MasterObjects, Inc.
Terms of Service

1   Proposals and agreements
1.1 These Terms of Service apply to all proposals and agreements in which MasterObjects, Inc., a Delaware corporation, hereinafter MasterObjects, delivers services or materials of any kind to Client. Deviations from these general terms are valid only if they have been specifically agreed to in writing by a duly authorized officer of MasterObjects. These general terms do not apply to Software Licenses for which a separate License Agreement was executed between MasterObjects and Client.
1.2 All proposals are non-binding unless they contain a specific statement to the contrary.
1.3 Applicability of any purchasing or other Client terms is expressly declined.
1.4 If a court decision invalidates one or more provisions of these Terms of Service then all other provisions will remain applicable.

2   Price and payment
2.1 All prices exclude sales tax (VAT) and other government-imposed fees.
2.2 MasterObjects is entitled to adjust its going rates and prices after announcing such in writing at least three months in advance.
2.3 If Client does not wish to agree with a price or rate adjustment announced by MasterObjects then Client may terminate the agreement from the moment of price adjustment by giving MasterObjects notice in writing within two weeks from such announcement.
2.4 Client will pay invoices according to the terms of payment they contain. If no terms of payment are mentioned then Client will pay within thirty days from invoice date.
2.5 If Client does not pay installments within their appropriate term then Client will be charged a monthly interest of 1.5%. MasterObjects may order a third party to claim payment if Client remains negligent after receiving a notice of default. Client pays collecting-charges and mediation costs.

3   Property and rights
3.1 Materials delivered to Client remain property of MasterObjects until they have been paid in full to MasterObjects.
3.2 Rights are only granted or transferred to Client if Client pays corresponding fees in full and in time.
3.3 As soon as materials contained in the agreement have been transferred to Client, Client will be responsible for loss or damage thereof.

4   Intellectual property and industrial ownership
4.1 MasterObjects or its licensors own Intellectual property and industrial ownership on software and materials supplied by MasterObjects. Client only receives usage rights and qualifications which are specifically mentioned in these terms or which have otherwise been expressly granted in writing.
4.2 Client is aware that software, hardware and other materials received from MasterObjects contain confidential information and trade secrets of MasterObjects or its licensors. Client is obliged to keep this software, hardware and other materials to himself and only use them for the purpose for which they were delivered to Client. Client will not provide, disclose or otherwise make available to any third party (i) any information or data received from MasterObjects pertaining to the materials which MasterObjects notifies Client is considered confidential by MasterObjects; and (ii) all training and procedural materials developed by MasterObjects in conjunction with the use or installation of MasterObjects Software by Client (collectively, "Confidential Information"). Except as expressly provided herein, Client will not disclose or use such Confidential Information without MasterObjects' prior written consent, except to Client's employees or consultants on a need-to-know basis, provided that such employees or consultants have executed written agreements restricting use or disclosure of such Confidential Information that are at least as restrictive as Client's obligations under this Section 4. In addition to the foregoing nondisclosure obligations, Client agrees to use at least the same care and precaution in protecting such Confidential Information as Client uses to protect Client's own confidential and proprietary information and trade secrets, and in no event less than reasonable care. Client acknowledges that due to the unique nature of MasterObjects' Confidential Information, MasterObjects will not have an adequate remedy in money or damages in the event of any unauthorized use or disclosure of MasterObjects' Confidential Information. In addition to any other remedies that may be available in law, in equity or otherwise, MasterObjects shall be entitled to obtain any injunctive relief that may be appropriate to prevent such unauthorized use or disclosure. Client's obligations set forth in this Section 4 will survive and continue for a period of five (5) years after the termination of this Agreement, and will bind Client's representatives, successors and assigns, if any; provided, however, that such obligations will terminate with respect to any Confidential Information which becomes available for unrestricted public use through no fault of Client.
4.3 Client may not remove or modify any marks or indications regarding copyrights, trademarks or other intellectual property and industrial ownership from software, hardware or other materials supplied by MasterObjects.
4.4 If MasterObjects has technically protected its software in any way then Client may not remove or circumvent this protection.
4.5 Client may make one (1) back-up or archival copy of delivered software in machine readable form to support Client's use of delivered software. Such machine-readable copy shall be labeled "Copy for Back-up Use and Not for Resale" and must otherwise be identical to the original and must carry the same labels and indications. Printed documentation may not be copied. Documentation in electronic form may be printed or reproduced for internal use by Client directly related to the purposes set forth in MasterObjects proposal or order confirmation and subject to the protection and security terms set forth in section 3 hereto. Additional copies of the delivered materials may be obtained under license from MasterObjects at the charges then in effect.

5   Cooperation by Client
5.1 Client will give MasterObjects useful and required information and cooperation needed for MasterObjects to comply with the agreement.
5.2 Client is responsible for use and application in his organization of software, hardware and services provided by MasterObjects as well as for safety procedures and appropriate systems management.
5.3 If the agreement involves transfer of software, materials or information on a deliverable then the deliverable used must conform to specifications needed to properly comply with the agreement.
5.4 If Client fails to supply information needed to comply with the agreement according to specifications and in time, then MasterObjects is entitled to suspend execution of the agreement and charge incurred costs according to its going rates.
5.5 Client will make facilities and services needed to comply with the agreement available to MasterObjects employees who work at a Client site at no extra charge.

6 Delivery time
Delivery times mentioned by MasterObjects are based on information known to MasterObjects at the time of agreement. MasterObjects cannot be bound to delivery times that cannot be kept because of consultation with Client or circumstances beyond control of MasterObjects that have occurred after entering into the agreement.

7 Termination
7.1 Either party may only terminate the agreement if the other party accountably fails to comply with essential obligations resulting from the agreement and after sending a valid and detailed notice of default in which a reasonable amount is time is allowed for correction of the failure.
7.2 Agreements of an indefinite nature can be terminated in writing stating the reason for termination only after business-like mutual consultation. A three-month notice must be observed if parties have not agreed to a specific term of notice.
7.3 If Client is granted postponement of payment, if bankruptcy of Client is requested or if Client's organization is liquidated or otherwise terminated for reasons other than reconstruction or merger then MasterObjects can immediately terminate the agreement in part or in full by written notice.
7.4 Amounts invoiced by MasterObjects before termination for work accomplished or materials supplied according to the agreement remain payable in full and are claimable at termination.

8 Liability and Indemnity
8.1 Client guarantees MasterObjects from any liability claims by third parties that occur as a result of a deficiency in a product or system that Client supplied to a third party which contains hardware, software or other materials supplied by MasterObjects.
8.2 MASTEROBJECTS'S LIABILITY SHALL BE LIMITED TO REFUND OF THE RELEVANT FEES PAID BY CLIENT TO MASTEROBJECTS DURING THE PREVIOUS TWELVE (12) MONTHS, IF ANY. IN NO EVENT SHALL MASTEROBJECTS OR ANY LICENSOR OF MASTEROBJECTS BE LIABLE FOR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS, LOSS OF PROFITS, OR FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES, HOWEVER CAUSED, WHETHER FOR BREACH OF WARRANTY, BREACH OF CONTRACT, REPUDIATION OF CONTRACT, NEGLIGENCE OR OTHERWISE.
8.3 MasterObjects will defend, at its expense, any action brought against Client based upon the claim that the delivered materials, as used within the scope of the service provided under this agreement, directly infringe a duly issued U.S. patent or a registered U.S. copyright. Client shall notify MasterObjects promptly in writing of any such claim. Client shall not enter into any settlement or compromise of any claim without MasterObjects' prior written consent. MasterObjects shall have sole control of any such action or settlement negotiations, and Client shall provide MasterObjects with information and assistance, at MasterObjects' expense, necessary to settle or defend such claim. MasterObjects agrees to pay all damages and costs finally awarded against Client attributable to such claim. If any of the delivered materials become, or in the opinion of MasterObjects may become, the subject of a claim of infringement of any duly issued U.S. patent or a registered U.S. copyright, MasterObjects may, at its option: (i) procure for Client the right to use such delivered materials free of any liability; (ii) replace or modify such delivered materials to make them non-infringing; or (iii) remove such delivered materials, or any part thereof, from the scope of the service. MasterObjects shall not be liable for any costs or expenses incurred by Client in connection with any potential claim of infringement without its prior written authorization. MasterObjects assumes no liability hereunder for, and shall have no obligation to defend Client or to pay costs, damages or attorney's fees for, any claim based upon: (i) any method or process in which the delivered materials may be used by Client; (ii) any results of using the delivered materials; (iii) any use of other than a current unaltered release of MasterObjects Software; or (iv) the combination, operation or use of any delivered materials furnished hereunder with non-MasterObjects programs or data if such infringement would have been avoided by the combination, operation, or use of the delivered materials with other programs or data.

THIS SECTION 8.3 STATES THE SOLE AND EXCLUSIVE LIABILITY OF MASTEROBJECTS FOR ANY INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS.

9 Superior forces
9.1 Neither party shall be bound to any obligations if it is incapable of doing so due to superior forces beyond its control and Acts of God. Superior forces include non-accountable failures and deficiencies by suppliers of MasterObjects.
9.2 If these superior forces last for more than ninety days, each party has the right to terminate the agreement in writing. Work performed and services provided as part of the agreement shall be paid proportionally.

10 Export
Client shall guarantee MasterObjects from any third party claims related to Client's failure to comply with applicable export regulations. Client acknowledges and agrees to comply with all export and re-export restrictions and regulations of the Department of Commerce or other United States agency or authority. Without limiting the foregoing or any other provision of this agreement, Client agrees not to download or transfer (or authorize anyone to download or transfer) the delivered materials (i) into any country to which the U.S. has embargoed goods; or (ii) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Commerce Department's Table of Deny Orders. Client shall guarantee MasterObjects from any third party claims related to Client's failure to comply with these and other applicable export regulations.

11 Applicable law and Costs
11.1 This Agreement and all acts and transactions pursuant hereto and the rights and obligations of the parties hereto shall be governed, construed and interpreted in accordance with the laws of the State of California and the United States of America
11.2 If any action at law or in equity (including arbitration) is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, costs and necessary disbursements in addition to any other relief to which such party may be entitled.

12 Work and services
12.1 If the agreement involves work to be performed or services to be provided in phases then MasterObjects is allowed to postpone work of a consecutive phase until results of the previous phase have been approved by Client in writing.
12.2 MasterObjects is not obliged to accept directions that would modify or extend work or services contained in the agreement; the corresponding work shall be paid according to article 13 if such directions are accepted.
12.3 If the agreement was concluded in view of work performed by a specific MasterObjects employee then MasterObjects is entitled to replace this employee by one or more similarly capable persons.

13 Modifications and additional work
13.1 If Client requests MasterObjects or if Client has agreed to work on services other than those covered by the agreement, then the additional work or services will be paid by Client according to MasterObjects going rates.
13.2 Client accepts that work and services mentioned in article 13.1 will influence the agreed or expected delivery date and may change responsibilities of Client and MasterObjects.

14 Education and training
14.1 If services provided by MasterObjects involve education or training then MasterObjects is entitled to request advance payment. No refund will be given if participation in a training course or education program is canceled.
14.2 Depending on the number of participants for a training course or education program, MasterObjects is entitled to combine the training course or education program with one or more other training courses or education programs or move them to a different date.
14.3 Client may not duplicate or publish training materials for reasons other than personal exercise, personal study or personal use.

14.4 MasterObjects declines responsibility for damage caused by Client's use of information obtained during a training course or education program.

15 Software development

15.1 Each party shall specify in writing what software is to be developed and how work will be performed.

15.2 MasterObjects may investigate correctness, completeness and consistency of Client information and is entitled to research Client specifications. If deficiencies or faults are found during such investigations or research then MasterObjects is entitled to suspend work until such deficiencies or faults are eliminated by Client.

16 Delivery, installation and acceptance of software

16.1 As far as was agreed in writing MasterObjects will deliver, activate and install software according to specifications.

16.2 If an acceptance test was agreed to in writing, then the acceptance test will last until fourteen days after delivery, or until fourteen days after installation if installation is performed by MasterObjects. Client may not use the software for production or operational purposes during the acceptance test period.

16.3 Software shall be considered accepted by both parties:
a. At delivery, or
b. After installation if installation by MasterObjects was agreed to, or
c. One day after the acceptance test period if an acceptance test was agreed to in writing, or
d. If MasterObjects receives a test report as defined in article 16.5 before the acceptance test period is over: As soon as program errors mentioned in the test report have been corrected, regardless of deficiencies that don't hinder acceptance as defined in article 16.6.

16.4 Client will send MasterObjects a detailed written report if program errors that hinder further testing are discovered during the agreed acceptance test period, in which case the test period will be suspended until those program errors have been eliminated. A program error is defined as a deviation from written functional specifications by MasterObjects. A program error is only considered to exist if it can be shown and if it can be reproduced.

16.5 Client will send MasterObjects a detailed written test report including descriptions of any program errors as defined in article 16.4 at the latest on the last day of the acceptance test period if the software is found to contain such program errors. MasterObjects will commit the best of its abilities to eliminate reported program errors within a reasonable timeframe during which MasterObjects is entitled to implement temporary fixes or workarounds or impose software restrictions in order to avoid the program errors.

16.6 Acceptance of the software cannot be refused for reasons other than those that have been explicitly agreed to in writing between both parties, nor because of the existence of minor errors that don't reasonably hinder deployment or productive use of the software.

16.7 If software is delivered and tested in phases and/or parts, then the non-acceptance of a certain phase and/or part shall not undo the acceptance or an earlier phase and/or part.

17 Software usage rights

17.1 MasterObjects supplies Client with the non-exclusive right to use the software. Client shall conform accurately to any mutually agreed usage limitations.

17.2 The Software may only be used by Client within his own organization or organization by a limited number or kind of users or connections for which the usage right was granted.

17.3 Usage rights are non-transferable. Client may not sell, rent, sub-license, transfer or grant limited rights to the software and deliverables on which it is recorded, nor may Client make these available to third parties in any way for any purpose, even if a third party uses the software for Client only.

17.4 Client shall destroy all copies of the software or return them to MasterObjects after termination of applicable usage rights. Client shall notify MasterObjects in writing immediately after destruction of the software.

17.5 Software source code and technical documentation produced during development of the software are not made available to Client unless this is explicitly stated in the license agreement.

18 Warranties

18.1 MasterObjects will commit the best of its abilities to eliminate program errors as defined in article 16.4 that have been reported in writing for a period of three months after delivery, or three months after acceptance if parties have mutually agreed to an acceptance test. Repairs will be carried out for free unless the software was developed by order of Client other than for a fixed price in which case MasterObjects will charge its going rates and repair costs. MasterObjects may charge its going rates and repair costs if program errors were caused by usage errors or injudicious use by Client or by other causes for which MasterObjects cannot be held accountable, or if the program errors could have been detected during the agreed acceptance test period. This warranty does not apply to repair of damaged or lost data. The warranty expires if Client modifies the software in any way or orders a third party to do so without written permission by MasterObjects.

18.2 Repair of program errors will take place at a location to be determined by MasterObjects. MasterObjects is entitled to implement temporary fixes or workarounds or impose software restrictions in order to avoid the program errors.

18.3 MasterObjects is not obliged to repair possible errors after the warranty period described in article 18.1 unless a maintenance agreement covering such repairs was concluded between the parties.

18.4 MasterObjects is not responsible for correct operation of third party software, even if correct operation of MasterObjects software is hindered by the use of such third party software. Client acknowledges that the proper operation of software delivered by MasterObjects may require certain third party software and that Client may at its sole discretion choose to obtain certain third party software from MasterObjects. In any event Client agrees that MasterObjects shall not be liable for any issues related to third party software and that Client's use of such third party software shall be subject to the applicable end user license terms.

18.5 MasterObjects warrants that no materials (including future updates and enhancements) will: (i) contain non-documented or harmful hidden files; (ii) have any "time bomb" unless the nature of the license hereto is non-perpetual, (iii) replicate, transmit, or activate itself without control of a person operating computing equipment on which it resides; (iv) alter, damage, or erase any data or other computer programs without control of a person operating the computing equipment on which it resides; or (v) contain any code, key, node lock, time-out or other function whether implemented by electronic, mechanical or other means which restricts or may restrict use or access to programs or data beyond the license restrictions stated in MasterObjects' proposal and order confirmation.

18.6 MasterObjects will maintain security measures that are at least equal to those maintained for its own information systems and data to ensure that access to information systems and data granted by Client will not impair the confidentiality, integrity, and availability of Client information systems and data. MasterObjects warrants and represents that each employee, agent, or subcontractor who performs work under the agreement hereto has been informed of the obligations contained herein and has agreed to be bound by them.

18.7 NO OTHER WARRANTY, EXPRESS OR IMPLIED, IS MADE WITH RESPECT TO MATERIALS OR SERVICES SUPPLIED BY MASTEROBJECTS, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS AND THOSE ARISING FROM A COURSE OF DEALING OR USAGE OF TRADE. NO WARRANTY IS MADE REGARDING THE RESULTS OF ANY MASTEROBJECTS SOFTWARE, OR THAT USE OF MASTEROBJECTS SOFTWARE OR SERVICES WILL BE UNINTERRUPTED, OR THAT ANY ERRORS OR DEFECTS IN MASTEROBJECTS SOFTWARE WILL BE CORRECTED, OR THAT MASTEROBJECTS SOFTWARE'S FUNCTIONALITY WILL MEET CLIENT'S REQUIREMENTS. CLIENT ACKNOWLEDGES ITS RESPONSIBILITY TO: (i) REGULARLY BACK UP DATA MAINTAINED ON ANY HARDWARE USING MASTEROBJECTS SOFTWARE; AND (ii) ADEQUATELY TEST PRIOR TO DEPLOYMENT EACH VERSION OF MASTEROBJECTS SOFTWARE IN A CONFIGURATION WHICH REASONABLY SIMULATES CLIENT'S PLANNED ENVIRONMENT.