

# Free video game EULA

## End user licence agreement

Please read this EULA carefully, as it sets out the basis upon which we license the Game for use.

Before you download the Game from [our website or the platform of one of our appointed distribution partners], you will be asked to give your express agreement to the provisions of this EULA.

**OR**

By clicking "accept agreement" when you first install the Game, you agree to be bound by the provisions of this EULA.[ If you do not agree to be bound by the provisions of this EULA, you must [click "reject agreement" during the installation process and promptly (and in any case within the period of 14 days following your purchase) return the Game (on the media upon which the Game was provided) to your supplier].[ Upon returning the Game and providing proof of purchase, you will be entitled to a refund.]]

**OR**

By breaking the seal on the packaging of the Game, you agree to be bound by this EULA.[ If you do not agree to be bound by this EULA, you must [promptly (and in any case within 14 days following your purchase)] return the Game (in its sealed packaging) to your supplier.[ Upon returning the Game in its sealed packaging and providing proof of purchase, you will be entitled to a refund.]]

By agreeing to be bound by this EULA, you warrant to us that you are at least [18] years of age; if you are not, you must not use the Game.

This EULA should be read in conjunction with [our privacy policy], which is available at [URL].

WARNING: The light patterns in some video games may trigger epileptic seizures or blackouts in a very small number of individuals. If you have an epileptic condition, you should consult a medical professional before playing the Game. If you experience dizziness, muscle twitching, changes to vision, disorientation, seizures, convulsions and/or any involuntary movements while playing the Game, you should immediately stop playing and consult a medical professional.

### 1. Definitions

1.1 In this EULA[, except to the extent expressly provided otherwise]:

**"Distribution Platform"** means [any digital distribution platform operated by a third party by means of which the User lawfully acquired the Game];

**"Distribution Platform Terms and Conditions"** means [the terms and conditions of the Distribution Platform that set out any rights and/or obligations of the User in relation to the Game];

"**DLC**" means [any downloadable or other supplemental content for the Game made available by the Licensor and purchased or otherwise lawfully acquired by the User];

"**Documentation**" means [any documentation for the Game produced by the Licensor and supplied or made available by the Licensor to the User];

"**Effective Date**" means [the date upon which the User accepts the terms of this EULA in accordance with the preamble to this EULA];

"**EULA**" means [this end user licence agreement, including any amendments to this end user licence agreement from time to time];

"**Force Majeure Event**" means [an event, or a series of related events, that is outside the reasonable control of the party affected (including failures of the internet or any public telecommunications network, hacker attacks, denial of service attacks, virus or other malicious software attacks or infections, power failures, industrial disputes affecting any third party, changes to the law, disasters, epidemics, pandemics, explosions, fires, floods, riots, terrorist attacks and wars)];

"**Game**" means [*identify video game*][, as [modified, patched, updated and upgraded] from time to time by or with the authorisation of the Licensor][, including any DLC];

"**Intellectual Property Rights**" means [all intellectual property rights wherever in the world, whether registrable or unregistrable, registered or unregistered, including any application or right of application for such rights (and these "intellectual property rights" include copyright and related rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trade marks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs)];

"**Licensor**" means [*individual name*] of [*address*] OR [*company name*], a company incorporated in [England and Wales] (registration number [*registration number*]) having its registered office at [*address*] OR [*partnership name*], a partnership established under the laws of [England and Wales] having its principal place of business at [*address*];

"**Permitted Hardware**" means [a single] OR [any] [desktop, laptop or tablet computer] that is [owned by and in the physical control of] the User[ and meets the minimum hardware requirements for the Game published by the Licensor from time to time];

"**Term**" means [the term of this EULA, commencing in accordance with Clause 3.1 and ending in accordance with Clause 3.2]; and

"**User**" means [the person to whom the Licensor grants a right to use the Game under this EULA in accordance with the preamble to this EULA].

### **3. Term**

- 3.1 This EULA shall come into force upon the Effective Date.
- 3.2 This EULA shall continue in force indefinitely, subject to termination in accordance with Clause 10 or any other provision of this EULA.

### **4. Licence**

- 4.1 The Licensor hereby grants to the User from the date of supply of the Game to the User until the end of the Term a [worldwide, non-exclusive, non-transferable] licence to:
- (a) install a copy of the Game on the Permitted Hardware;
  - (b) [install a copy of the Documentation on the Permitted Hardware];
  - (c) use a single instance of the Game on the Permitted Hardware[ in accordance with the Documentation];
  - (d) [view the Documentation on the Permitted Hardware]; and
  - (e) [create, store and maintain up to [5] back up copies of the Game],
- for [the private and domestic purposes of the User] and subject to the limitations and exclusions set out and referred to in this Clause 4.[ This licence is granted subject to the payment of [any applicable Licensor, Distribution Platform and supplier charges].]
- 4.2 The User may permit [the family members and friends of the User] to use the User's installation of the Game on the Permitted Hardware[ in accordance with the Documentation]; providing that the User must not allow any other person or persons to use the Game.
- 4.3 Any licence granted to the User under this Clause 4 shall be subject to the following prohibitions:
- (a) [the User must not [sell, resell, rent, lease, loan, license, sub-license, gift, supply, transfer, publish, distribute or redistribute] the Game];
  - (b) [the User must not make the Game available for download or access by others];
  - (c) [the User must not commercially exploit the Game or use the Game to provide any service (including using the Game at an internet cafe or computer gaming centre)];
  - (d) [the User must not use the Game in connection with any marketing, advertising or promotional activity];
  - (e) [the User must not [modify, alter, edit, adapt or create derivative works of] the Game];
  - (f) [the User must not decompile, de-obfuscate or reverse engineer, or attempt to decompile, de-obfuscate or reverse engineer, the Game];

- (g) [the User must not delete, remove, disable or circumvent any security protection measures or proprietary notices in or associated with the Game]; and
- (h) [the User must not import or export the Game, or otherwise use the Game, in contravention of any applicable laws],

*[additional list items]*

save to the extent expressly permitted by this EULA or permitted by applicable law on a non-excludable basis.[ The prohibitions in this Clause 4.3 relating to the Game shall apply equally to the Documentation.]

- 4.4 The User acknowledges that the use of the Game and the exercise of the rights of the User under this EULA may require the use of an activation code or key, and further that:
- (a) the User shall be responsible for securely storing the activation code or key; and
  - (b) the Licensor shall have no obligation to replace a lost, stolen or corrupted activation code or key.

## **5. Distribution Platforms**

- 5.1 In addition to this EULA, the Distribution Platform Terms and Conditions may affect the rights, obligations and liabilities of the User in relation to the Game.
- 5.2 In the event of any conflict between this EULA and the Distribution Platform Terms and Conditions, the provisions of [the former] OR [the latter] shall take precedence.
- 5.3 Those provisions of the Distribution Platform Terms and Conditions that impose obligations and/or liabilities on the User in relation to the Game[ excluding those relating to payments] are hereby incorporated into this EULA for the benefit of the Licensor, and as such shall be enforceable by the Licensor against the User.
- 5.4 For the avoidance of doubt, the following matters shall be governed by the provisions of the Distribution Platform Terms and Conditions: [the amounts payable by the User in respect of this EULA; the methods of payment to be used by the User; and any rights of the User to cancel this EULA and receive any refunds of amounts paid in respect of this EULA].
- 5.5 The User acknowledges that the operator of the Distribution Platform has rights under the Distribution Platform Terms and Conditions which may affect the exercise of the User's rights under this EULA. Subject to Clause 9.1, the Licensor will not be in breach of this EULA as a result of, and will not be liable to the User in respect of:
- (a) any act or omission of the operator; or
  - (b) any loss or damage arising out of the operator's exercise of its rights under the Distribution Platform Terms and Conditions.

## **6. Intellectual Property Rights**

- 6.1 Nothing in this EULA shall constitute an assignment or transfer of any Intellectual Property Rights of the Licensor.
- 6.2 Save to the extent expressly provided otherwise in this EULA, all the Intellectual Property Rights and other rights in:
- (a) the Game;
  - (b) the works and materials comprised in the Game; and
  - (c) any other software or services of the Licensor,
- are hereby reserved to the Licensor[ and its licensors].

## **7. Warranties**

- 7.1 If [the Licensor reasonably determines, or any third party alleges, that the use of the Game by the User in accordance with this EULA infringes any person's Intellectual Property Rights], the Licensor may[ acting reasonably] at its own cost and expense:
- (a) modify the Game in such a way that it no longer infringes the relevant Intellectual Property Rights; or
  - (b) procure for the User the right to use the Game in accordance with this EULA.
- 7.2 The User warrants to the Licensor that it has the legal right and authority to enter into this EULA and to perform its obligations under this EULA.
- 7.3 All of the parties' warranties and representations in respect of the subject matter of this EULA are expressly set out in this EULA. To the maximum extent permitted by applicable law, no other warranties or representations concerning the subject matter of this EULA will be implied into this EULA or any related contract.

## **8. Acknowledgements and warranty limitations**

- 8.1 The User acknowledges that the use of the Game will require computer hardware and software meeting the minimum requirements specified by the Licensor.[ The User further acknowledges that, as the Game is updated, those requirements may change and, accordingly, the Game may cease to function on the hardware of the User.]
- 8.2 The User acknowledges that complex software is never wholly free from defects, errors and bugs; and the Licensor gives no warranty or representation that the Game will be wholly free from defects, errors and bugs.
- 8.3 The User acknowledges that complex software is never entirely free from security vulnerabilities; and the Licensor gives no warranty or representation that the Game will be entirely secure.

## **9. Limitations and exclusions of liability**

9.1 Nothing in this EULA will:

- (a) limit or exclude any liability for death or personal injury resulting from negligence;
- (b) limit or exclude any liability for fraud or fraudulent misrepresentation;
- (c) limit any liabilities in any way that is not permitted under applicable law; or
- (d) exclude any liabilities that may not be excluded under applicable law, and, if a party is a consumer, that party's statutory rights will not be excluded or limited by this EULA, except to the extent permitted by law.

9.2 The limitations and exclusions of liability set out in this Clause 9 and elsewhere in this EULA:

- (a) are subject to Clause 9.1; and
- (b) govern all liabilities arising under this EULA or relating to the subject matter of this EULA, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty, except to the extent expressly provided otherwise in this EULA.

9.3 The Licensor will not be liable to the User in respect of any losses arising out of a Force Majeure Event.

9.4 The Licensor will not be liable to the User in respect of any business losses, including loss of or damage to profits, income, revenue, use, production, anticipated savings, business, contracts, commercial opportunities or goodwill.

9.5 The Licensor will not be liable to the User in respect of any loss or corruption of any data, database or software.

9.6 The Licensor will not be liable to the User in respect of any special, indirect or consequential loss or damage.

9.7 The liability of the Licensor to the User under this EULA in respect of any event or series of related events shall not exceed *[amount]*.

## **10. Termination**

10.1 This EULA shall immediately and automatically terminate if the User commits any breach of this EULA.

**OR**

10.1 The Licensor may terminate this EULA immediately by giving written notice of termination to the User if the User commits any breach of this EULA.

## **11. Effects of termination**

- 11.1 Upon the termination of this EULA, all of the provisions of this EULA shall cease to have effect, save that the following provisions of this EULA shall survive and continue to have effect (in accordance with their express terms or otherwise indefinitely): [Clauses 1, 5, 9, 11 and 12].
- 11.2 Except to the extent expressly provided otherwise in this EULA, the termination of this EULA shall not affect the accrued rights of either party.
- 11.3 For the avoidance of doubt, all licences granted to the User under this EULA shall terminate upon the termination of this EULA. Accordingly, the User must immediately cease to use the Game[ and all other works and materials licensed to the User under this EULA] upon the termination of this EULA.
- 11.4 Within [2 days] following the date of effective termination of this EULA, the User must irreversibly delete or destroy all copies of the Game[ and all copies of all other works and materials licensed to the User under this EULA] in the possession or control of the User.

## **12. General**

- 12.1 No breach of any provision of this EULA shall be waived except with the express written consent of the party not in breach.
- 12.2 If any provision of this EULA is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions of this EULA will continue in effect. If any unlawful and/or unenforceable provision would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect (unless that would contradict the clear intention of the parties, in which case the entirety of the relevant provision will be deemed to be deleted).
- 12.3 The Licensor may vary this EULA by giving to the User[ at least [30 days'] prior] written notice of the variation[ or by updating the version of this EULA published on its website]. The continued use of the Game by the User following any such variation constitutes the acceptance by the User of that variation. Subject to this, this EULA may only be varied by a written document signed by or on behalf of each of the parties.
- 12.4 The User hereby agrees that the Licensor may assign the Licensor's contractual rights and obligations under this EULA to [any successor to all or a substantial part of the business of the Licensor from time to time] OR [any third party] - providing that such action does not serve to reduce the guarantees benefiting the User under this EULA. Save to the extent expressly permitted by applicable law, the User must not without the prior written consent of the Licensor assign, transfer or otherwise deal with any of the User's contractual rights or obligations under this EULA.
- 12.5 This EULA is made for the benefit of the parties, and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree any amendment, waiver, variation or settlement under or relating to this EULA are not subject to the consent of any third party.

- 12.6 Subject to Clause 9.1, this EULA shall constitute the entire agreement between the parties in relation to the subject matter of this EULA, and shall supersede all previous agreements, arrangements and understandings between the parties in respect of that subject matter.
- 12.7 This EULA shall be governed by and construed in accordance with [English law].
- 12.8 Subject to any mandatory requirements of applicable law, the courts of [England] shall have exclusive jurisdiction to adjudicate any dispute arising under or in connection with this EULA.

## Free video game EULA: drafting notes

This free end user licence agreement (EULA) has been designed for use in relation to stand-alone video games that do not include an online component.

The EULA may be used in one of three ways: as a shrink-wrap licence on physical copies of the game; as a click-wrap licence to be accepted on game installation; or as a web-wrap licence to be accepted before the download of the game to the user's device.

A detailed licensing clause is included in the EULA. The default licence text is relatively strict, but this can easily be edited to meet your requirements.

Most computer games are nowadays distributed digitally, and the EULA includes a set of clauses intended to clarify the relationship between the EULA and the terms and conditions of the relevant distribution platform. You should read the distribution platform terms and conditions before reviewing these clauses.

The EULA does not include any clauses charges/pricing or distance selling cancellation rights. In many cases, charges and cancellation will be dealt with by the distribution platform terms and conditions. If, however, you require such clauses in your EULA, see the standard and premium versions of this EULA.

### **Subsection: Web-wrap video game agreement**

This wording may be used for "web-wrap" agreements - that is, agreements that are formally accepted on a website before the software is downloaded. Accordingly, there is no right to return the software.

### **Subsection: Click-wrap video game agreement**

This wording may be used for "click-wrap" software agreements - that is, agreements that are formally accepted as part of the software installation process. There is an optional right to return the software, which should be included where customers will or may not have a chance to review the agreement terms before purchasing the software.

- Will customers have a right to return the software if they do not accept this document?
- How should the software be returned?
- Will the customer be entitled to a refund upon the return of the software under this provision?

### **Subsection: Shrink-wrap video game agreement**

This wording may be used for "shrink-wrap" software agreements - that is, agreements that are visible through product packaging and are formally accepted when a person unseals the software packaging. There may be a right to return software, because a customer may not have a chance to review the agreement terms before purchasing the software.

- Should the User return the software if the terms of this document are not accepted?
- Within what period must the software be returned?
- Will there be a right to return the software for a refund?

**Subsection: Age warranty for video game**

Optional element.

For information about the PEGI rating system, see:

<https://pegi.info/>

**Subsection: Read document in conjunction with privacy policy**

Optional element.

**Subsection: Video game epilepsy warning**

Optional element.

**Clause 1: Definitions**

**Clause 1.1**

*Definition of Distribution Platform*

- Define "Distribution Platform".

*Definition of Distribution Platform Terms and Conditions*

- Define "Distribution Platform Terms and Conditions".

*Definition of Documentation*

- How should the game documentation be identified?

*Definition of Force Majeure Event*

- Specify particular examples of force majeure events.

*Definition of Game*

- Identify the game here.

*Definition of Licensor*

- Is the first party an individual, a company or a partnership?
- What is the full name of the individual (including middle names)?
- What is the postal address of the first party?
- What is the full company name of the first party?

- In which jurisdiction is the first party incorporated?
- What is the registration number of the first party?
- What is the registered office address of the first party?
- What is the name of the first party partnership?
- In which jurisdiction is the first party partnership established?
- Where is the principal place of business of the first party?

#### *Definition of Term*

- Define "Term", the period during which the contract will subsist.

#### *Definition of User*

- Define "User".

### **Clause 2: Credit**

#### **Clause: Free documents licensing warning**

Optional element. Although you need to retain the credit, you should remove the inline copyright warning from this document before use.

### **Clause 4: Licence**

These provisions should be used to specify what rights the User has to use the game.

#### **Clause 4.1**

Consider which specific rights should be granted to the User in relation to the use of the game and the documentation.

In many legal systems, customers have a right to create back-up copies of software. For example, Section 50A of the UK Copyright, Designs and Patents Act 1988 (as amended) provides that:

"(1) It is not an infringement of copyright for a lawful user of a copy of a computer program to make any back up copy of it which it is necessary for him to have for the purposes of his lawful use.

...

(3) Where an act is permitted under this section, it is irrelevant whether or not there exists any term or condition in an agreement which purports to prohibit or restrict the act (such terms being, by virtue of section 296A, void)."

- What sort of licence is granted?

#### **Clause 4.2**

Optional element. Should use of the game be limited to particular classes of person?

### **Clause 4.3**

In addition to specifying what a licensee is permitted to do under a licence, it is usual to specify what is not permitted.

There are, however, legal restrictions upon the types of prohibition that may be applied to a software licence.

In *UsedSoft GmbH v Oracle International Corp.* (C-128/11), for example, the court ruled that a software vendor could not prevent a perpetual licensee from selling a "used" licence for software downloaded from the internet. Nonetheless, we have included an express restriction on resale here, as such restrictions are commonly found in this type of document. The law in this area is complex and uncertain, and you should consider taking legal advice if resale may be an issue for you.

- What general prohibitions apply to the use of the software?

### **Clause 4.4**

Optional element.

## **Clause 5: Distribution Platforms**

Optional element.

Video game distribution platforms - such as Valve's Steam, Apple's iTunes store and Google's Play store - will usually include terms and conditions that users must agree to when making a purchase, and those terms and conditions may interact with the licences granted by video game publishers to end users. These provisions are intended to help clarify the relationship between this EULA and those terms and conditions, and to help resolve any conflicts.

### **Clause 5.2**

Optional element.

You should check whether the relevant distribution platform terms and conditions require that they take precedence over developer EULAs.

### **Clause 5.3**

Optional element.

### **Clause 5.4**

Optional element.

### **Clause 5.5**

Optional element.

## **Clause 7: Warranties**

Optional element.

### **Clause 7.1**

Optional element.

- In what circumstances may the Licensor exercise its rights under this provision?
- Should there be an express requirement for the Licensor to act reasonably in relation to the exercise of its rights under this provision?

### **Clause 7.2**

Optional element.

## **Clause 8: Acknowledgements and warranty limitations**

Optional element.

### **Clause 8.1**

Optional element.

### **Clause 8.2**

Optional element.

### **Clause 8.3**

Optional element.

## **Clause 9: Limitations and exclusions of liability**

Contractual limitations and exclusions of liability are regulated and controlled by law, and the courts may rule that particular limitations and exclusions of liability in contracts are unenforceable.

Exclusions and limitations of liability in UK B2C contracts are primarily regulated by the Consumer Rights Act 2015 ("CRA").

Consumer contracts regulated by the CRA cannot exclude or restrict liability for death or personal injury resulting from negligence (Section 65(1), CRA). Further, any "unfair term" in such a contract will not be binding on the consumer (Section 62(1), CRA). A contractual term is unfair "if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations arising under the contract to the detriment of the consumer" (Section 62(3), CRA).

Sections 31, 47 and 57 of the CRA prevent a trader using exclusion clauses to abridge the rights of a consumer in relation to goods, digital content and services respectively.

Section 31 of the CRA provides that a term of a contract to supply goods is not binding on the consumer to the extent that it would exclude or restrict the trader's liability arising under the provisions of the CRA relating to: (a) goods being of

satisfactory quality; (b) goods being fit for a particular purpose; (c) goods being as described; (d) pre-contract information; (e) goods matching a sample; (f) goods matching a model seen or examined; (g) installation of goods; (h) ancillary digital content; (i) the trader having the right to supply the goods; (j) the delivery of the goods; or (k) the passing of risk in the goods.

Section 47 of the CRA provides that a term of a contract to supply digital content is not binding on the consumer if it excludes or restricts the trader's liability under the provisions of the CRA relating to: (a) digital content being of satisfactory quality; (b) digital content being fit for a particular purpose; (c) digital content being as described; (d) pre-contract information; or (e) the trader's right to supply the digital content.

Section 57 of the CRA provides (inter alia) that a term in a services contract will not bind consumers if it excludes any liability of the trader to provide the services with reasonable care and skill.

A "grey list" of provisions that may be regarded as unfair is set out in Part 1 of Schedule 2 to the CRA. Some of these have implications for the drafting of limitations and exclusions of liability. For example, they include: "[a] term which has the object or effect of excluding or limiting the trader's liability in the event of the death of or personal injury to the consumer resulting from an act or omission of the trader."

Section 65(2) of the CRA provides that "[w]here a term of a consumer contract, or a consumer notice, purports to exclude or restrict a trader's liability for negligence, a person is not to be taken to have voluntarily accepted any risk merely because the person agreed to or knew about the term or notice".

The courts may be more likely to rule that provisions excluding liability, as opposed to those merely limiting liability, are unenforceable.

If there is a risk that any particular limitation or exclusion of liability will be found to be unenforceable by the courts, that provision should usually be drafted as an independent term, and be numbered separately from the other provisions.

These guidance notes provide a very incomplete and basic overview of a complex subject. Accordingly, you should take legal advice if you may wish to rely upon a limitation or exclusion of liability.

### **Clause 9.1**

Do not delete this provision (except upon legal advice). Without this provision, the specific limitations and exclusions of liability in the document are more likely to be unenforceable.

### **Clause 9.4**

Optional element.

### **Clause 9.5**

Optional element.

## **Clause 9.6**

Optional element.

## **Clause 9.7**

Optional element. Do you want to include a per event liability cap in this document?

Liability caps may be unenforceable in practice.

## **Clause 11: Effects of termination**

### **Clause 11.3**

Optional element.

### **Clause 11.4**

Optional element.

- Within what period following termination must licensed software copies be returned, destroyed or deleted?

## **Clause 12: General**

### **Clause 12.1**

Optional element.

### **Clause 12.2**

Optional element.

### **Clause 12.3**

Optional element.

It is common in consumer contracts to find provisions giving the Licensor strong rights to vary the terms of the contract (such as this one). However, contract law and consumer protection law may affect the enforceability of such variations.

### **Clause 12.4**

Optional element.

- To whom may the Licensor assign its rights and obligations under the contract?

### **Clause 12.5**

Optional element.

This provision is designed to exclude any rights a third party may have under the Contracts (Rights of Third Parties) Act 1999.

- *Contracts (Rights of Third Parties) Act 1999* - <https://www.legislation.gov.uk/ukpga/1999/31>

### **Clause 12.6**

Optional element.

### **Clause 12.7**

This template has been drafted to work in the English law context. If you plan to change the governing law, you should have the document reviewed by someone with expertise in the law of the relevant jurisdiction.

- Which law will govern the document?

### **Clause 12.8**

Optional element.

As a practical matter, it makes sense for the courts with expertise in the relevant law to have the right to adjudicate disputes. Where one of the parties is outside England (or at least the UK), you may want to grant the courts of their home jurisdiction the right to adjudicate disputes, as this could ease enforcement in some circumstances.

- The courts of which jurisdiction will have the exclusive right to adjudicate disputes relating to the document (subject to applicable law)?