

Terms of Maintenance, Support and Auto-renewal

These terms and conditions shall govern the provision by The Foundry Visionmongers Ltd. ("Foundry") of, and your entitlement to receive and use, maintenance and support services purchased by you for certain of Foundry's software products and services (the "Maintenance and Support Agreement").

Your attention is particularly drawn to: (a) Clause 2.12 regarding the data we may collect and how we may use it; (b) Clause 5 in which certain customers agree to the auto-renewal of this Agreement on an annual basis, subject to your right to opt out prior to the date of auto-renewal; and (c) Clause 6 where we limit our liability to those receiving our maintenance and support services.

Whenever you place an order for Maintenance and Support with Foundry (whether by phone, email, via Foundry's website or otherwise) you are bound by the version of the Maintenance and Support Agreement in effect and published on <https://s3.amazonaws.com/thefoundry/documents/AnnualUpgradeAndSupportProgramme.pdf> on the date you place that order. Foundry may revise the terms of the Maintenance and Support Agreement from time to time so please review the terms prior to each order. If you do not accept and agree to be bound by this Maintenance and Support Agreement, then you will not be entitled to receive or access the applicable Maintenance and Support from Foundry.

1. Definitions

For the purposes of this Maintenance and Support Agreement:

"Commercially Reasonable Efforts" means the same degree of priority and diligence with which Foundry meets the support needs of its other similar customers;

"Co-Term Period" means a period of less than twelve (12) months agreed in writing between Customer and Foundry as the initial term in which Customer shall be entitled to receive Maintenance and Support such that expiry of the Co-Term Period will coincide with the expiry of certain of Customer's existing Licenses. A Co-Term Period, where applicable, shall apply in lieu of the Initial Support Period;

"Customer" means you as a legal entity or natural person who has purchased and holds a current Licence to use a Foundry Product;

"Customer Classification" has the meaning given in Clause 2.1;

"Educational License" means a License that has been purchased on the discounted terms of and is subject to Foundry's educational policy as detailed at <https://www.foundry.com/industries/education> and as further described in the End User Licence Agreement;

“End User License Agreement” means the end user license agreement between Customer and Foundry governing Foundry’s licensing and your use of Foundry Products;

“Foundry Product” means a software product or plugin licensed by Foundry to a Customer together with any Updates provided in accordance with this Maintenance and Support Agreement;

“Initial Support Period” means twelve (12) months;

“License” means a valid license for a Foundry Product that has been purchased by a Customer;

“Maintenance and Support” means the maintenance and support services provided or made available by Foundry as set out in Clause 2.2;

“Maintenance and Support Fees” means the price paid by a Customer to Foundry for Maintenance and Support;

“Mari Individual Subscription License” means a License for Mari that has been purchased by an individual on a subscription basis as further described in the End User License Agreement;

“Modo Subscription License” means a License for Modo that has been purchased on a subscription basis as further described in the End User License Agreement;

“Renewal Support Period” has the meaning given in Clause 5.1.2;

“Rental License” means a License that has been purchased by a Customer on a rental basis as further described in the End User License Agreement;

“Student License” means a License that has been purchased as a student license as detailed at <https://www.foundry.com/industries/education/students-graduates> and as further described in the End User License Agreement;

“Subscription Licence” means a Mari Individual Subscription License or a Modos Subscription License, as the case may be.

“Supported Licences” those Licences for which Customer has purchased Maintenance and Support or for which Customer is otherwise entitled to receive Maintenance and Support (as stated on the applicable Foundry order confirmation);

“Term” (i) in respect of a Subscription License or a Rental License, has the meaning given in Clause 5.9; and (ii) in respect of all other Licenses, means the Initial Support Period (or, if applicable, the Co-Term Period) together with any and all Renewal Support Period(s);

“Updates” has the meaning given in Clause 2.7;

2. Maintenance and Support Terms & Support Entitlements

2.1 **Customer Classifications.** Each Customer shall be categorised into one of six Customer Classifications depending on the type of Licence they have purchased and whether or not they have purchased Maintenance and Support as follows:

Licence Type	Customer Classification
<p>A Customer who:</p> <ul style="list-style-type: none"> i. has purchased and holds a Licence (other than an Educational Licence, a Rental Licence or a Subscription Licence) together with Maintenance and Support within the previous twelve (12) months (or, if applicable, within a Co-Term Period); or ii. who has purchased Maintenance and Support for an existing Licence (other than an Educational Licence, a Rental Licence or a Subscription Licence) within the previous twelve (12) months (or, if applicable, within a Co-Term Period); or iii. is in a Renewal Support Period. 	A
A Customer who has purchased and holds a current Rental License or Subscription License.	B
A Customer who has purchased and holds a current Educational License.	C
A Customer who has purchased and holds a current a Student License	D
Any other Customer	E

2.2 **Entitlement to Receive Maintenance and Support.** During the Term, a Customer shall be entitled to access, and Foundry shall provide, different levels and/or types of Maintenance and Support for Customer's Supported Licences depending on the Customer's Customer Classification as follows (where a "✓" indicates available access):

Customer Classification	Maintenance and Support Services						
	Updates	Tele- phone support	Support via Support Portal	License and install support (via Support Portal)	Bug reporting (via Support Portal)	Bug Tracker	Community forums, online help and documents
A	✓	✓	✓	✓	✓	✓	✓
B	✓		✓	✓	✓	✓	✓
C	✓		✓	✓	✓	✓	✓
D	✓			✓	✓	✓	✓
E				✓*		✓	✓

* for a period of thirty (30) days following initial License purchase.

2.3 **Acceptance.** Customer acknowledges and agrees that if it purchases, requests, accepts, or makes use of any of the Maintenance and Support services offered by Foundry, it will be bound by this Maintenance and Support Agreement, and any associated, additional or modified Foundry policies or materials, as may be issued by Foundry from time to time, and such terms shall form a part of and will be incorporated by reference into this Maintenance and Support Agreement.

2.4 **Changes.** Foundry reserves the right at its discretion to change or add any maintenance and support entitlements or benefits to any Maintenance and Support from time to time, without prior notification to Customer. FOUNDRY DOES NOT GUARANTEE THAT IT WILL MAKE AVAILABLE, AND CUSTOMER ACKNOWLEDGES THAT IT MAY NOT RECEIVE, ANY PARTICULAR BENEFIT DURING THE TERM OF THEIR MAINTENANCE AND SUPPORT.

2.5 **Restrictions.** Customer may not share, distribute, rent, loan, sell, sublicense or otherwise transfer or market any Maintenance and Support to or with any other person or entity without Foundry's prior written consent. Maintenance and Support entitlements may only be accessed

and/or used by Foundry's authorised Customers (in accordance with Clauses 2.1 and 2.2), and may not be shared with any third party.

2.6 Customer's obligations.

2.6.1 Customer shall notify Foundry of an email address for the provision of any notices and correspondence in connection with this Maintenance and Support Agreement and shall notify Foundry via 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, including in relation to the auto-renewal of your Maintenance and Support Agreement. 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 Maintenance and Support Agreement.

2.6.2 If Customer is a business, it will notify Foundry of the names of up to two employees who shall then become the technical representatives of the Customer for the purposes of receiving Maintenance and Support in accordance with this Maintenance and Support Agreement ("**Customer Representatives**").

2.6.3 Customer shall co-operate with Foundry in requesting Maintenance and Support and shall provide any assistance or information as may reasonably be required by Foundry, including in relation to the diagnosis of any faults.

2.6.4 Customer shall submit (or shall ensure that its Customer Representatives shall submit) all requests for support in accordance with this Maintenance and Support Agreement. report errors, faults in Foundry Products promptly to Foundry.

2.6.5 Customer acknowledges that it is exclusively responsible for: (a) reviewing any new Updates; (b) ensuring that its staff is trained in the proper use and operation of Foundry's Products; (c) making regular backup copies of its data to ensure recovery of its data if any of Foundry's Products malfunction; and (d) the selection, use of and results obtained from any other programs, equipment, materials or services used in conjunction with Foundry Products.

2.7 **Updates.** Foundry may from time to time and in its sole discretion issue updates or upgrades to a product's existing version, comprising bug fixes and/or feature enhancements ("**Updates**"). Subject to this Clause 2.7, Maintenance and Support will only apply to the latest product version commercially released by Foundry at the relevant time ("**Current Version**") except in the case of Customers who fall within Customer Classification "A" or "B" for whom Maintenance and Support will apply to the latest product version and any prior versions released within the previous 18 (eighteen) months. Foundry will endeavour to provide news of Updates to the technical representatives of Customer. If Foundry releases an Update and Customer decides not to acquire and install such Update, Foundry shall not be obligated to correct errors or provide bug fixes in relation to any earlier releases or undertake any attempts

FOUNDRY.

imagination engineered

to fix issue in such earlier releases, other than offering the Update to Customer following the expiry of the then current support year.

- 2.8 **Disclaimer.** FOUNDRY DOES NOT GUARANTEE, REPRESENT OR WARRANT SUPPORT RESULTS, SUPPORT RESPONSE TIMES, IDENTIFICATION OF ALL VIRUSES, OR THAT ALL ERRORS AND BUGS WILL BE CORRECTED.
- 2.9 **Product discontinuation.** Foundry has the right to discontinue the distribution and/or development of any Foundry Product and the support for that Foundry Product, including the distribution of older software versions, at any time in its sole discretion, provided that Foundry agrees not to discontinue the support for any Foundry Product during the then-current support year that may have been purchased by Customer, subject to the termination provisions in the applicable End User Licensing Agreement or the terms of this Maintenance and Support Agreement. If Foundry discontinues the distribution and/or development and support for a particular Foundry Product, support services for any remaining Foundry Products shall not be adversely affected; provided however, that Foundry reserves the right to alter the Maintenance and Support services, from time to time, using reasonable discretion but in no event shall such alterations made during the then-current Term result in: (a) diminished support from the level of support set forth in this Maintenance and Support Agreement; (b) materially diminished obligations for Foundry; or (c) materially diminished rights of Customer. Foundry shall provide Customer with 30 days prior written notice of any material changes to the Maintenance and Support contemplated in this Agreement.
- 2.10 **Usage.** It will be assumed that users of Foundry Products are generally familiar with the software and with the use of licensing tools and networking infrastructure. Foundry may restrict the use of its Maintenance and Support if Customer repeatedly makes requests for information, which is contained in the relevant software documentation. Foundry is not responsible for advising on setting up a network to allow the Foundry Product to function.
- 2.11 **Service exclusions.** Foundry does not provide on-site support services. Foundry does not provide support for and shall not be responsible for the operation of or any defects arising from third party software/gizmos/plugin unless otherwise stated on Foundry's website. For details of out of scope services please see Clause 4.
- 2.12 **Privacy.** The email address you provide in accordance with Clause 2.6.1, any further contact details you provide and any information you provide to Foundry in connection with your access to and/or Foundry's provision of Maintenance and Support shall together constitute "**Information**". 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 Foundry Products by Customer is in accordance with their End User Licence Agreement(s) and does not exceed any user number or other limits on its use; and (d) to advise Customer 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

FOUNDRY.

imagination engineered

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 published on its website from time to time (see <https://www.thefoundry.co.uk/EULA/TFPrivacyCookiesPolicy.pdf>). Customer agrees to make its Customer Representatives aware of, and ensure that its Customer Representatives agree, to the uses which Foundry will make of the Information and of the terms of Foundry's Privacy Policy.

3. Access To Foundry's Support Team

3.1 **Support Portal.** Customers entitled to support via the online portal (as determined in accordance with Clause 2.2) can post issues to the support team using Foundry's Support Portal accessed here: <https://support.foundry.com/hc/en-us> ("**Support Portal**"). Foundry's support hours (including for phone support) are 09.30 - 17.30 (GMT/BST) and 08.30 17.00 (PST/PDT) Monday to Friday (excluding U.K. and U.S. public holidays respectively).

3.2 **Foundry's undertaking.** Foundry will undertake Commercially Reasonable Efforts to:

3.2.1. Acknowledge receipt of a support request (via email);

3.2.2. Provide a short status report to Customer within a reasonable time; and

3.2.3. Where possible, provide a remedy that may include error correction or workarounds. Alternatively, the issue may be identified as a problem with the Foundry Product and Customer will be provided with a bug tracking ID in the Support Portal, which can be followed to identify when an Update is issued to correct the bug.

3.3 **Ticketing.** Foundry's support team utilize a ticket system to manage communications with Customers. Communications from Foundry's support team will be done via email and tickets will be available to view or manage via the Support Portal. At Customer's request, Foundry may provide Customer with the ability to view all Support Portal tickets raised by Customer. If Foundry grants such a request, Customer will be responsible for notifying Foundry's support team in the event that access to the Support Portal should be revoked in due course (e.g. if a Customer's employee's contract is terminated). All support requests logged via the Support Portal will be assigned a unique identifier. This unique identifier should be used whenever Customer contacts Foundry. Support requests submitted outside the Support Portal (e.g. which may be sent to Foundry employees' or otherwise) will not be considered valid support requests and Foundry's support team will be under no obligation to address such requests in accordance with this Maintenance and Support Agreement. Valid support request eligible for support in accordance with this Maintenance and Support Agreement must be logged via the Support Portal and have a ticket ID. Each support ticket must be related to one question. Foundry may ask Customers to split support tickets if those relate to multiple questions in

FOUNDRY.

imagination engineered

order to ensure that all support questions are properly addressed and a support engineer with the relevant skills is assigned to Customers' requests. When raising a support ticket, it is Customers' responsibility to ensure that adequate, complete and accurate information is provided to Foundry, including, but not limited to: a) steps to reproduce the issue, and b) sample scripts so that the support team can reproduce the problem. Foundry reserves the right to reject support requests where it determines that insufficient or incomplete information has not been provided by the Customer.

3.4 **Customer identification.** Foundry reserves the right to ask Customers for identification details in order to confirm that Customer is an authorised Customer (e.g. in the event that it is unable to do so based on the information provided in a support ticket). To help Foundry track down a Customer's support entitlements, Customers are required to email support requests from the email account associated with Customer's Maintenance and Support.

3.5 **Urgent requests & deadlines.** Customer may advise Foundry in writing at the time of creating the support request ticket of any urgent deadlines that Foundry should be aware of. Foundry will use Commercially Reasonable Efforts to accommodate any deadlines notified to it in accordance with this Support Agreement but it does not warrant or represent that such deadlines or any other timelines can be met in all cases.

3.6 **Educational.** For Customers who have an Educational License, Foundry will provide support only to the nominated contact at educational institutions that are Customers of Foundry. Students who require support should contact their course tutor or other nominated contact as applicable, who may then contact Foundry for support.

3.7 **Telephone support.** Customers who are entitled to telephone support in accordance with clause 2.2 may contact the support team via telephone on:

- UK: 020 7479 4350 Monday to Friday, 09.30 – 17.30 (GMT/BST); or
- US: +1 (310) 399 4555 Monday to Friday, 08.30 – 17.00 (PST/PDT)

Due to the technical nature of Foundry Products, support tickets should be submitted in writing first in order to help Foundry investigate the issue properly and ensure it is assigned to the most appropriate member of the support team. Foundry cannot guarantee the availability of a product expert when a call to phone support is made. Where the support team is unable to help resolve the issue over the phone, a support ticket will be raised on Customer's behalf and assigned to the appropriate support engineer as soon as reasonably practicable. Support tickets raised via the phone are subject to the same prioritization as support tickets raised via email or the Support Portal. Foundry cannot guarantee that support tickets raised via the phone will be allocated urgent priority or immediate attention.

4. Out of Scope Services

FOUNDRY.

imagination engineered

- 4.1 **Exclusions.** The following matters are excluded from Maintenance and Support: (a) Queries related to licence purchase or a quote for Foundry's products - please contact Foundry Sales team at licenses@foundry.com; (b) Non-core product functionality queries, such as customizations of Foundry Products. Before sending Foundry a support request or bug report, Customer should attempt to reproduce the issues in a vanilla product environment; (c) network configuration - if an issue is related to DNS, network traffic, VM, RAID, VPN configuration etc., Customer may be asked to refer to their internal system administrators; (d) any faults or issues related to hardware of any type; and (e) other third-party software cannot be supported or recommended, unless expressly stated or advertised on Foundry website or with specific Foundry Products. Questions or issues arising in connection with any third-party software should be raised by Customers directly with the vendor.
- 4.2 Foundry encourages Customers to discuss customization problems on Foundry's community product forums (<http://community.foundry.com>) as these have a mix of new and experienced users participating, including Foundry staff. Foundry's product forums are an open community and not an official support platform.
- 4.3 **Operating systems.** If Customer chooses to use an operating system that has not been tested with Foundry Products, Foundry cannot guarantee that its products will work as stated. Customers are requested to check the release notes for the relevant product as made available on Foundry's website for currently supported operating systems. If Customer proceeds to install Foundry Products on unsupported systems, Customer does so at their own risk and will be unsupported.
- 4.4 **Host systems.** If Customer decides to use a host system that has not been tested with Foundry's plug-in products, Foundry cannot guarantee that its products will work as stated. Customers are requested to check Foundry's website regularly for currently supported hosts and versions. If Customer would like to use Foundry's plug-ins on a host system that is not presently supported, a request should be sent to the Support Portal.
- 4.5 **Beta programmes.** If Customer is participating in a beta programme for one of Foundry's pre-release products, all queries should be directed to the contacts stated in the initial beta programme invitation. However, if Customer encounters licensing issues while installing the beta product, it can contact the support team via the Support Portal.

5. Term, Termination & Auto-renewal

5.1 Term & Auto-renewal.

- 5.1.1 Subject to Clause 5.9, this Maintenance and Support Agreement will begin as soon as Foundry accepts Customer's order for Maintenance and Support by issuing you with a licence key (the "**Acceptance Date**") and shall continue, unless earlier terminated in accordance with the terms of this Maintenance and Support Agreement, for the Term.

- 5.1.2 Subject to Clause 5.9, unless you opt out of auto-renewal in accordance with Clause 5.2 then upon the first anniversary of the Acceptance Date and each subsequent anniversary (each a “**Renewal Date**”), your Maintenance and Support Agreement shall renew automatically for a further twelve (12) months (each a “**Renewal Support Period**”). Your Maintenance and Support Agreement will continue to auto-renew in this manner until you opt out of auto-renewal or unless earlier terminated in accordance with the terms of this Maintenance and Support Agreement.
- 5.1.3 Prior to each Renewal Date, Foundry shall send not less than two reminder emails to advise you that your Maintenance and Support Agreement is approaching auto-renewal to the contact email address as provided by you in accordance with Clause 2.6.1. The first reminder email will be sent not less than sixty (60) days prior to the relevant Renewal Date. The second reminder email will be sent not less than thirty (30) days prior to the relevant Renewal Date.
- 5.2 **Opting Out of Auto-renewal.** If Customer wishes to opt out of auto-renewal then you must email licenses@foundry.com providing details of the Foundry Products and the Licences which you wish to opt out not less than seventy-two (72) hours prior to the relevant Renewal Date. Provided that you notify Foundry in accordance with the provisions of this Clause 5.2 then your Maintenance and Support Agreement will not auto-renew and shall expire at the end of the then-current Term. If you require further Maintenance and Support then please refer to Foundry’s Maintenance and Support Policy as published on its website from time to time.
- 5.3 **Maintenance and Support Fees.** Customer will be charged and agrees to pay to Foundry: (a) the annual Maintenance and Support Fees as notified by Foundry at the time of the initial purchase of Maintenance and Support; and (b) for any/all Renewal Support Periods, the annual Maintenance and Support Fees as notified by Foundry on the applicable Renewal Date; plus any/all applicable taxes or other duties or levies as a single annual payment in full.
- 5.4 **Increases to the Maintenance and Support Fees.** Foundry reserves the right to increase the annual Maintenance and Support Fees from time to time provided that it shall provide Customer with not less than thirty (30) days’ notice of any increase prior to the relevant Renewal Date.
- 5.5 **Foundry’s right to terminate.** Foundry shall be entitled to suspend or terminate this Maintenance and Support Agreement by immediate notice if: (a) Customer fails to pay the Maintenance and Support Fees or any other costs, fees or charges due and payable to Foundry in accordance with this Maintenance and Support Agreement and/or when Customer is otherwise in breach of Foundry’s End User License Agreement; or (b) if Customer is subject to bankruptcy proceedings, becomes insolvent, makes an arrangement with its creditors, goes into liquidation or otherwise ceases its business operations.

- 5.6 **Customer's right to terminate.** Customer may terminate this Maintenance and Support Agreement if Foundry materially breaches its terms and either: (a) such breach is capable of remedy and Foundry fails to remedy it within thirty (30) days of Customer's written notice to do so; or (b) such breach is not capable of remedy.
- 5.7 **Maintenance and Support Purchased prior to 1 February 2017.** Any Maintenance and Support purchased by Customer prior to 1 February 2017 ("Legacy Maintenance and Support Plans") shall not renew and shall automatically expire on the twelve (12) month anniversary of the date of purchase. Customer will need to purchase new Maintenance and Support from Foundry if it wishes to continue to receive Maintenance and Support for the relevant Foundry Product.
- 5.8 **Refunds and Cancellations.** If Customer cancels Maintenance and Support within fourteen (14) days of the initial purchase date, Customer will be entitled to a full refund. Refunds are not payable for cancellations made after such date and support will continue until the end of the contracted Term. Cancellations and requests for refunds can be made by contacting Foundry's Sales Support team at: licenses@foundry.com.
- 5.9 **Subscription Licenses and Rental Licenses.** If Customer has purchased:
- 5.9.1 a Subscription License then, subject to Customer's timely payment of the applicable License Fee, this Maintenance and Support Agreement shall commence on the Subscription Start Date and shall continue for the Subscription Period (each as defined in the End User Licence Agreement); or
 - 5.9.2 a Rental License then, subject to Customer's timely payment of the applicable License Fee, this Maintenance and Support Agreement shall commence on the date of the initial License purchase and shall continue for the term of the rental.
6. **Limitation of Liability**
- 6.1 **Limitation of liability (Business).** This clause applies where Customer is a business user. Foundry shall not under any circumstances whatever be liable to Customer, 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 this Maintenance and Support 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 this Maintenance and Support Agreement whether in contract, tort (including negligence) or otherwise, shall in all circumstances be limited to a sum equal to the Maintenance and Support Fees paid to Foundry in the twelve months prior to the date of the event giving rise to liability. Nothing in this Maintenance and Support Agreement

shall limit or exclude Foundry's liability for death or personal injury resulting from its negligence, fraud or fraudulent misrepresentation or for any other liability that cannot be excluded or limited by applicable law. This Maintenance and Support Agreement sets out the full extent of Foundry's obligations and liabilities in respect of the supply of maintenance and support services and entitlements. Except as expressly stated in this Maintenance and Support Agreement, 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 Maintenance and Support services which might otherwise be implied into, or incorporated in, this Maintenance and Support Agreement, whether by statute, common law or otherwise, is excluded to the fullest extent permitted by law.

6.2 **Limitation of liability (Consumer).** This clause applies where Customer is a consumer. Foundry has no liability to Customer 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 Customer that is a foreseeable result of Foundry's breach of this Maintenance and Support 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 Customer and Foundry at the time of forming this Maintenance and Support Agreement. Foundry's maximum aggregate liability under or in connection with this Maintenance and Support Agreement, whether in contract, tort (including negligence) or otherwise, shall in all circumstances be limited to a sum equal to the Maintenance and Support Fees paid to Foundry in the twelve months prior to the date of the event giving rise to liability. Nothing in this Maintenance and Support 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.

7. **Miscellaneous**

7.1 **Entire agreement.** This Maintenance and Support Agreement together with the applicable terms and conditions stated on Foundry's quotation and any documents incorporated in accordance with Clause 2.3 constitute the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

7.2 **Force majeure.** Foundry shall not be in breach of this Maintenance and Support Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Maintenance and Support Agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed.

7.3 **Variation.** No variation of this Maintenance and Support Agreement shall be effective unless it is issued in writing by Foundry.

- 7.4 **Confidentiality.** Each party undertakes that it shall not at any time during this Maintenance and Support Agreement disclose to any person any confidential information concerning the business, affairs, customers, clients, suppliers operations, processes, product information, know-how, designs, trade secrets or software of the other party (including all discoveries, ideas, concepts, techniques, designs, specifications, drawings, blueprints, diagrams, flow charts, data, computer programs, data and intellectual property) except that each party may disclose the other party's confidential information: (a) to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this Maintenance and Support Agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this Maintenance and Support Agreement; and (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority. No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Maintenance and Support Agreement.
- 7.5 **Assignment.** This Maintenance and Support Agreement is personal to the parties and Customer shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under this Maintenance and Support Agreement.
- 7.6 **Waiver.** No failure or delay by a party to exercise any right or remedy provided under this Maintenance and Support Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 7.7 **Severability.** If any provision or part-provision of this Maintenance and Support Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Maintenance and Support Agreement.
- 7.8 **Governing Law & Jurisdiction.** This Maintenance and Support Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales and the courts of England and Wales shall have non-exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Maintenance and Support Agreement or its subject matter or formation.
- 7.9 **Survival.** Clause 6 (Limitation of Liability) and this Clause 7 (Miscellaneous) inclusive shall survive any termination or expiration of this Maintenance and Support Agreement.