



SOFTWARE LICENSE AGREEMENT

This Software License Agreement (the "Agreement") is made effective as of this ____ day of _____, 200_ (the "Effective Date") by and between MasterObjects, Inc., a Delaware corporation (the "Company") and _____, a _____ corporation ("Licensee").

The Company and Licensee agree that the following terms and conditions will apply to any Licensee order to license use of the Company's _____ software, in machine readable (object code) form as described more fully in Exhibit A attached hereto (the "Company Software"). The Company Software and related documentation and supporting materials provided by the Company from time to time in either machine readable or hard copy form (the "Documentation") are referred to collectively in this Agreement as the "Licensed Materials." In consideration of the mutual promises contained in this Agreement, the parties agree as follows:

1. **Grant of License.**

(a) **License to Licensed Materials.** The Company hereby grants to Licensee a non-transferable, royalty-free, non-exclusive license (with no right to sublicense) to (i) install and use the Company Software internally and solely for the purpose of _____ at the location and on those computers, operating systems and other system components specified in Exhibit B attached hereto (the "Designated Equipment"); (ii) by the number of Named Users and/or Queries and for the particular Project(s) and Database(s) as defined and specified in Exhibit B; (iii) to use the Documentation internally and solely in connection with Licensee's authorized use of the Company Software; and (iv) for the Term specified in Exhibit B. In the event Licensee desires to extend the Term or obtain licenses for additional Named Users, additional Queries, or additional Projects; Licensee shall deliver a written request to the Company (including a description of the additional Project, if applicable). The grant of any such additional license shall be subject to acceptance by the Company and payment of the applicable license fees in accordance with the payment terms set forth on Exhibit C.

(b) **Limitation of Rights.** Licensee acknowledges that Licensee's rights in and to Licensed Materials are solely as set forth in Section 1(a) hereto and do not include any rights of ownership in any of the Licensed Materials. Licensee agrees that the Company owns all right, title and interest, including but not limited to copyright, patent, trade secret and all other intellectual property rights, in and to the Licensed Materials, and any changes, modifications or corrections thereof. Licensee hereby irrevocably assigns to the Company any and all rights it may be deemed to have in any changes, modifications or corrections to the Licensed Materials, including but not limited to copyright rights, and agrees to execute all documents necessary to implement and effect such assignment. Licensee shall not, and shall not permit any third party to, (i) modify or use the Licensed Materials except to the extent permitted in Section 1(a) and Exhibit A of this Agreement; or (ii) decompile, reverse engineer, disassemble or otherwise determine or attempt to determine source code (or the underlying ideas, algorithms, structure or organization) of any object code contained in the Company Software. Except as expressly set forth herein, Licensee will not market, sublicense, distribute, reproduce, rent, lease or offer for timesharing any Licensed Material. Except as set forth in Section 2(b) hereto, this Agreement and the license granted pursuant hereto may not be assigned, sublicensed or otherwise transferred by Licensee without the prior written consent of the Company. Except as expressly set forth in Exhibit A, Licensee will not receive or have access to Company source code (including human-readable code that documents the Company Software, related compilers, entities, listings, test suites, build scripts, libraries, design documentation and technical documentation).

(c) **Substitute Designated Equipment.** If for any reason the Designated Equipment is unavailable, Licensee may use the Company Software at any substitute location and/or computer selected by Licensee on a temporary basis; provided, however, that Licensee gives notice to the Company within seven (7) days after such substitution; provided further, however, that if such substitute Designated Equipment is to be used for more than thirty (30) days, written notice shall be given to the Company within thirty (30) days following such substitution. If this change in computers, operating systems, and/or system components results in an increase of the applicable license fees, then these additional license fees will be invoiced on a pro-rata basis at the charges then in effect. Under no circumstance will a change in Designated Equipment result in a refund of prior invoiced license fees. Except as provided herein, the Company Software may not be transferred physically, mechanically, electronically, over a computer network or by any other means to any computer hardware other than the Designated Equipment.

(d) **Failover Copies.** Licensee may install the Company Software on one or more redundant servers ("Failover Copy"), but idle, so that the Failover Copy can immediately initiate a process or application in the event that the primary server fails. Licensee may not utilize any Failover Copy as a production copy, except during such time as the primary server has failed and the production copy of the Company Software is unavailable.

(e) **Back-up Copies.** Licensee may make one (1) back-up or archival copy of the Company Software in machine readable form to support Licensee's use of the Company Software as authorized under this Agreement. 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 Licensee directly related to the purposes set forth in section 1(a) hereto and subject to the protection and security terms set forth in section 6 hereto. Additional copies of the Licensed Materials may be obtained under license from the Company at the charges then in effect.

(f) **Company Audit Rights.** Licensee agrees that the Company Software maintains anonymous usage-auditing files that register information related to the license restrictions set forth in Exhibit B, In order to enable the Company to verify Licensee's compliance with the terms of this Agreement, Licensee agrees to (i) store and keep a back-up of the unmodified usage-auditing files for a period of at least eighteen (18) months; and (ii) to make available to the Company a copy of said unmodified usage-auditing files within thirty (30) days upon request by the Company. Further, the Company reserves the right, upon prior notice to Licensee, to audit usage of the Licensed Materials at Licensee's premises specified in Exhibit B during normal business hours. If use not authorized by this Agreement is found, Licensee agrees to cease such use immediately upon receipt of written notification, or to promptly purchase additional licenses such that the total of all purchased licenses reflects the actual number of Named Users, Queries, and/or Projects.

(g) **Export Restrictions.** Licensee 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, Licensee agrees not to download or transfer (or authorize anyone to download or transfer) the Licensed Materials (i) into (or to a national or resident of) Cuba, Iraq, Libya, Yugoslavia, North Korea, Iran, Syria or any other 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. Licensee shall guarantee the Company from any third party claims related to Licensee's failure to comply with these and other applicable export regulations.

(h) **Third-party Software.** Licensee acknowledges that the proper operation of the Company Software requires certain third party software and that Licensee may at its sole discretion choose to obtain certain third party software from the Company. In any event Licensee agrees that the Company shall not be liable for any issues related to third party software and that Licensee's use of such third party software shall be subject to the applicable end user license terms.

2. **Term.**

(a) **Term.** This Agreement is effective as of the Effective Date and will remain in effect until terminated: (i) by the expiration date specified in Exhibit B; (ii) by Licensee upon one (1) month prior written notice to the Company; or (iii) by the Company pursuant to Section 2(b) hereof.

(b) **Termination by Company.** The Company may terminate this Agreement immediately: (i) in the event of the insolvency, bankruptcy or voluntary dissolution of Licensee; or (ii) if Licensee defaults in the performance of any provision hereunder, and if such default continues and is not cured within thirty (30) days after written notice thereof by the Company. Such termination right is in addition to, and not in limitation of, any other right or remedies available to the Company.

(c) **Effect of Termination.** Notwithstanding anything to the contrary in this Agreement, any termination of this Agreement shall not relieve either party hereto of any of its obligations or liabilities accrued hereunder prior to such termination. Within ten (10) days after termination of this Agreement, Licensee shall return to the Company or destroy, as instructed by the Company, all copies of Licensed Materials then in Licensee's possession, and Licensee shall certify in writing to the Company, within two (2) weeks of any termination of this Agreement, that through its best efforts and to the best of its knowledge the original and all copies of the Licensed Materials have been destroyed or returned to the Company.

(d) **Force Majeure.** Neither party hereto 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 the Company. If these superior forces last for more than ninety (90) days, each party hereto has the right to terminate the agreement in writing. Work performed and services provided as part of the agreement shall be paid proportionally.

3. **License Fees.** In consideration of the licenses granted herein, Licensee shall pay the license fees in the amount and in accordance with the payment terms set forth in Exhibit C attached hereto. Except as expressly set forth in Exhibit C, prices exclude sales tax (VAT) and other government-imposed fees. If Licensee does not pay installments within their appropriate term then Licensee will be charged a monthly interest of 1.5%. The Company may order a third party to claim payment if Licensee remains negligent after receiving a notice of default, in which case Licensee will pay applicable collecting-charges and mediation costs.

4. **Delivery and Installation.**

(a) **Delivery.** Delivery dates quoted by the Company or its personnel represent the Company's best estimate only of the expected delivery date of the Licensed Materials to Licensee. The Company shall not be liable for any damages or penalties arising from any delays in delivery of the Licensed Materials or for failure to give notice of any delivery delay. Risk of loss of or damage to the Licensed Materials shall transfer to Licensee upon delivery. Materials delivered to Licensee remain property of the Company until they have been paid in full. If this Agreement involves work to be performed or services to be provided in phases, then the Company is allowed to postpone work of a consecutive phase until the results of the previous phase have been accepted by Licensee.

(b) **Acceptance by Licensee.** Unless Licensee has accepted the Licensed Materials by placing a purchase order after a pre-agreed trial or evaluation of said Licensed Materials, Licensee shall conduct acceptance tests of the Company Software during the thirty (30) days following the announcement of availability for electronic download or the shipment of the Company Software by the Company. If during this acceptance period Licensee finds that the Company Software does not correspond to the then current product description, Licensee may cancel the requested shipment and receive a refund of all payments made to the Company for the non-accepted Licensed Materials; provided, however, that Licensee shall return such defective Licensed Materials to the Company, transportation prepaid and insured, in the same condition as delivered and in same or equivalent shipping container, with a description of all such defects; and, provided further, that the Company is able to confirm such defects independently. Failure to return the Licensed Materials within such thirty

(30) day period shall constitute acceptance of the Licensed Materials by Licensee. If errors or defects that hinder further testing are discovered before the end of the acceptance test period, Licensee will send the Company a detailed written report, at which time the acceptance test period will be suspended until those defects have been eliminated, whereby a defect is defined as a deviation from written functional specifications. Acceptance of the Company Software cannot be refused for reasons other than those that have been explicitly agreed to in writing between the Company and Licensee, nor because of the existence of minor errors or defects that don't reasonably hinder deployment or productive use of the Licensed Materials for the purposes set forth in Exhibit B. If the Licensed Materials are delivered and tested in phases and/or parts, then the non-acceptance of a certain phase and/or part shall not undo the acceptance of an earlier phase and/or part.

(c) **Licensee Responsibilities**. It is the responsibility of Licensee to provide and prepare, in the configuration and at the location specified in Exhibit B, the system environment upon which the Company Software is to be installed. The Company will invoice Licensee for the set-up and installation of the Company Software in the event any such service is provided by the Company. Licensee is also responsible for ensuring a proper environment, safety procedures, ongoing systems management, and proper utilities for the computer system of which the Company Software will operate, including but not limited to an uninterrupted power supply. At no charge, Licensee will provide assistance to Company employees who work at a Licensee site or who access Licensee systems remotely.

5. **Company Services**

(a) **Maintenance and Support Agreement**. The Company will provide to Licensee maintenance services and updates with respect to the Licensed Materials pursuant to a separate Maintenance and Support Agreement, a copy of which is attached as Exhibit D.

(b) **Additional Work**. The Company is not obliged to accept Licensee requests that would modify or extend the Licensed Materials set forth in section 1(a). The resulting additional work shall be invoiced according to the Company's going rates if such requests are accepted. Licensee accepts that additional work will influence the agreed or expected delivery date and may alter the responsibilities of the parties herein.

(c) **Work Assignment**. If this Agreement was executed in view of work to be performed by a specific Company employee then the Company is entitled to replace this employee by one or more similarly capable persons.

(d) **Education and Training**. If services provided by the Company include education or training, then the Company is entitled to request advance payment for these services and related travel costs. No refund will be given if participation in a training course or educational program is canceled less than sixty (60) days before the agreed date. Depending on the number of participants for a training course or educational program, the Company is entitled to combine the training course or educational program with one or more other training courses or education programs and to move them to a different date with a sixty (60) day advance notice. Licensee may not duplicate or publish training materials for reasons other than personal exercise, personal study, or personal use. The Company expressly declines responsibility for any damages caused by Licensee's use of information obtained during a training course or educational program.

(e) **Software Development**. Each party shall specify in writing what software is to be developed and how work will be performed. The Company may investigate correctness, completeness and consistency of information provided by Licensee and is entitled to research Licensee specifications. If deficiencies or faults are found during such investigations or research then the Company is entitled to suspend its services until such deficiencies or faults have been corrected by Licensee.

6. **Protection and Security of Licensed Materials**

(a) **Protection of Confidential Information**. Licensee will not provide, disclose or otherwise make available to any third party (i) any information or data received from the Company

pertaining to the Licensed Materials which the Company notifies Licensee is considered confidential by the Company; and (ii) all training and procedural materials developed by the Company in conjunction with the use or installation of the Company Software by Licensee (collectively, "Confidential Information"). Except as expressly provided herein, Licensee will not disclose or use such Confidential Information without the Company's prior written consent, except to Licensee'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 Licensee's obligations under this Section 6. In addition to the foregoing nondisclosure obligations, Licensee agrees to use at least the same care and precaution in protecting such Confidential Information as Licensee uses to protect Licensee's own confidential and proprietary information and trade secrets, and in no event less than reasonable care. Licensee shall return all Confidential Information promptly upon the request of the Company or upon termination of this Agreement. Licensee acknowledges that due to the unique nature of the Company's Confidential Information, the Company will not have an adequate remedy in money or damages in the event of any unauthorized use or disclosure of the Company's Confidential Information. In addition to any other remedies that may be available in law, in equity or otherwise, the Company shall be entitled to obtain any injunctive relief that may be appropriate to prevent such unauthorized use or disclosure. Licensee's obligations set forth in this Section 6 will survive and continue for a period of five (5) years after the termination of this Agreement, and will bind Licensee'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 Licensee.

(b) **Copies of Licensed Materials.** All copies of Licensed Materials are the property of the Company. Licensee will reproduce and include any copyright, trademark and/or other proprietary notices in any form on all copies of Licensed Materials in the possession of Licensee. If the Company has technically protected its software in any way then Licensee may not remove or circumvent this protection.

(c) **Copies of Third-party Software.** The Company Software includes open source and proprietary software developed or obtained through third parties. Installation, copying or otherwise using the Company Software constitutes acceptance of the third party software license terms found in a separate license agreement or "Read Me" file included with the Company Software.

7. **Warranties.**

(a) **By Company.** The Company hereby warrants that: (i) the Company has the right to grant to Licensee a license to use the Licensed Materials and to enter into this Agreement; and (ii) for a period of ninety (90) days following delivery of the Licensed Materials (the "Performance Warranty Period"), the Company shall correct any Defect in Licensed Materials pursuant to Section 5 hereto. The Company's sole liability under this Agreement is limited to issuing: (x) Defect correction information, such as correction documentation; (y) corrected code; or (z) a restriction, workaround, or bypass; whereby corresponding corrective work will take place at a location to be determined by the Company and software patches may be made available for electronic download only. Notwithstanding the foregoing, the Company does not represent or warrant that the Company Software is error-free or that all errors or Defects will be corrected. The warranty set forth in this Section 7(a) shall not be available if the Defect is determined by the Company to: (i) be of Licensee or user origin; (ii) have resulted from: (x) modification of the Company Software without the Company's approval; or (y) use of the Company Software in conjunction with software not approved by the Company; or (iii) result from use of Company Software in conjunction with equipment other than the Designated Equipment.

(b) **No Harmful Code.** The Company warrants that no Licensed 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 set forth in Exhibit B.

(c) **Security of Information.** The Company 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 Licensee will not impair the confidentiality, integrity, and availability of Licensee information systems and data. The Company 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.

(d) **Limited Warranty.** NO OTHER WARRANTY, EXPRESS OR IMPLIED, IS MADE WITH RESPECT TO THE LICENSED MATERIALS OR MAINTENANCE SERVICES TO BE SUPPLIED HEREUNDER, 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 COMPANY SOFTWARE, OR THAT USE OF THE COMPANY SOFTWARE WILL BE UNINTERRUPTED, OR THAT ANY ERRORS OR DEFECTS IN THE COMPANY SOFTWARE WILL BE CORRECTED, OR THAT THE COMPANY SOFTWARE'S FUNCTIONALITY WILL MEET LICENSEE'S REQUIREMENTS. LICENSEE ACKNOWLEDGES ITS RESPONSIBILITY TO: (i) REGULARLY BACK UP DATA MAINTAINED ON ANY HARDWARE USING THE COMPANY SOFTWARE; AND (ii) ADEQUATELY TEST PRIOR TO DEPLOYMENT EACH VERSION OF THE COMPANY SOFTWARE IN A CONFIGURATION WHICH REASONABLY SIMULATES LICENSEE'S PLANNED ENVIRONMENT.

(e) **Limitation of Liability.** THE COMPANY'S LIABILITY UNDER THIS AGREEMENT OR FOR BREACH OF THIS AGREEMENT SHALL BE LIMITED TO REFUND OF THE RELEVANT LICENSE FEES PAID BY LICENSEE TO THE COMPANY HEREUNDER DURING THE PREVIOUS TWELVE (12) MONTHS, IF ANY. IN NO EVENT SHALL THE COMPANY OR ANY LICENSOR OF THE COMPANY 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. **Indemnity.**

(a) **By Company.** The Company will defend, at its expense, any action brought against Licensee based upon the claim that the Licensed Materials, as used within the scope of the license granted under this Agreement, directly infringe a duly issued U.S. patent or a registered U.S. copyright. Licensee shall notify the Company promptly in writing of any such claim. Licensee shall not enter into any settlement or compromise of any claim without the Company's prior written consent. The Company shall have sole control of any such action or settlement negotiations, and Licensee shall provide the Company with information and assistance, at the Company's expense, necessary to settle or defend such claim. The Company agrees to pay all damages and costs finally awarded against Licensee attributable to such claim.

(b) **Company Options.** If any of the Licensed Materials become, or in the opinion of the Company may become, the subject of a claim of infringement of any duly issued U.S. patent or a registered U.S. copyright, the Company may, at its option: (i) procure for Licensee the right to use such Licensed Materials free of any liability; (ii) replace or modify such Licensed Materials to make them noninfringing; or (iii) remove such Licensed Materials, or any part thereof, from the scope of this Agreement. The Company shall not be liable for any costs or expenses incurred by Licensee in connection with any potential claim of infringement without its prior written authorization.

(c) **No Company Liability.** The Company assumes no liability hereunder for, and shall have no obligation to defend Licensee or to pay costs, damages or attorney's fees for, any claim based upon: (i) any method or process in which the Licensed Materials may be used by Licensee; (ii) any results of using the Licensed Materials; (iii) any use of other than a current unaltered release of the Company Software; or (iv) the combination, operation or use of any Licensed Materials furnished hereunder with non-Company programs or data if such infringement would have been avoided by the combination, operation, or use of the Licensed Materials with other programs or data.

THE FOREGOING STATES THE SOLE AND EXCLUSIVE LIABILITY OF THE COMPANY FOR ANY INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS.

9. **General.**

(a) **Modification of the Agreement.** The terms of this Agreement may only be modified by a written agreement duly signed by both parties hereto. Variance from the terms and conditions of this Agreement in any Licensee purchase order or other written notification will be of no effect.

(b) **Assignment.** This Agreement may not be assigned by Licensee without the prior written consent of the Company; provided, however, that such consent shall not be required for the assignment of this Agreement by Licensee to a wholly-owned subsidiary of Licensee or to a successor corporation or entity in connection with a merger, consolidation or transfer of all or substantially all of the assets of Licensee by such successor corporation or entity. In such event, Licensee shall provide prior written notice of such assignment to the Company.

(c) **Survival.** The provisions of Sections 2(c), 6, 7, 8 and 9 shall survive any termination of this Agreement.

(d) **Governing Law.** 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.

(e) **Notices.** Any notice or report required or permitted by this Agreement, except as otherwise set forth in this Agreement, shall be in writing and shall be deemed sufficient upon receipt, when delivered personally or by courier, overnight delivery service or confirmed facsimile, or forty-eight (48) hours after being deposited in the regular mail as certified or registered mail (airmail if sent internationally) with postage prepaid, if such notice is addressed to the party to be notified at such party's address or facsimile number as set forth below or as subsequently modified by written notice.

(f) **No Waiver.** No failure of either party to exercise or enforce any of its rights under this Agreement will act as a waiver of such rights or of any other rights hereunder.

(g) **Relationship of the Parties.** Nothing in this Agreement is to be construed as creating an agency, partnership, or joint venture relationship between the parties hereto.

(h) **Costs.** 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.

(i) **Entire Agreement.** This Agreement, including all Exhibits hereto, is the product of both of the parties hereto, and constitutes the entire agreement between such parties pertaining to the subject matter hereof and merges all prior negotiations and drafts of the parties with regard to the transactions contemplated herein. Any and all other written or oral agreements existing between the parties hereto regarding such transactions are expressly canceled.

[Signature Page Follows]

SIGNATURE PAGE

BOTH PARTIES ACKNOWLEDGE THAT THEY HAVE READ THIS AGREEMENT, UNDERSTAND IT AND AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS.

MASTEROBJECTS, INC.:

LICENSEE:

Signature: _____

Signature: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Address:

Address:

1156 Clement Street
San Francisco, CA 94118
United States

