

# AKEYTSU Terms and Conditions

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## BY AND BETWEEN:

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**NUKEYGARA SAS**, a French simplified joint-stock company (société par actions simplifiée) with share capital of € 30.750, incorporated and registered in France with company number 802 163 766 RCS Lyon, whose registered office is at 130 rue Duguesclin, 69006 Lyon (FRANCE),

Hereinafter referred as “**NUKEYGARA**”

**ON THE ONE HAND**

**AND** the customer as identified online on the NUKEYGARA Website,

Hereinafter referred as the “**Customer**”

**ON THE OTHER HAND**

Hereinafter referred to jointly as the “**Parties**” and separately as the “**Party**”.

## WHEREAS

NUKEYGARA is a business entity validly incorporated in accordance with French law.

NUKEYGARA supplies a 3D animation software called Akeytsu which provides a simple, responsive and ergonomic toolset for 3D studios.

Customer wishes to use Akeytsu Software for its own purposes.

Prior to the acceptance of this Agreement, Customer acknowledges having been able to consult the Akeytsu Software’s documentation online (<https://www.NUKEYGARA.com/learn-akeytsu/documentation>) and/or having received all useful information and other elements necessary about Akeytsu Software functionalities to give its informed consent.

CUSTOMER ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS, AND THAT THE PERSON WHO ACCEPTS ON ITS BEHALF HAS BEEN AUTHORIZED TO DO SO.

THE PERSON WHO ACCEPTS THIS AGREEMENT ON CUSTOMER’S BEHALF REPRESENTS THAT HE OR SHE HAS THE AUTHORITY TO BIND CUSTOMER.

CUSTOMER IS AND REMAINS SOLE RESPONSIBLE FOR THE RESPECT OF THE EULA BY ITS OWN END-USERS.

## IT HAS THEREFORE BEEN AGREED AS FOLLOWS.

### 1. DEFINITIONS

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Unless expressly provided otherwise herein, the terms and expressions beginning with a capital letter and used in the body of this agreement shall refer to the definitions given below.

“**Agreement**” means both these Terms and Conditions and the EULA set out in Appendix 1.

“**Akeytsu Software**” means the software called Akeytsu edited by NUKEYGARA in its version 2019-1-1 or higher, unless expressly provided otherwise. This software is notably protected by French copyright laws and international copyright treaties, as well as other intellectual property laws and treaties.

“**Business Day**” refers to any day which is not a Saturday, Sunday or public holiday in France.

“**Documentation**” means the online documentation of the Akeytsu Software, accessible at the following URL: <https://www.NUKEYGARA.com/learn-akeytsu/documentation>

“**Effective Date**” means the date of acceptance of the Agreement made online by Customer.

“**End-User**” means an individual who belongs to Customer’s Legal Entity and who is authorized by Customer to use the Akeytsu Software. End-User shall comply with the EULA.

“**EULA**” means the End-User License Agreement of the Akeytsu Software.

“**Legal Entity**” means any company, corporation, limited liability company, general partnership, limited partnership, limited liability partnership, proprietorship, joint venture or other form of business organization. Legal Entity includes, without limitation, any government, non-profit, educational or academic institution, including but not limited to any primary or secondary school, vocational school, college or university.

“**License Type**” means the different license restrictions and price schemes targeting different customer profiles. License Type are listed in Section 3.1 of the EULA.

“**Maintenance**” means the support and update services as described in Section 6 of the Terms and Conditions.

“**Normal Business Hours**” refer hours from 9.00 AM to 6.00 PM UTC+01:00 (CET) time, each Business Day.

“**NUKEYGARA Website**” means the website accessible at the following URL: [www.NUKEYGARA.com](http://www.NUKEYGARA.com)

“**Perpetual License**” is a type of license which allow Customer to purchase an Akeytsu Software license and to use it for an indefinitely period in return for the payment of a single fee. Each fresh Perpetual License comes with a free 12-month period of Maintenance. After this initial period, and at its sole discretion, Customer may decide to continue to use its perpetual license without Maintenance or to pay the fees corresponding to Maintenance in order to benefit from it. The rights of use and the restrictions of the Perpetual License depends on Customer License Type and are defined in the EULA.

“**Revenue**” means (1) either Customer annual gross revenue where Customer does not belong to a group (2) or the consolidated annual revenue where Customer belong to a group of companies. For clarification purpose, consolidated annual revenue means the sum of the annual turnover of the group’s legal units from which Customer belongs.

“**Seat**” means the activation giving the right for one individual to use the Akeytsu Software in accordance with the license purchased. Several Seats can be purchased for a license.

“**Service**” means any and all services provided by NUKEYGARA to Customer in relation with the Akeytsu Software.

“**Subscription-Based License**” is a type of license which allow Customer to use Akeytsu Software for a limited period of use (monthly or annual period) depending of the plan subscribed (monthly plan or annual plan). At the end of the subscription plan, the subscription-based license expires, and Customer shall no longer use Akeytsu Software. Each Subscription-based license include Maintenance for the period of the subscription plan. The rights of use and the restrictions of the Subscription-Based License depends on Customer License Type are defined in the EULA.

“**Subscription Services**” means any and all services provided on the basis of a subscription plan and designating notably the Subscription-Based License and the Maintenance.

“**Terms and Conditions**” means all the terms and conditions contained therein.

## **2. PURPOSE**

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These Terms and Conditions shall apply to each and every Services provided by NUKEYGARA, including (1) the subscription to a monthly or yearly plan, (2) the purchase of a Perpetual License (3) and the provision of Maintenance services.

The use of Akeytsu Software remains subject to the acceptance by Customer of the EULA set out in Appendix 1.

## **3. DURATION**

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This Agreement shall come into force on the Effective Date.

All Subscription Services will remain in force for the period set forth in the subscription plan concerned. The term will renew automatically for successive equivalent periods unless either party refuses such renewal by notification (written email request for cancellation or cancellation action made on NUKEYGARA Website) made before the renewal date.

Akeytsu License is granted for the duration which depends of the License Type subscribed as specified in the EULA.

## **4. FINANCIAL CONDITIONS**

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### **4.1. Pricing**

Prices depend mainly on Customer License Type and where applicable the number of Seats purchased. Prices are available online on NUKEYGARA Website. NUKEYGARA may change at its sole discretion the prices of its Services and its subscription plan over time. Prices invoiced to Customer will remain those agreed at the time of the acceptance of any subscription for the entire duration of the subscription period concerned. At the end of the subscription period, the new prices charged by NUKEYGARA will apply automatically to Customer, even in the event of renewal.

### **4.2. Payment terms**

All Services shall be paid in advance.

Subscription Services with monthly or yearly payment terms will be billed and paid in advance, on a monthly or yearly basis depending of the subscription plan purchased by Customer. All Subscription Services are not refundable.

Perpetual Licensing purchase shall be paid prior its activation.

### **4.3. Authorization**

Customer authorizes NUKEYGARA to charge its on-file credit card or any other approved methods of payment for the prices of purchased services.

### **4.4. Taxes and exchange fees**

Depending on the country from which Customer proceed to payment, additional taxes due (notably VAT) or exchange fees may be charged to Customer in addition to the pricing indicated on NUKEYGARA Website. Consequently, Customer shall pay all such additional taxes and exchange fees and undertakes not to dispute their billing.

### **4.5. Failure to pay**

In the event of failure by Customer to make any payment required to be made pursuant to these Terms and Conditions, and without prejudice to any damages, the default of payment may automatically imply:

- the application of interest equal to three times the French legal rate of interest, without prior notice and as from the first day of delay;
- the payment of bank charges and consecutive additional management fees (monitoring recovery, mail and telephone costs of recovery, representation debit releases);
- at NUKEYGARA discretion, the immediate suspension of Services and/or the termination of license granted;
- at NUKEYGARA discretion, the termination of the Agreement when such failure continues unremedied for a period of thirty (30) days after the due date thereof.

## **5. EULA**

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The right to use Akeytsu Software is determined and limited by the EULA set out in Appendix 1 and the specific terms applicable to the license granted to Customer.

Without prejudice to the rights granted to Customer in the EULA, NUKEYGARA is and shall remain the owner of the intellectual property rights on the Akeytsu Software.

CUSTOMER IS AND REMAINS RESPONSIBLE FOR THE ACCEPTANCE AND RESPECT OF THE EULA BY ITS OWN END-USERS.

## **6. MAINTENANCE**

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NUKEYGARA maintenance services includes an access to technical support and the right to download the latest Akeytsu Software updates. The scope of these services is detailed below.

### **6.1. Support**

NUKEYGARA shall only provide for Customer a standard customer support service by email ([support@NUKEYGARA.com](mailto:support@NUKEYGARA.com)) or on our discussion forum (<https://www.nukeygara.com/community/forum>), during Normal Business Hours and undertakes to answer to Customer's requests within 72 Normal Business Hours delay after reception. Customer support is solely provided for the solving of Akeytsu Software use issues. Considering the above, NUKEYGARA shall not give any advice or training in relation with 3D modeling techniques. Prior to contact the technical support, Customer undertakes

to consult the Documentation, which contains Frequently Asked Questions and Troubleshooting and Resolve common issues.

## **6.2. Updates**

NUKEYGARA shall provide to Customer, without additional costs, the latest Akeytsu Software updates available on NUKEYGARA Website. Customer may ask to use previous versions of NUKEYGARA Software (downgrade) upon request.

## **6.3. Exclusions**

Maintenance services are limited to the scope described in Sections 6.1 and 6.2 above. Considering the above, maintenance services do not allow Customer to ask for the development of specific functionalities nor the provision of patches at request.

## **7. ELECTRONIC EVIDENCE**

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The Parties undertake to recognize a probative value equivalent to that of a paper document to any electronic document exchanged between them as well as any action carried out online via the Akeytsu Website, Akeytsu Software and stored in NUKEYGARA's information system (particularly online acceptance of the Agreement, date of acceptance, connection logs, date and hour of any actions or connection, IP addresses). Since NUKEYGARA's computerized records are kept in reasonable conditions of security, the Parties waive, except proven computer fraud, to invoke any unenforceability, inadmissibility, nullity of evidence that would be reported by means of these computerized records.

## **8. DISCLAIMERS, EXCLUSIONS AND LIMITATIONS OF LIABILITY**

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### **8.1. Internet Delays**

Customer acknowledges that the Services may be subject to limitations, delays, and other problems inherent in the use of the internet and electronic communications. NUKEYGARA is not responsible for any delays, delivery failures or other damage resulting from such problems.

### **8.2. No Warranty**

ALL VERSION OF AKEYTSU SOFTWARE ARE PROVIDED "AS IS", WITHOUT WARRANTY OF ANY KIND. NUKEYGARA DISCLAIM ALL WARRANTIES AND CONDITIONS, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT, AND ANY WARRANTIES AND CONDITIONS ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED FROM NUKEYGARA OR ELSEWHERE WILL CREATE ANY WARRANTY OR CONDITION NOT EXPRESSLY STATED IN THIS AGREEMENT.

### **8.3. Disclaimer**

EXCEPT AS EXPRESSLY REPRESENTED OR WARRANTED, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE AKEYTSU SOFTWARE, AND ALL SERVICES PERFORMED BY THE NUKEYGARA ARE PROVIDED "AS IS," AND NUKEYGARAS DISCLAIMS ANY AND ALL OTHER PROMISES, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUIET ENJOYMENT, SYSTEM INTEGRATION AND/OR DATA ACCURACY. NUKEYGARA DOES NOT WARRANT THAT THE APPLICATION SERVICE OR ANY OTHER SERVICES PROVIDED BY NUKEYGARA WILL MEET CUSTOMER'S REQUIREMENTS OR THAT THE OPERATION OF THE APPLICATION SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ALL ERRORS WILL BE CORRECTED.

### **8.4. Exclusions of Remedies; Limitation of Liability.**

IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, REGARDLESS OF THE NATURE OF THE CLAIM, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, COSTS OF DELAY, ANY FAILURE OF DELIVERY, BUSINESS INTERRUPTION, COSTS OF LOST OR DAMAGED DATA OR DOCUMENTATION, OR LIABILITIES TO THIRD PARTIES ARISING FROM ANY SOURCE, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE CUMULATIVE LIABILITY OF NUKEYGARA TO CUSTOMER FOR ALL CLAIMS ARISING FROM OR RELATING TO THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY CLAIM FOR INDEMNIFICATION OR ANY CAUSE OF ACTION SOUNDING IN CONTRACT, TORT, OR STRICT LIABILITY, WILL NOT EXCEED THE AMOUNT PAID BY CUSTOMER OVER THE LAST 12 MONTHS OR IF NOT APPLICABLE WILL BE LIMITED TO ONE HUNDRED EUROS (€ 100). THIS LIMITATION OF LIABILITY IS INTENDED TO APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED OR HAVE PROVEN INEFFECTIVE.

## 8.5. Essential Basis of the Agreement

Customer acknowledges and understands that the disclaimers, exclusions and limitations of liability set forth in this Section 8 form an essential basis of the Agreement between the Parties.

## 9. RESCISSION

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In the event of failure by one or other Party to perform its obligations in respect of this Agreement, and if such breach is not repaired within thirty (30) days from the time of receipt of an email outlining said breach, the other Party shall be free to rescind the Agreement *ipso jure* without any further formality and without prejudice to any damages it may be awarded by way of such breach.

Failing payment of all or part of the price or in the event of non-performance by Customer of any one of its obligations towards NUKEYGARA, the relevant order and any and all orders in process shall be rescinded *ipso jure* by NUKEYGARA, subject to dispatch of an email requesting repair of the alleged breach which had not been repaired by Customer within the fifteen-day period following receipt of said letter.

Notwithstanding the above, NUKEYGARA shall terminate the Agreement immediately and without prior notice if it becomes aware that Customer has used a false document or made a false declaration in order to obtain a License for which it was not eligible.

## 10. FORCE MAJEURE

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Other than the events usually taken into account by Case Law in the event of force majeure, the obligations binding on the Parties shall be automatically suspended should any event beyond their control arise preventing normal performance of this contract, e.g.: earthquakes; fire; storms; floods; blocking of transport or delivery services for whatever reason; total or partial strikes inside or outside the company; lock-outs; blocking of telecommunications or internet services and networks; electricity outages lasting more than 30 minutes; statutory or regulatory changes to commercialization modes; any other event beyond the parties' control preventing normal performance of this contract.

The Party which becomes aware of the event shall immediately inform the other Party that performance of its service is impossible and provide justification thereof. Any suspension of obligations shall not induce liability in any form for non-performance of the obligation in question, nor shall it give rise to the payment of damages or late charges.

However, once the supervening event causing suspension of their respective obligations has ceased, the Parties shall endeavor to resume performance of said contractual obligations under normal conditions and as quickly as possible. To this effect, the Party so prevented shall inform the other Party of the resumption of its obligation by registered letter with acknowledgement of receipt or by service of a legal process.

## 11. CUSTOMER REFERENCES

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Customer grants NUKEYGARA a license to use and reproduce its name, trademark and logo on NUKEYGARA Website for the sole purpose of referencing NUKEYGARA's customer references. Notwithstanding the above, Customer may terminate this license by giving to NUKEYGARA 30 days' written notice of termination.

## 12. GENERAL PROVISIONS

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### 12.1. Entire obligations

The clauses set forth in this Agreement, composed of the Terms and Conditions and the EULA, constitute the entire obligations binding on the parties in regard to the Services and Akeytsu Software.

No other general or specific condition provided in the documents sent or remitted by the Parties may be added to the Agreement, except by way of an addendum to be drawn up and signed by either party.

### 12.2. Non-waiver

Should one of the Parties fail to assert its rights in regard to a breach by the other Party of any one of its obligations set forth herein, such failure to assert shall not in any manner be construed to be a waiver of said obligation in the future.

### 12.3. Non-transferable

Customer may not assign or transfer this Agreement, or any rights granted hereunder, by operation of law or otherwise, without NUKEYGARA's prior written consent, and any attempt by Customer to do so, without such consent, will be void.

#### **12.4. Headings**

Should any difficulty arise with the interpretation of any of the headings of the clauses herein, or the clause itself, the heading shall be declared null.

#### **12.5. Nullity**

Should one or several provisions herein be declared null or by way of application of a law, a regulation or following the final ruling of a court with relevant jurisdiction, the other provisions shall remain in full force and effect.

#### **12.6. Residence**

The Parties choose their residence at the addresses provided in its billing information at the date of the online acceptance on the NUKEYGARA Website, except in the case of specific derogation by way of an addendum.

If Customer changes its address, it shall notify NUKEYGARA by updating on the NUKEYGARA Website its contact information.

If NUKEYGARA changes its address, it shall notify Customer by any electronic means.

#### **12.7. Applicable law**

This Agreement shall be governed by the laws of France and without regard to international law rules of conflict of laws. This Agreement shall apply to the rules on form and substance. The United Nations Convention on Contracts for the International Sale of Goods will not apply.

#### **12.8. Forum of jurisdiction**

IN THE EVENT OF A DISPUTE ARISING IN CONNECTION WITH THE PERFORMANCE OF THE AGREEMENT, THE PARTIES UNDERTAKE TO COOPERATE TO THE FULLEST EXTENT AND IN GOOD FAITH TO FIND AN AMICABLE SOLUTION THERETO.

SHOULD THE PARTIES FAIL TO REACH A SETTLEMENT, FORUM OF JURISDICTION SHALL BE GIVEN TO THE COURTS OF LYON (FRANCE), EVEN IN THE CASE OF THIRD-PARTY PROCEEDINGS, URGENT PROCEEDINGS OR OPPOSITION TO AN ORDER TO PAY.

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# Appendix 1. End-User License Agreement

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## Akeytsu Software End-User License Agreement 2.1

This EULA is applicable to Akeytsu Software in its version 2019-4-1 or higher.

Last updated: December 18<sup>th</sup>, 2019

### PREAMBLE

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The use of Akeytsu Software is subject to the acceptance of the Agreement between NUKEYGARA and Customer, which is composed of the Terms and Conditions and this End-User License Agreement (EULA).

Customer who acquired this Akeytsu License has accepted the Agreement and has undertaken to ensure that its End-Users will respect it. Therefore, the terms of this EULA also apply to each and every End-Users and NUKEYGARA draws their attention to the following terms.

In the event of a breach of the EULA made by an End-User, Customer shall be liable for such breach.

NUKEYGARA also draws the attention of End-Users to the existence of processing of their personal data when using Akeytsu Software. For more information about it, please read the Section 2 of this EULA.

### 1. Definitions

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Unless expressly provided otherwise herein, the terms and expressions beginning with a capital letter and used in the body of this agreement shall refer to the definitions given below.

**"Agreement"** means both this EULA and the NUKEYGARA Terms and Conditions accepted by Customer.

**"Test 3D Models"** means virtual 3D rigged and animated characters namely "Akeyboy", "e-LysE" and "Sky Surfer" created respectively by Vanilla Seed, Etienne Beschet and Hocus Pocus Studio for NUKEYGARA and included in the Software, in order to train you to the use of the Software and as an example of the Software capacities.

**"Akeytsu License"** means the Trial, Pro, Indie and Education Licenses together and any other paid Akeytsu Licenses.

**"Akeytsu Software"** means the software called Akeytsu edited by NUKEYGARA in its version 2019-1-1 or higher. This software is notably protected by French copyright laws and international copyright treaties, as well as other intellectual property laws and treaties.

**"Customer"** means the Legal Entity who has entered into the Agreement with NUKEYGARA.

**"End-User"** means an individual who belongs to Customer Legal Entity and who is authorized by Customer to use the Akeytsu Software. End-User shall comply with the EULA.

**"Legal Entity"** means any company, corporation, limited liability company, general partnership, limited partnership, limited liability partnership, proprietorship, joint venture or other form of business organization. Legal Entity includes, without limitation, any government, non-profit, educational or academic institution, including but not limited to any primary or secondary school, vocational school, college or university.

**"License Type"** means the different license restrictions and price schemes targeting different customer profiles. License Type are listed in Section 3.1 of this EULA.

**"Licensee Content"** means animations, images, video, substances or any other content resulting of your use of the Software, under the terms of an Akeytsu License.

**"Education License"** means the specifics terms and restrictions of the commercial offer targeting educational, academic, or non-profit entity (legal entity), as set out in this EULA.

**"EULA"** means the End-User License Agreement of the Akeytsu Software.

**"Indie License"** means the specifics terms and restrictions of the commercial offer targeting independent professionals (individual or legal entity), as set forth in this EULA.

**“NUKEYGARA”** means NUKEYGARA a French simplified joint-stock company (société par actions simplifiée) with share capital of € 30.750, incorporated and registered in France with company number 802 163 766 RCS Lyon, whose registered office is at 130 rue Duguesclin, 69006 Lyon (FRANCE).

**“Perpetual License”** is a type of license which allow Customer to purchase an Akeytsu Software license and to use it for an indefinitely period in return for the payment of a single fee. Each fresh Perpetual License comes with a free 12-month period of Maintenance. After this initial period, and at its sole discretion, Customer may decide to continue to use its perpetual license without Maintenance or to pay the fees corresponding to Maintenance in order to benefit from it. The rights of use and the restrictions of the Perpetual License depends on Customer License Type and are defined in the EULA.

**“Pro License”** means the standard terms and conditions granting full rights to an Akeytsu Software licensee, as set forth in this EULA.

**“Revenue”** means (1) either Customer annual gross revenue where Customer does not belong to a group (2) or the consolidated annual revenue where Customer belong to a group of companies. For clarification purpose, consolidated annual revenue means the sum of the annual turnover of the group’s legal units from which Customer belongs.

**“Seat”** means the right for one individual to use the Akeytsu Software in accordance with the license purchased. Several Seats can be purchased for a license.

**“Subscription-Based License”** is a type of license which allow Customer to use Akeytsu Software for a limited period of use (monthly or annual period) depending of the plan subscribed (monthly plan or annual plan). At the end of the subscription plan, the subscription-based license expires, and Customer shall no longer use Akeytsu Software. Each Subscription-based license include Maintenance for the period of the subscription plan.. The rights of use and the restrictions of the Subscription-Based License depends on Customer License Type are defined in the EULA.

**“Trial License”** means the free trial version of the Akeytsu Software, as set forth in this EULA.

## **2. DATA PRIVACY**

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In the context of the execution of this Agreement, the provision of Services and the execution of Akeytsu Software, NUKEYGARA is required to process personal data belonging either to Customer or End-Users, mainly in order:

- (i) to manage the Customer relationship (for the performance of the Agreement),
- (ii) to provide aggregated usage statistics of End-Users use of Akeytsu Software (in accordance with NUKEYGARA legitimate interests);
- (iii) to get aggregated crash report in order to identify and fix bugs (in accordance with NUKEYGARA legitimate interests);
- (iv) and to license validation and checking purposes to prevent unauthorized use (for the performance of the Agreement).

Customer and End-Users have several rights on their personal data: right to access, right to rectification, right to erasure, right to restrict processing, right to portability, right to object, right to lodge a complaint.

For further information on the processing of personal information regarding license activation and checking, Customer and End-User may consult NUKEYGARA Privacy Policy online: <https://www.nukeygara.com/legal>.

## **3. GENERAL PROVISIONS FOR ALL LICENSE TYPE**

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### **3.1. LICENSE TYPE**

The license granted to Customer depends on the License Type to which it belongs. License Type determines Customer’s rights to use NUKEYGARA Software as well as the fees due by Customer.

License Type includes the following categories: Trial License, Not-For-Resale License, Indie License, Pro License, Education License.

### 3.2. LICENSE ACTIVATION AND CHECKING

Customer shall activate its license prior to use Akeytsu Software by entering the License Key during the installation.

License Key is provided to Customer:

- For Perpetual License: after full payment fees;
- For Subscription-based License: after payment of the first fees dues;
- For Education License: immediately, provided that Customer provides a proof of eligibility;
- For Trial License: Immediately.

License activation requires an internet connection to check the validity of the License Key entered.

Except for specific restrictions applicable to certain License Categories, License Key can be installed on as many computers as Customer wishes. Despite floating license, the use of Akeytsu Software requires checking the number of End-Users who use simultaneously the software in order to ensure that the number of Seats contained in Customer license is not exceeded. If the number of Seats is reached, the last incoming End-Users will not be able to use Akeytsu Software until other End-Users log out.

License Checking is regularly done to ensure that the number of Seats purchased by Customer or allowed by NUKEYGARA is not reached, and to do so, an internet connection is required.

Subscription-based License also requires an internet connection to check the status of Customer subscription and payments. If Customer has not connected to the Internet at least once during the last 7 (seven) days, the Use of Akeytsu Software may be suspended.

For further information on the processing of personal information regarding license activation and checking, Customer may consult NUKEYGARA Privacy Policy online: <https://www.nukeygara.com/legal>.

### 3.3. GENERAL RESTRICTIONS

Except as expressly specified in this Agreement, Customer may not:

- (i) copy (except in the course of loading or installing) or modify or create derivative works of Akeytsu Software;
- (ii) distribute, transfer, sublicense, lease, lend, rent or otherwise provide access to Akeytsu Software to any third party;
- (iii) make the functionality of Akeytsu Software available to multiple users or third parties through any means, including but not limited to by uploading Akeytsu Software to a network or file-sharing service or through any hosting, application services provider, service bureau, software-as-a-service (SaaS) or any other type of services; use Akeytsu Software to develop a competing product; or
- (iv) do anything that could cause or result in Akeytsu Software being subject to any open source license (or similar license) that requires as a condition of use, modification or distribution that Akeytsu Software (including the runtime portion thereof) or other software combined or distributed with Akeytsu Software be:
  - i. disclosed or distributed in source code form,
  - ii. licensed for the purpose of making derivative works, or
  - iii. redistributable at no charge.

Customer acknowledges and agrees that portions of Akeytsu Software, including but not limited to the source code and the specific design and structure of individual modules or programs, are confidential and constitute or contain trade secrets of NUKEYGARA and its licensors. Accordingly, you agree not to translate, disassemble, decompile or reverse engineer NUKEYGARA Software, in whole or in part, or permit or authorize a third party to do so, except to the extent such activities are expressly permitted by law notwithstanding this prohibition.

## 4. TRIAL LICENSE

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### 4.1. Overview

Trial License purpose is solely to enable Customer to evaluate NUKEYGARA Software functionalities with its own business needs.

Trial License is a Seat-Locked License which means that Customer is not allowed to use its Trial Version serial key on several workstations.

Trial License lasts for 30 days only from the date of download of the trial version of NUKEYGARA Software. Customer is not authorized and will not be able to use its Trial License after this duration nor to ask for a new Trial License serial key. Customer may only request to receive a new Trial License serial key after 24 months from the termination of its last Trial License.

### 4.2. Right to use

Conditioned upon the compliance with the terms and conditions of the Agreement, NUKEYGARA grants to Customer a non-exclusive, non-transferable 30-day license to install and execute the executable form of the Akeytsu Software, solely for internal use.

Customer may not sublicense the rights granted herein.

### 4.3. Restrictions

These restrictions are without prejudice to the General Restrictions set out in Section 3.3 of the EULA.

Customer may only install Akeytsu Software on a single computer.

Customer may not sell, exploit, publish or distribute any Licensee Content created under a Trial License, for commercial use.

NUKEYGARA will make the trial version of Akeytsu Software available to Customer on a trial basis free of charge until the earlier of (a) the end of the free trial period provided to use Akeytsu Software defined on Section 4 of this EULA, or (b) the start date of any paid Akeytsu License ordered by Customer.

At the end of the free Trial License, Customer may order any Akeytsu License.

## 5. NOT-FOR-RESALE LICENSE

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### 5.1. Overview

"Not-For-Resale License" or "NFR License" means a License granted for a limited duration to use Akeytsu Software in a non-production environment for

- (i) internal developing and testing purposes
- (ii) or internal training purposes.

NFR License are floating license provided with a number of Seats determined by NUKEYGARA at its sole discretion.

### 5.2. Right to use

Conditioned upon the compliance with the terms and conditions of the Agreement, NUKEYGARA grants to Customer a non-exclusive, non-transferable license to install and execute the executable form of the Akeytsu Software, solely for internal use.

This license is granted for a period of time determined by NUKEYGARA at its sole discretion.

### 5.3. Restrictions

These restrictions are without prejudice to the General Restrictions set out in Section 3.3 of the EULA. Customer may not sublicense the rights granted herein.

Customer may not sell, exploit, publish or distribute any Licensee Content created under a Not-For-Resale License, for commercial use.

## **6. INDIE LICENSE / PRO LICENSE**

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### **6.1. Overview**

Customer using Akeytsu Software for commercial or professional purposes shall purchase a license authorizing such commercial use, namely either an Indie License or a Pro License.

When Customer's Revenues:

- do not exceed \$ 100.000 per year, Customer shall purchase an Indie License;
- exceed \$ 100.000 per year, Customer shall purchase a Pro License.

By "**Revenue**" the Parties mean (1) either Customer annual gross revenue where Customer does not belong to a group (2) or the consolidated annual revenue where Customer belong to a group of companies. For clarification purpose, consolidated annual revenue means the sum of the annual turnover of the group's legal units from which Customer belongs.

If Customer wishes to use Akeytsu Software only for the needs of one of its clients, it shall take into account its client's Revenues to determine which license to purchase rather than take into account its own Revenues.

Upon simple request, Customer shall provide to NUKEYGARA all supporting documents to verify the amount of its Revenues. NUKEYGARA may also verify Customer's Revenue itself, by checking any official company database.

If the license purchased by Customer does not correspond to its Revenues, NUKEYGARA may claim payment of the amount of fees due by Customer as well as the application of the new fees rates.

In any case, in the event of Customer's refusal to pay the new fees rates or the fees due, NUKEYGARA may terminate all Services and licenses subscribed by Customer.

In the event of a decrease in Revenues allowing Customer to benefit from the Indie License, it is Customer's sole responsibility to request to switch from the Pro License to the Indie License for the next contractual period. No refund of Indie/Pro License fees paid will be made by NUKEYGARA retroactively.

### **6.2. Floating-License**

Indie / Pro License are floating license which allow Customer's End-User to install Akeytsu Software on different computers and use it at the same time, provided that Customer has purchased a sufficient number of Seats (namely, one End-User per Seat using Akeytsu Software at the same time).

### **6.3. License Freeze (For Indie License only)**

Customer who purchases an Indie Subscription-based license may decide to transform such license into a Perpetual License.

License freeze option is only available to the Indie Customer who has paid the Indie Subscription-Based License fees for at least 12 months over the last 15 calendar months.

When Customer freezes its Subscription-Based License, the lowest number of the 12 highest numbers of Seats associated with the Subscription-based License over the last 15 months will determine the number of Seats associated with the frozen Perpetual License while the number of Seats remaining will be deleted. Customer may acquire additional seats by purchasing another Subscription-Based or Perpetual Licence.

When Customer freezes its Subscription-Based License, its subsequent Perpetual License does not come with Maintenance. If Customer is interested in benefiting from it, it may purchase Maintenance at any time.

### **6.4. Right to use**

Conditioned upon the compliance with the terms and conditions of this Agreement and payment of all applicable fees, NUKEYGARA grants to Customer a non-exclusive, non-transferable license to install and execute the executable form of the Akeytsu Software, solely for internal use by one End-User per Seat at a time to develop Licensee Content.

Customer is expressly allowed to sell, exploit, publish or distribute, for commercial use or not commercial, any Licensee Content developed under an Indie/Pro License.

Customer may not sublicense the rights granted herein.

### **6.5. Copies of Akeytsu Software and others paid NUKEYGARA products**

Customer may install Akeytsu Software and any other paid NUKEYGARA products on both a primary computer and any other computers, solely for its convenience.

Customer may make a single copy of the Akeytsu Software solely for backup or archival purposes.

### **6.6. Restrictions**

Indie/Pro License restrictions are set out in Section 3.3 "General Restrictions" of the EULA.

## **7. EDUCATION LICENSE**

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### **7.1. Overview**

Education Licenses are divided into two sub-categories:

- on the one hand, the Student/Teacher Education License
- and on the other hand, the University/School/Academy Education License.

All Education Licenses are granted for a period of one year only. Their renewal is not automatic.

Education Licenses are subject to important restrictions to use specified in Section 7.5 of this EULA.

### **7.2. Eligibility**

Customer shall provide a proof of eligibility for the Education License of its interest, namely:

- for Student/Teacher Education License, an up-to-date school certificate or an up-to-date certificate of teaching quality for the current year.
- for University/School/Academy Education License, a document attesting to the educational nature of the institution.

All the proof of eligibility provided shall be valid and up to date.

NUKEYGARA reserves the right to refuse the grant of an Education License or to revoke a license in case of any doubt regarding the authenticity and/or the validity of the proof of eligibility provided by Customer.

### **7.3. Floating License**

Education License are floating license which allow Customer's End-User to install Akeytsu Software on different computers and use it at the same time, provided that Customer has a sufficient number of Seats (namely, one End-User per Seat using Akeytsu Software at the same time).

Student/Teacher Education License are floating license with one Seat only.

University/School/Academy Education License are floating license provided with a maximum of 15 Seats. Educational Legal Entity are not allowed to conclude several Education Licenses for the same Legal Entity. If Customer wishes to acquire more Seats for its educational Legal Entity, it shall contact NUKEYGARA to negotiate a specific license agreement.

### **7.4. Right to use**

Conditioned upon the compliance with the terms and conditions of this Agreement, NUKEYGARA grants to Customer a non-exclusive, non-transferable one-year license to install and execute the executable form of the Akeytsu Software, solely for internal use by one End-User per Seat at a time to develop Licensee Content.

## 7.5. Restrictions

Customer may not sell, exploit, publish or distribute any Licensee Content created under an Education License, for commercial use.

Customer is solely authorized to use Akeytsu Software in a strictly educational purpose, excluding any commercial purpose.

For the avoidance of doubt, Customer acknowledges and agrees that as an express condition to the Education License rights granted under Section 7.1 Customer is not allowed:

- to combine or to integrate in any manner any Licensee Content developed with an Education License with any Licensee Content developed simultaneously with an Indie or Pro License owned by another person or entity than Customer;
- to import any Licensee Content developed with an Education License in a version of Akeytsu Software under the terms of an Indie or Pro License.

If Customer is an eligible user of an Education License, Customer may initiate a project using only the latter Akeytsu License and subsequently upgrade all (but not less than all) of its Education License to an Indie or Pro License.

Customer may not sublicense the rights granted herein.

### 7.6. Specific restrictions for Student/Teacher Education License

Student/Teacher Education License shall only be installed on computers personally owned by Customer. They may not be installed on computers belonging to a Legal Entity or lent by a Legal Entity and in particular by the educational Legal Entity where Customer is a student or a teacher.

### 7.7. University/School/Academy Education License

Student/School/Education License shall only be installed on computers belonging to Customer.

## 8. OWNERSHIP

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### 8.1. Ownership of Akeytsu Software

Akeytsu Software is licensed, not sold. NUKEYGARA and/or its licensors retain ownership of Akeytsu Software including all intellectual property rights therein. Akeytsu Software is protected by French copyright laws and international treaties. NUKEYGARA reserves all rights in Akeytsu Software not expressly granted to Customer in this Agreement. Customer shall not delete or in any manner alter any NUKEYGARA or third-party copyright, trademark or other proprietary rights notices or markings appearing on or in the Software.

### 8.2. Ownership on the Test 3D Models

The Test 3D Models are protected by French copyright laws and NUKEYGARA retains all ownership on Test 3D Models, including all intellectual property rights therein.

Customer shall not copy or modify or create derivative works of Test 3D Models, except for Customer's internal purpose of training.

Customer shall not distribute, transfer, sublicense, lease, lend, rent or otherwise provide access to Test 3D Models to any third party.

## 9. TERM

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Akeytsu Licenses are granted for different terms depending on the License Type granted to Customer:

- Trial License granted under this EULA will remain in effect for the period defined in Section 4 of this EULA, unless Customer upgrades to an Indie/Pro License.

- Education License granted under this EULA will remain in effect for the period defined in Section 7 of this EULA, prior Customer's eligibility to use an Education License.
- Subscription-based License will remain in effect for the period of subscription as explained in Section 6 of this EULA.
- Perpetual License will remain in effect without any time limit.

Notwithstanding the above, any License granted under this Agreement will automatically terminate, with or without prior notice from NUKEYGARA, if Customer fail to pay all fees dues for the Akeytsu License granted or for breach of any term of this Agreement made by Customer or one of its End-User. Upon termination, Customer shall promptly delete and destroy all copies of Akeytsu Software in its possession or control. NUKEYGARA may also disable Akeytsu Software upon expiration of the Akeytsu License granted or in the event of any breach of this Agreement.