
POSER END USER LICENSE AGREEMENT

This End User License Agreement (“EULA”) is between you (both the individual installing the Program and any single legal entity on behalf of which such individual is acting) (“you” or “your”) and Smith Micro Software, Inc., and/or its subsidiaries (“Company”).

PLEASE READ THIS EULA CAREFULLY BEFORE USING THE SOFTWARE. BY CLICKING THE “I ACCEPT” BUTTON WHEN INSTALLING THE PROGRAM, YOU ARE AGREEING TO BE BOUND BY THE TERMS OF THIS EULA. IF YOU DO NOT AGREE TO THE TERMS OF THIS EULA, CLICK ON THE “I DO NOT ACCEPT” BUTTON. IF YOU DO NOT ACCEPT THIS EULA, YOU MAY NOT USE OR ACCESS THE SOFTWARE. USING OR ACCESSING ANY PART OF THE SOFTWARE INDICATES THAT YOU ACCEPT THESE TERMS.

DEFINITIONS

- “Content” means animations, characters, clothing, faces, hair, geometries, images, materials, meshes, morphs, motion files, props, PoserPython scripts, textures, bump maps, transparencies, and similar files and data created with the intent of being used within the Program and/or third party applications.

- “Documentation” means any written material in any form for installation and use of the Program provided by authorized agents or representatives of the Company.

- “Legitimate Uses” means (a) creating morph targets based on the Restricted Content, provided that any distribution of the morph targets will not include the original mesh connectivity information (for example, distribution in the form of data utilized with morph moving utilities or in a .CR2 file that references the original geometry, but no inclusion of the complete mesh); (b) creating texture templates derived from the Restricted Content to create new maps for either Restricted Content or Other Content; (c) creating tutorials, books, or other educational materials using images of the Program interface or Content for sale, distribution, public display, or public performance, provided such materials are intended to educate users as to use of the Program; (d) creating original Content for sale, distribution, public display, or public performance; (e) creating materials (e.g., shader trees) for use with either Restricted Content or Other Content; (f) creating characters or props based on Restricted Content in Proprietary File Formats, where the original (or modified) geometry, texture, or other Restricted Content files are not distributed with such characters or props; or (g) creating PoserPython scripts.

- “Other Content” means Content that is not Restricted Content or Unrestricted Content. Other Content may be subject to license terms imposed by the Other Content’s original creator.

- “Program” means the Company computer software and associated files in Proprietary File Formats delivered via the accompanying physical media or electronic media.

- “Proprietary File Formats” means any of Company’s proprietary compressed and uncompressed formats and/or future proprietary file formats, including files with the following extensions: CM2, CR2, FC2, HD2, HR2, LT2, MC6, MT5, PP2, PZ2, PZ3.

- “Restricted Content” means all Content included with or part of the Program that is not Unrestricted Content, including without limitation mesh objects (geometry) in any format, files in Proprietary File Formats, images, materials, texture, transparency maps, Documentation, and Company’s proprietary data.

- "Unrestricted Content" means Content included with or part of the Program that is specifically identified in the Documentation or listed in this EULA as Unrestricted Content. This version of the Program contains no Unrestricted Content.

THIRD-PARTY TECHNOLOGY AND CONTENT

Portions of the Program and Other Content contain technology and/or other components licensed by the Company from the following third parties: Pixels Digital, Inc., Singular Inversions, Inc., Size8 Software, Inc., and Automatic Sync Technologies LLC, each of whom retain the ownership, copyrights, trademarks, and patents to their respective contributions to the Program. Other Content that is subject to third-party rights included with Program and Documentation is copyrighted and owned by the original Content creators.

GENERAL

You agree to use the Program, Documentation and Content only for lawful purposes. Any use of the Program, Documentation or Content other than as granted in this EULA must be approved by the Company's prior written consent. The Company maintains an ongoing EULA enforcement program. Violation of any provision in this EULA automatically terminates this EULA. The Company reserves all other rights that it may have for violation of this EULA.

PROGRAM LICENSE

A. Subject to the terms and conditions of this EULA and your payment of the license fee, the Company grants you a limited, personal, nontransferable and nonexclusive license (without the right to sublicense): (i) to use a single copy of the Program (except as expressly permitted in the Documentation) solely for your own internal business operations on a single computer as set forth in Section K below for production operation or, on a temporary basis, on a backup system if such equipment is inoperative, consistent with the limitations specified or referenced in this EULA and the Documentation; (ii) to use the Documentation provided with the Program in support of your authorized use of the Program; and (iii) to copy the Program to make one (1) archival copy of the Program for your personal archival or backup purposes, and to make a sufficient number of copies for Legitimate Uses or the intended use described in the Documentation, provided that all titles and trademark, copyright and restricted rights notices are reproduced on all such copies. Any other uses of the Program, including without limitation the Program interface, other than those granted in this EULA must be approved by the Company's prior written consent.

B. You will not use, copy, modify, derive, or transfer the Program or Documentation, or any copy, modification, derivation, or merged portion thereof, in whole or in part via any means or for any purpose whatsoever except as expressly permitted in this EULA or the Documentation. You will not relicense, sublicense, rent, lease, or lend the Program for third-party training, commercial time-sharing or service bureau use. You will not, and will not permit any third party to, reverse engineer, decompile, debug, disassemble, circumvent the security features of, or interfere with the normal functionality and operation of the Program for any reason whatsoever without the express prior written consent of the Company or except to the extent expressly permitted by applicable law. If the Program is an upgrade to a previous version of the Program, you must possess and maintain a valid license to such previous version in order to use the upgrade.

C. You expressly acknowledge that the Company has a valuable proprietary interest in both the Program and the Documentation. All title, ownership, interest and rights in and to the patent, copyright, trademark, trade secret and any other intellectual property rights in the Program (and any derivative works thereof) and the Documentation (and any derivative works thereof), not expressly granted to you by this EULA remain with the Company. You do not acquire any other rights, express or implied, in the Program (and any derivative works thereof) and the Documentation (and any derivative works thereof) other than those rights expressly granted under this EULA. Without limiting the generality of the foregoing, the Company retains all title, ownership, interest and rights in and to the patent, copyright, trademark, trade secret and any other intellectual property rights in the copy of the Program contained on your archival media, and all of the terms of this EULA apply to such archival copy as if it were the original Company-produced copy of the Program that was furnished to you when you paid the licensing fee.

D. Except as otherwise expressly permitted in the Documentation, you will only use the Program on a single computer, meaning that you must treat the Program "like a book." "Like a book" means that the Program may be used by any number of people and may be freely moved from one computer to another so long as no possibility exists of the Program being used at more than one computer simultaneously. More than one person at a time cannot read the same copy of a book, and this restriction applies to the Program. The Company is pleased to offer site licenses for multiple simultaneous users. Please contact the Company at the address below for details.

E. You, your employees, and/or authorized agents must protect the Program's confidentiality and act to enforce your obligations under this EULA. You cannot distribute or otherwise make the Program or Documentation available to any third party via any means whatsoever, public or private, for any purpose, commercial or not, unless explicitly allowed by this EULA.

F. You assume full responsibility for your selection of the Program to achieve your intended results and for the installation, use, and results you obtain from the Program. Company has no obligation to provide support, maintenance, upgrades, modifications or new releases under this EULA.

CONTENT LICENSE

G. Subject to the terms and conditions of this EULA and your payment of the license fee, Company grants you a limited, personal, nontransferable and nonexclusive license (without the right to sublicense):

- a. To reproduce, prepare derivative works based upon, distribute, publicly display, and publicly perform the Unrestricted Content for any lawful purpose other than to create a product which is intended to compete with the Program or to create new content which is intended to compete with the Restricted Content.
- b. To prepare derivative works based upon the Restricted Content solely for Legitimate Uses and lawful uses.
- c. To reproduce, prepare derivative works based upon, distribute, publicly display, and publicly perform content you create using Restricted Content, provided that such use of Restricted Content shall be solely Legitimate Uses and lawful uses.

H. Notwithstanding the foregoing, nothing shall limit the Company's right to independently create, develop, own, market, distribute, license, sublicense, import, export, sell, or otherwise exploit any content or materials similar to any derivative works based upon the Content.

I. You will use the Other Content in accordance with all applicable license terms imposed by the content's original creator.

J. You will not use, copy, modify, derive, distribute, transfer or sublicense the Restricted Content, the Unrestricted Content, or the Other Content or any copy, modification, derivation, or

portion thereof, in whole or in part via any means or for any purpose whatsoever except as expressly permitted in this EULA or the Documentation.

K. You expressly acknowledge that the Company has a valuable proprietary interest in the Restricted Content and the Unrestricted Content. All title, ownership, interest and rights in and to the patent, copyright, trademark, trade secret and any other intellectual property rights in the Restricted Content and the Unrestricted Content not expressly granted to you by this EULA remain with the Company. You do not acquire any other rights, express or implied, in the Company-created Restricted Content (and any derivative works thereof) other than those rights expressly granted under this EULA.

L. Except as otherwise expressly permitted in the Documentation or unless otherwise provided for herein, you will only use the Content on a single computer, meaning that you must treat the Content "like a book." The Company is pleased to offer site licenses for multiple simultaneous users. Please contact the Company at the address below for details.

TERM

M. This EULA remains in full force and effect until terminated. You may terminate it at any time by returning or destroying both the Program and the Documentation, together with all copies, modifications, and merged portions of the Product and the Documentation in any form. The Company is in no way obliged to issue refunds. Company may terminate this EULA at any time upon your breach of any of the provisions hereof.

N. Upon termination, you will immediately cease all use of the Program, return or destroy both the Program and the Documentation to the Company, together with all copies, modifications, and merged portions of the Product and the Documentation in any form, and so certify to vendor. Termination of this EULA for any reason in no way limits the Company's right to continue enforcing all rights provided by law and does not entitle you to a refund of your license fee except as provided herein. All provisions of this EULA that protect the Company's proprietary rights continue in full force and effect after termination.

LIMITED WARRANTY

O. The Company provides the Program and the Documentation AS IS with no warranty. The Company makes no representations or warranties, either express or implied, of any kind with respect to the Program and the Documentation. To the fullest extent permissible under applicable law, Company expressly disclaims all warranties of any kind, either express or implied, with respect to the Program or the Documentation, including warranties of merchantability, fitness for a particular purpose, satisfactory quality, and non-infringement. The Company does not warrant that the Program's functionality will meet your requirements or that the Program operation will be uninterrupted or error-free. No distributor, dealer, or any other entity or person is authorized to expand or alter either this warranty or this EULA, and the Company will not be bound by any such representation in any way. You assume the entire risk of the Program's and the Documentation's quality and performance. Should the Program prove defective, you assume the entire cost of all necessary servicing repair or correction.

LIMITATION OF LIABILITY

P. In no event will the Company be liable to you for any indirect, incidental, consequential, special, or punitive damages, including damages for any lost profits, arising out of your use or inability to use the Program and the Documentation, even if the Company has been advised of the possibility of such damages or for any claim by any other party. Some states and countries do not allow the limitation or exclusion of liability for certain damages, so the above limitation or exclusion may not apply to you. In no event will the Company's liability to you or any other person for damages hereunder exceed the amount of the license fee paid by you to use the Program regardless of the form of the claim. The parties acknowledge that this limitation of liability are an essential element of the bargain between the parties, without which Company would not have entered into this EULA. Company's pricing reflects this allocation of risk and the limitation of liability specified herein.

INDEMNIFICATION

Q. You will indemnify and hold harmless, and at Company's request defend, Company and its affiliates, successors and assigns from and against any and all claims, losses, liabilities, damages, settlements, expenses and costs (including, without limitation, attorneys' fees and court costs) which arise out of or relate to any third party claim or threat thereof that your use of the Program, Documentation or Content is unlawful or not otherwise permitted by this EULA. Company reserves the right, at its own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification hereunder.

EXPORT LAW ASSURANCES

R. Export of this Program and Documentation is governed by the laws and regulations of the United States and import laws and regulations of certain other countries. You will comply with all such laws and regulations. Export of this Program and Documentation to any entity on the Denied Parties List and other lists promulgated by various agencies of the United States Federal Government is strictly prohibited.

U.S. GOVERNMENT RESTRICTED RIGHTS

S. The Program and Documentation is provided with RESTRICTED RIGHTS. Any use, modification, reproduction, release, performance, display or disclosure by the U.S. Government or any of its agencies shall be governed solely by the terms of this EULA and shall be prohibited except to the extent expressly permitted by the terms of this EULA. The Software and Documentation are deemed to be "commercial computer software" and "commercial computer software documentation", respectively, pursuant to DFAR Section 227.7202 and FAR 12.212(b), as applicable. Any technical data provided that is not covered by the above provisions is deemed to be "technical data-commercial items" pursuant to DFAR Section 227.7015(a). Any use, modification, reproduction, release, performance, display or disclosure of such technical data shall be governed by the terms of DFAR Section 227.7015(b).

MISCELLANEOUS

T. This EULA shall be governed by the laws of the State of California, without giving effect to any choice of law rules. This EULA will not be governed by the United Nations Convention on Contracts for the International Sales of Goods, the application of which is expressly excluded. Exclusive jurisdiction over and venue of any suit arising out of or relating to this EULA will be in the state and federal courts of Orange County, California. If for any reason a court of competent jurisdiction finds any provision, or portion thereof, to be unenforceable, the remainder of this License shall continue in full force and effect. The waiver by either party of any default or breach of this EULA will not constitute a waiver of any other or subsequent default or breach. You may not assign, sell, transfer, delegate or otherwise dispose of, whether voluntarily or involuntarily, by operation of law or otherwise, this EULA or any rights or obligations under this EULA without the prior written consent of the Company. Any purported assignment, transfer or delegation by you will be null and void. This EULA constitutes the entire agreement between the parties and supersedes all prior or contemporaneous agreements or representations, written or oral, concerning the subject matter of this EULA. This EULA may not be modified or amended except in a writing signed by a duly authorized representative of each party.

CONTACT INFORMATION

U. If you have questions concerning this EULA or need to contact Customer Service, please contact Company at this address:

Smith Micro Software, Inc., 51 Columbia, Aliso Viejo, CA 92656.

TRADEMARK & COPYRIGHT NOTICE

Poser, Poser Pro, the Poser logo, and the Smith Micro Logo are trademarks and or registered trademarks of Smith Micro Software, Inc. Poser copyright © 1991-2008 All Rights Reserved. All other product names are trademarks or registered trademarks of their respective holders. Licensed product.

This EULA does not grant you the right to use, and you shall not use, the copyrighted materials or trademarks of Company or its affiliates in any advertising, publicity or promotion, or to express or imply any endorsement of such party. Without limiting the generality of the foregoing, you may not express or imply any endorsement by the Company or its affiliates of any tutorials, books, or other educational materials you create using images of the Program interface or Content.

BY CLICKING ON THE "I ACCEPT" BUTTON WHEN INSTALLING THE PROGRAM, YOU ACKNOWLEDGE THAT (1) YOU HAVE READ AND REVIEWED THIS AGREEMENT IN ITS ENTIRETY, (2) YOU AGREE TO BE BOUND BY THIS AGREEMENT, (3) THE INDIVIDUAL SO CLICKING HAS THE POWER, AUTHORITY AND LEGAL RIGHT TO ENTER INTO THIS AGREEMENT ON BEHALF OF YOU AND, (4) BY SO CLICKING, THIS AGREEMENT CONSTITUTES BINDING AND ENFORCEABLE OBLIGATIONS OF YOU.