com.

6 SUPPORT SERVICES

- 6.1 The Support Period shall be:
 - a. for subscription licences, the duration of the subscription; and
 - b. for lifetime licences, 12 months from the date you purchase the lifetime licence.
- 6.2 Subject to the continued compliance by Licensee with this agreement in all respects, the Imbalance shall during the Support Period ("**Support Services**"):
 - a. use its reasonable endeavours to correct any faults in the Software notified to it by the Licensee (but not to recover or reconstruct your computer records, corrupted or lost as a result of such faults);
 - b. provide you with all documentation which Imbalance considers necessary to configure and use any modified enhanced or replacement version of or additions to the Software as may be made available by Imbalance from time to time; and
 - c. provide you with such technical advice by electronic mail only as shall be necessary to resolve your difficulties and queries in using the current version of the Software or refer to the Documentation for resolution by you.
- 6.3 You shall:

- a. use only the most recent patched version of the Software to which the Licensee is entitled and/or available to you by Imbalance from time to time;
- b. ensure that the Software is used on equipment which meets the minimum equipment specifications specified by Imbalance and use the Software in a proper and lawful manner by competent trained persons only;
- c. notify each software fault to Imbalance as it arises and shall wherever possible supply Imbalance with a documented example of such fault;
- d. cooperate fully with Imbalance in diagnosing any software fault;
- e. make available to Imbalance free of charge all reasonable facilities and services which are required by Imbalance to enable it to provide the Support Services including without limitation memory dumps, telecommunications facilities, remote online access, reports and diagnostic data; and
- f. not request, permit or authorise anyone other than Imbalance to provide any support services in respect of the Software.

6.4 The Support Services do not include:

- a. attendance to faults caused by using the Software otherwise than non-conformances with the Documentation;
- b. support or maintenance of software accessories, peripheral devices, computer hardware systems, connectivity or any other device and/or software not supplied by the Imbalance;
- c. diagnosis or rectification of problems not attributable to the Software; or
- d. loss or damage caused directly or indirectly by operator error or omission, and any service which is provided by the Imbalance as a result of any of the foregoing shall be subject to additional charges at the Imbalance's standard rates from time to time in force.

6.5 No support services shall be provided while you are in default of any payment obligations or in breach of any term of this Agreement. Imbalance shall be entitled at any time and from time to time after the Support Period to make reasonable increases of the support charge to accord with any change in the Imbalance's standard scale of charges by giving to you not less than 30 days' written notice expiring on the date for payment of the next support charge from time to time.

6.6 Imbalance shall be under no obligation to provide any Support Services where:

- a. requests for Support Services or calls are not justified in the sole discretion of Imbalance;
- b. the Support Services requested arise from or are connected with user error, user misunderstanding, and/or improper or incomplete or inadequate training;

- c. use of the Software takes place in conditions which exceeds any of the thresholds forming part of any performance limitations published to the website of Imbalance or referred to in the Documentation; or
- d. the equipment and/or software used by the Licensee is inadequate for the Software to perform as designed.

6.7 If any Support Request does not qualify for Support Services or is otherwise excluded, Imbalance may provide customised support services in accordance with the rates set out in the then current rate card of Imbalance.

7 ANNUAL UPGRADE PLAN

7.1 Imbalance offers an extension to the Support Period for lifetime licences.

7.2 Lifetime licensees may purchase an Annual Upgrade Plan within 12 months of acquiring a lifetime licence

7.3 The Annual Upgrade Plan:

- a. has a duration of 12 months;
- b. entitles you to updates to the Software released by Imbalance during the Annual Upgrade Plan, together with the Support Services;
- c. may be renewed within that 12 month period for a further 12 months.

8 LICENSE FEES

8.1 Licensee acknowledges that the permissions granted to Licensee under this EULA are conditional on Licensee's payment in advance of the license fee listed on the order form.

8.2 Licence fees and support charges are exclusive of Value Added Tax and any other tax duty or levy for which Imbalance is legally liable, which shall be paid by the Licensee at the rate and in the manner for the time being prescribed by law. All fees shall be payable without deduction or set-off and shall be paid in Sterling.

8.3 Notwithstanding anything else in the agreement, the Licensee shall have no right to use the Software absent payment of the applicable licence fee, save as to a trial version for up to 30 days.

9 INTELLECTUAL PROPERTY RIGHTS

9.1 Licensee agrees that the Software and Documentation and all related intellectual property rights and other proprietary rights are and remain the sole property of Imbalance and its Third Party Licensors.

- 9.2 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 Imbalance or any Third Party Licensor.
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- 10.2 Licensee shall disclose Confidential Information only to those who have "need-to-know" such Confidential Information, and shall advise any recipients in writing that Confidential Information is to be used only as expressly authorised in this Agreement.
- 10.3 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.
- 10.4 Licensee acknowledges that monetary damages may not be a sufficient remedy for unauthorised disclosure of Confidential Information, and that Imbalance shall be entitled, without waiving any other rights or remedies, to seek such injunctive or other equitable relief as may be deemed proper by a court of competent jurisdiction.

11 **TERMINATION**

- 11.1 Licensee may terminate the Agreement on written notice to Imbalance if Imbalance is in breach of this Agreement and fails to cure the breach within 7 working days of receiving notice of such breach. In such event, Imbalance shall reimburse to Licensee, on a pro-rata basis, the license fees paid. If Licensee breaches the Agreement, Imbalance may terminate the License immediately by notice to Licensee.
- 11.2 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 Imbalance all copies of the Software and Documentation in Licensee's possession, custody or power or, if Imbalance directs in writing, destroy all such copies. In the latter case, if requested by Imbalance, Licensee shall provide Imbalance with a certificate confirming that such destruction has been completed.
- 11.3 Imbalance reserves the right to terminate and/or suspend this Agreement and the permissions granted by it in its sole discretion by notice to Licensee if it becomes aware that Licensee has failed to pay any sum due to Imbalance in connection with the Agreement or in connection with any other Software license to use any product(s) of Imbalance, in connection with any Support Agreement or if the Licensee is otherwise in breach of or fails to comply with any term of the Agreement.
- 11.4 Imbalance 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 Imbalance if Licensee goes into liquidation.

12 LIABILITY

- 12.1 Nothing in the Agreement shall limit or exclude Imbalance's liability for death or personal injury resulting from its own negligence, fraud or fraudulent misrepresentation or for any other liability that cannot be excluded or limited by law.
- 12.2 The following provisions set out the entire financial liability of each party including without limitation any liability for the acts or omissions of its employees, agents and/or subcontractors in respect of:
- a. any breach of this agreement howsoever arising; and
 - b. any loss or damage suffered by the Licensee connected with use of the Software and/or any part of it;
 - c. any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including without limitation negligence) arising under or in connection with this agreement.
- 12.3 Neither party shall be liable to the other party for (whether direct or indirect) loss of profits, loss of business, loss of revenue, business interruption, loss of anticipated savings, loss of opportunity, corruption of data, increased and/or wasted expenditure, loss of goodwill or reputation, losses incurred in connection with any act or omission on the part of said party.
- 12.4 In no event shall any party have any liability to the other party or any third party for any indirect, special or consequential loss or damage.
- 12.5 In respect of any other losses, each Party'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 £500 and a sum equal to license fees paid.

13 EXPORT CONTROL

- 13.1 Licensee shall not export, directly or indirectly, any technical data acquired from Imbalance (or any products, including software, incorporating any such data) in breach of any applicable laws or regulations in force in the UK, in addition to European Union and United States export laws and regulations ("**Export Control Laws**"), to any country for which the government or any agency thereof at the time of export requires an export licence or other governmental approval without first obtaining such licence or approval.
- 13.2 You are contractually obliged to notify any third party to whom you disclose or transfer any such data or products that these terms apply and obtain an undertaking in similar terms to that set out above; and if requested, to provide the other party with any reasonable assistance, at the reasonable cost of the other party, to enable it to perform

any activity required by any competent government or agency in any relevant jurisdiction for the purpose of compliance with any Export Control Laws.

14 MISCELLANEOUS

- 14.1 This Agreement is personal to you and you shall not assign sublicense or otherwise transfer any part of Agreement or any of its rights or obligations hereunder whether in whole or in part without the prior written consent of Imbalance. The Licensor shall be entitled to assign and/or novate any part of this Agreement to any third party in its sole discretion.
- 14.2 This 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 statement, representation or collateral warranty not recorded in the Agreement prior to entering into this Agreement.
- 14.3 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.
- 14.4 If Imbalance fails to insist that Licensee performs any obligation under the Agreement, or delays in doing so, that will not mean that Imbalance has waived its rights.
- 14.5 Imbalance may use the email address provided by the Licensee as part of the ordering process for the provision of any notices and correspondence in connection with this Agreement and shall notify Imbalance via licenses@ragdoll dynamics.com of any change(s) to that email address. Licensee may serve notices to the registered office of Imbalance.
- 14.6 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement.

15 DISPUTE RESOLUTION

- 15.1 We hope that you are satisfied with any Software purchase made or service received from Imbalance, but if you have a complaint, in the first instance, please contact us on licenses@ragdoll dynamics.com.

16 LAW AND JURISDICTION

16.1 This Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with the laws of England and the parties hereby submit to the exclusive jurisdiction of the English courts.