

## **1. INTERPRETATION**

1.1. In these Terms, the following terms shall have the following meanings:

**“Agreement”** means the Quote, these Terms and any Contract for Services.

**“Client”** means the person, firm, company or other entity who has instructed MIKROS to carry out the Services (as defined below) as set out in this Agreement.

**“Client Materials”** means any goods, products and materials in whatever form (including all Intellectual Property Rights in the same) provided or made available by the Client to MIKROS for use in connection with this Agreement, and including any master tapes, film negative prints, sound tapes, video tapes or visual images or sound held in any media.

**“Confidential Information”** means such information as MIKROS may from time to time provide to the Client (in whatever form including orally, written, in electronic, tape, disk, physical or visual form) relating to this Agreement and the Works, and all know-how, trade secrets, tactical, scientific, statistical, financial, commercial or technical information of any kind disclosed by MIKROS to the Client whether in existence prior to the parties entering into this Agreement or which subsequently comes into existence, including any copies, reproductions, duplicates or notes in any form whatsoever.

**“Contract for Services”** means any subsequent contract for the provision of Services entered into between MIKROS and the Client pursuant to these Terms.

**“Intellectual Property Rights”** means copyright (including rights in computer software), database rights, design rights, moral rights, patents, trademarks, service marks, rights (registered or unregistered) in any designs, applications for any of the foregoing, trade or business names, and topography rights, know-how, secret formulae and processes, lists of suppliers and customers and other proprietary knowledge and information, internet domain names, rights protecting goodwill and reputation, and all intellectual property rights and forms of protection of a similar nature to any of the foregoing or having equivalent effect anywhere in the world and all rights under licences and consents in respect of any of the rights and forms of protection mentioned in this definition.

**“MIKROS”** means the entity indicated on the Quote: MIKROS ANIMATION SAS and MIKROS ANIMATION INC.

**“MIKROS Intellectual Property”** means all rights, including Intellectual Property Rights, in and to (i) MIKROS’s proprietary underlying mechanical or electronic devices, software (in source code and object code), libraries, engines, subroutines, data, files, development tools and utilities (in source code and object code form), processes, know how, research and development, technologies and generic or stock elements not provided by Client, including any underlying models, rigging, and animation data and all Intellectual Property Rights in the foregoing, which were in existence prior to the parties entering into this Agreement or developed independently of this Agreement; (ii) any other materials, in whatever form (including documents, information, data and software), which were in existence prior to the parties entering into this Agreement or developed independently of this Agreement; and (iii) any subsequent modification thereto or enhancement thereof.

**“Quote”** means a quote presented by MIKROS in respect of Services to be provided to the Client.

**“Services”** means the services to be provided by MIKROS for the Client pursuant to this Agreement and includes the Works (as defined below) arising out of the Services. **“Terms”** means these terms and conditions of business.

**“Works”** means the products and materials created, developed and

produced by MIKROS for the Client pursuant to this Agreement.

1.2. Headings used in these Terms are purely for ease of reference and do not form any part of or affect the interpretation of these Terms.

1.3. The words “include” and “including” shall not be construed restrictively.

1.4. Any reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

## **2. FORMATION OF CONTRACT**

2.1. The Services will be carried out in accordance with these Terms, any Quote, and any subsequent Contract for Services to the exclusion of any other terms and conditions the Client seeks to impose whether orally or in writing, unless agreed otherwise in writing by the parties.

2.2. All representations, conditions or warranties, or other terms concerning the Services which might otherwise be implied or incorporated in this Agreement, whether by statute or otherwise are, to the maximum extent permitted by law, excluded from this Agreement or any variation thereof, unless expressly accepted by MIKROS in writing.

2.3. No employee, consultant, freelancer or agent of MIKROS has the power to vary these Terms orally or in writing, or to make any statement or representation about the Services offered, their fitness for any purpose or any other matter.

2.4. Upon requesting Services from MIKROS, the Client shall be deemed to have accepted these Terms and these Terms shall become binding as between the Client and MIKROS, notwithstanding the absence of any formal acknowledgement.

2.5. The Client and MIKROS may enter into a Contract for Services which will constitute a separate binding contract between the parties which shall incorporate (with any necessary changes) these Terms. In the case of any conflict or inconsistency between these Terms and any subsequent Contract for Services, these Terms shall take precedence.

## **3. PRICES AND TERMS OF PAYMENT**

3.1. MIKROS will invoice the Client for the prices quoted in respect of Services to be provided at the times set out in the relevant Quote or Contract for Services. Unless otherwise mutually agreed in writing, MIKROS’s quoted prices are for services and materials requiring standard procedures based upon the use of MIKROS facilities and personnel during normal working hours.

3.2. MIKROS shall be entitled to make an adjustment to any quoted prices in the event that additional costs are incurred, or likely to be incurred, by reason of:

3.2.1. the Client Materials (or any part thereof) being, in the reasonable opinion of MIKROS, in any way defective, in an unsuitable format (or a different format to that which MIKROS is expecting to receive the same) or of unsuitable quality for normal processing;

3.2.2. any information supplied by the Client or any third party in connection with this Agreement and the Services being inaccurate or incomplete, or failing to give MIKROS a full and accurate indication of the work involved and/or time and resources required;

3.2.3. changes by the Client or any third party in its requirements for the Services or Works;

3.2.4. exceptional circumstances outside the control of MIKROS, including currency fluctuations and changes in third party costs; or

3.2.5. failure to timely provide any final instructions or Client approvals.

3.3. Subject to clause 3.4 and unless otherwise agreed by MIKROS in writing, all invoices rendered by MIKROS are payable within 30 days of the date of invoice.

3.4. MIKROS expressly reserves the right, at its sole option, to require payment by instalments during the performance of this Agreement and/or to require

payment of all amounts due to MIKROS in respect of Works to be provided prior to delivery of such Works.

3.5 MIKROS retains title to all Works until all outstanding sums pursuant to clause 3 have been paid in full.

3.6. Payment of all amounts shall only be made in the currency in which they are invoiced and shall not be subject to any deductions or charges whatsoever.

3.7. In the event of default in payment by the Client under this Agreement, MIKROS shall be entitled, without prejudice to any of its other rights or remedies, to suspend any further performance of the Services without notice and to charge (i) a recovery of sums penalty of a minimum of forty euros (40€) and (ii) over the overdue sums an interest calculated at the rate applied by the European Central Bank to its most recent main refinancing plus ten (10) percentage points from the due date of payment to the actual date of payment. Client agrees to pay all reasonable costs and expenses (including attorneys' fees) incurred by MIKROS, in connection with the collection of any monies owed by Client to MIKROS.

3.8. All sums payable under this Agreement are exclusive of (a) any sales, use, customs, duties, exhibition and any other duty or taxes, imposed by any foreign, federal, state, provincial, municipal or other governmental authority in respect of any item of Work or the Services to be furnished by MIKROS to Client, which shall (if and to the extent applicable) be payable by the Client at the rate and in the manner from time to time prescribed by law and (b) any freight and delivery charges and any other services that are not expressly included in the applicable Quote or Contract for Services.

3.9. The Client shall pay any withholding tax or other similar taxes applicable for the Services or otherwise required by law to be deducted from any payment by the Client to MIKROS pursuant to this Agreement.

3.10. Any Client requests for revisions, additions or deletions to the Services ordered by Client or changes in the schedule for the Services (collectively, "**Modifications**"), shall be negotiated in good faith by the parties, and performed in accordance with the terms of one or more mutually agreed additional or updated estimates, bids, work orders, purchase orders, overages, statements of work, Quotes or Contracts for Services, whether by email or in writing (collectively, "**Change Order(s)**"), each of which shall set forth the Modifications, the increase or decrease, if any, in the compensation to be paid to MIKROS occasioned by such Modifications, any changes to the schedule to complete such Modifications and any other proposed changes or known impacts to any other terms, conditions or assumptions in this Agreement, as mutually agreed in writing by the Client and MIKROS.

#### **4. PERFORMANCE AND DELIVERY**

4.1. Unless otherwise agreed in writing between the parties, all times specified in a Quote or Contract for Services for performance of the Services and delivery of the Works are given in good faith but are not guaranteed by MIKROS.

4.2. Notwithstanding that MIKROS and the Client may have agreed that time is of the essence in respect of specified Services or Works, the time for performance of the Services or delivery of the Works shall in every case be dependent upon prompt receipt of all necessary information, materials (including Client Materials), final instructions and/or approvals from the Client. The Client acknowledges and agrees that any changes to its requirements and/or the occurrence of any of the circumstances in clause 3.2 or this clause 4.2 may result in delay in performance or delivery, for which MIKROS shall not be liable.

4.3. Where the Works are to be delivered electronically, the Client acknowledges and agrees that:

4.3.1. electronic delivery is not a completely secure medium of communication and that an unauthorised third party may intercept, tamper with or delete the Works to be delivered electronically; and

4.3.2. electronic delivery may involve reliance upon third party providers and data carriers, over which MIKROS has no control.

4.4. MIKROS shall not be responsible for and shall have no liability to the

Client or any third party for:

4.4.1. any delay in delivery or any non-receipt of any Works delivered electronically.

4.4.2. any loss or damage (including loss of data) that results from any person gaining unauthorised access to any Works delivered electronically.

4.4.3. use or disclosure of any data obtained by any third party as a result of that third party gaining unauthorised access to any Works delivered electronically; and

4.4.4. any loss or damage resulting from any malfunction of or the introduction of any viruses, worms, logic bombs, time locks, time bombs, trojan horses and/or bugs to any equipment and/or software used to effect and/or receive any Works delivered electronically.

#### **5. INTELLECTUAL PROPERTY**

5.1. The Client acknowledges that MIKROS (or its third-party licensors) owns, and shall retain ownership of, the MIKROS Intellectual Property, and MIKROS shall not at any time be required to deliver, license or grant any rights to the Client any of the MIKROS Intellectual Property whatsoever.

5.2. The Client acknowledges and agrees that if in the course of performing the Services (including any processing or production of materials on behalf of the Client) MIKROS: (a) discovers or devises any techniques or know-how or (b) creates any mechanical or electronic devices, software (in source code and object code), libraries, engines, subroutines, data, files, development tools and utilities (in source code and object code form), or any underlying models, rigging, and animation data to provide the Services, all rights of every kind in and to the foregoing shall belong to and vest in MIKROS and shall be deemed to be MIKROS Intellectual Property for the purposes of this Agreement.

5.3. MIKROS shall retain ownership and possession of, and all rights (including all MIKROS Intellectual Property Rights) in and to, any original character design, ideas or concepts presented or created by MIKROS in relation to this Agreement, unless otherwise agreed in writing by the parties. Where the Client requires a licence to use any such original character design, ideas or concepts, for whatever purpose, the terms of such licence shall be agreed by the parties in writing pursuant to a Quote and/or any subsequent Contract for Services.

5.4. Subject to clauses 5.1 to 5.3 above and any other terms agreed pursuant to a Quote or Contract for Services, all title and Intellectual Property Rights in and to the Works (excluding MIKROS Intellectual Property), shall pass to the Client only upon the Client paying to MIKROS all sums due and payable under this Agreement. To the extent required, the parties may agree on terms for the licence of MIKROS Intellectual Property (or any part of it) incorporated into the Works, to enable the Client to receive the benefit of the Works.

5.5. The Client hereby grants to MIKROS a perpetual, non-exclusive, transferable, sub-licensable, royalty-free licence to use the Client Materials to the extent necessary for MIKROS and/or its suppliers to provide the Services and the Works.

#### **6. CONFIDENTIALITY**

The parties hereto acknowledge that they may receive from the other **Confidential Information**, in the process of producing the Services. Confidential Information of Producer includes, but is not limited to, the terms of this Agreement, MIKROS Intellectual Property as well as the structure, organization, documentation, design, algorithms, methods, templates, data models, data structure, flow charts, logic flow, and screen displays associated with such software, and MIKROS's pricing, sales and training materials and procedures. The parties will use commercially reasonable efforts to keep confidential all of the other's Confidential Information that is clearly marked as "Confidential." Each party shall, at the other's reasonable written request, require independent contractors engaged by such party in connection with the production of the Services to sign appropriate agreements to keep confidential any Confidential Information; provided, however, that such party and its contractors and/or employees may disclose such Confidential Information as may be necessary for such party to perform its duties under this Agreement.

## **7. CANCELLATION AND VARIATION**

7.1. Except where otherwise stated in a Quote or Contract for Services, this Agreement will expire on completion of the Services to be provided pursuant to it.

7.2. This Agreement (and any Services to be provided under it) may only be cancelled with the written consent of MIKROS and in accordance with these Terms (and if applicable, the terms of any subsequent Contract for Services). The giving of consent shall not in any way prejudice MIKROS's right to recover from the Client full compensation for any loss or expense arising from such cancellation of this Agreement.

7.3. Notwithstanding clause 7.2 and without prejudice to any other rights or remedies available to MIKROS, the Client may give MIKROS written notice of cancellation of this Agreement (and any Services to be provided thereunder), provided that where such notice is received by MIKROS:

7.3.1. less than 24 hours prior to the date for performance or the commencement of performance of the relevant Services (the "Target Date"), MIKROS shall be entitled to charge the Client the full price specified in the Quote or the relevant Contract for Services or, if none is stated, the applicable amount chargeable to the Client based on MIKROS's rate card current at the Target Date; and

7.3.2. less than five calendar days but more than 24 hours prior to the applicable Target Date, MIKROS shall be entitled to charge the Client the justified out of pocket costs and one half of the full price specified in the Quote or the relevant Contract for Services or, if none is stated, one half of the applicable amount that chargeable to the Client based on MIKROS's rate card current at the Target Date,

7.3.3. more than five calendar days prior to the applicable Target Date, MIKROS shall be entitled to charge the Client the justified out of pocket costs,

in each case reflecting the fact that MIKROS is unlikely to be able to secure an order for the Services and/or to reallocate the resources allocated to the Client's order within the specified timeframes.

7.4. Any provisions of this Agreement which by their nature are intended to survive cancellation or expiration (including clause 6 (Confidentiality) and clause 8 (Liability and Indemnity)) shall remain in full force and effect notwithstanding any cancellation or expiration of this Agreement.

## **8. LIABILITY AND INDEMNITY**

8.1. Nothing in this Agreement shall exclude or in any way limit either party's liability for fraud, or for death or personal injury caused by its negligence, or any other liability to the extent such liability cannot be excluded or limited as a matter of law.

8.2. Subject to clause 8.1 and without prejudice to any other provision of these Terms, the Client agrees that:

8.2.1. this Agreement states the full extent of MIKROS's obligations and liabilities in respect of the Works and performance of the Services;

8.2.2. UNDER NO CIRCUMSTANCES SHALL MIKROS BE LIABLE FOR ANY INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL LOSS OR DAMAGE WHATSOEVER, INCLUDING BUT NOT LIMITED TO ANY LOSS OF REVENUE OR BUSINESS PROFITS, BUSINESS INTERRUPTION, DEPLETION OF GOODWILL, LOSS OF USE OR CORRUPTION OF DATA OR SOFTWARE, WHETHER ON A DIRECT OR INDIRECT BASIS;

8.2.3. MIKROS's entire liability for any direct loss suffered by the Client under or in connection with this Agreement shall, subject to the limitations expressly set forth herein, not exceed the fees paid by the Client in accordance with this Agreement; and

8.2.4. this clause 8.2 is reasonable and necessary in the circumstances and, having regard to that fact, does not take effect harshly or unreasonably against the Client.

8.3. The Client shall indemnify and hold harmless MIKROS and its parent

companies, affiliates and subsidiaries and their respective officers, directors, employees and agents (collectively, "MIKROS Indemnitees") from and against all claims, judgements or proceedings and all costs, liabilities, losses, expenses and damages of any kind (including reasonable legal and other professional fees and expenses) awarded against, or incurred or paid by, any of the MIKROS Indemnitees as a result of or in connection with:

8.3.1. any defamatory, slanderous or libelous matter or invasion of privacy or any infringement or alleged infringement of a third party's Intellectual Property Rights or other rights arising out of the supply or use of the Client Materials in relation to the Works and/or in the course of carrying out the Services;

8.3.2. any damage to property caused by MIKROS in the course of carrying out the Services as a result of any act or omission of the Client (including its officers, employees, consultants, freelancers and agents);

8.3.3. the publication, processing, use, distribution and/or exhibition of the Client Materials;

8.3.4. MIKROS carrying out any of Client's written instruction(s) or following the written instructions of Client (including, but not limited to, any claim that Client does not have full and lawful authority to place or authorize MIKROS to execute an order with MIKROS in respect of the Client Materials); and

8.3.5. any breach by the Client, including its officers, employees, consultants, freelancers and agents, of any of these Terms or the terms of any Contract for Services.

8.4. Clause 8.3 above shall apply whether the Client, or its officers, employees, consultants, freelancers or agents, have been negligent or otherwise.

8.5. Any recommendations or suggestions by MIKROS relating to the use of the Works are given in good faith but it is for the Client to satisfy itself of the suitability of the Works for its own particular purpose. Accordingly, unless otherwise expressly agreed in writing, MIKROS gives no warranty as to the fitness of the Works for any particular purpose, even though that purpose may be specified in the applicable Quote or Contract for Services, and any implied warranty or condition (statutory or otherwise) to that effect is excluded.

8.6. Each party will only look to the other party and not to any director, officer, employee, consultant, freelancer or agent of the other party for satisfaction of any claim, demand or cause of action for damages, injuries or losses incurred as a result of the other party's action or inaction.

## **9. INSURANCE**

The Client shall maintain and keep effective at all times insurance policies with reputable insurers as are sufficient to protect the Client against any loss or liability which it may incur or suffer arising out of this Agreement, including insurance which covers the Client for any damage or loss for which MIKROS is not liable pursuant to the these Terms, and which protects the Client against any accidental loss, damage or destruction to any Client Materials or any other materials of any kind supplied by the Client to MIKROS whilst in the possession or custody, care and control of MIKROS. MIKROS may at any time request the Client to provide copies or certificates of insurance or other evidence to prove compliance with this clause.

## **10. STORAGE OF CLIENT MATERIALS**

10.1. MIKROS shall be under no liability whatsoever in respect of any loss or damage to or destruction of the Client Materials (whether such Client Materials are in the possession of MIKROS or otherwise) and it is the Client's responsibility to ensure that it has appropriate back-up copies of all Client Materials.

10.2. In accordance with clause 9 above, the Client shall insure all Client Materials to their full value against all risks. Client hereby waives all rights of subrogation with respect to losses covered by its insurance policies or coverage.

10.3. The Client is required to take back any elements (digital or analog) or documents entrusted to MIKROS, as well as the Works, from the date of

their completion, except in case of agreement with MIKROS on storage or conservation services terms. In the absence of a request for restitution of the elements and/or agreement with MIKROS on storage or conservation services at the end of services carried out by MIKROS, MIKROS will be discharged from any responsibility regarding the conservation of the Client's elements (including the Works), the Client giving up any recourse against MIKROS in that respect, including in case of the elements' (including the Works') obsolescence due to the absence of migration, absence of interoperability, or in case of loss, damage, partial or total destruction of the elements for any reason whatsoever. Any request for material to be returned should be accompanied by an authorization from the rights holders or a proof of ownership of the tangible or intangible rights over the elements to be returned, should the applicant not be the depositor.

10.4. Where Client Materials are supplied or specific instructions are given by the Client, MIKROS accepts no liability for any reduction in the quality of the Services caused by defects or errors in or the unsuitability of such Client Materials or by MIKROS's use of the Client Materials or adherence to any of the Client's specific instructions.

## **11. DATA PROTECTION**

The provision of the Services by MIKROS may require the latter to collect some of Client's employees' personal data (for administrative management of the Agreement). In this context, MIKROS may use technical means in order to process this personal data and to ensure its security. As a data controller, MIKROS processes Client's personal data for the aforementioned purposes and in compliance with applicable laws. MIKROS processes Client's personal data where necessary for the performance of the Agreement or to comply with legal obligations as a provider. Client's personal data will only be accessible to the teams allocated to the Agreement (marketing, IT, security, finance, and to any subcontractor working with those departments). MIKROS has offices in several countries, including some countries outside the European Union. Client's personal data may be transferred or made accessible outside of the European Union and such access and transfers are governed by an intragroup agreement which secures transfers and access. In case of transfer to subcontractors outside the European Union, MIKROS ensures that the Standard Contractual Clauses approved by the European Commission are signed with these subcontractors. Client expressly acknowledges and agrees to these transfers and access. Pursuant to the applicable law, Client's employees have rights regarding their personal data and can exercise them by contacting MIKROS' data protection officer or the service relating to data protection, at the following email address: dpo@mikrosanimation.com.

## **12. CREDITS/ PUBLICITY**

12.1. To the extent Client has the right, Client shall insert customary credits in the form provided by MIKROS: (a) on the main title card or on the technical credit card, which credit will include MIKROS' then current trade name and logo, for the Works provided; and (b) MIKROS' applicable account executives and creative team providing direct services for the Works.

12.2. Client shall use commercially reasonable efforts to credit MIKROS in Client's promotional materials and any trade publication articles or coverage regarding the Works. Each party will mention or give credit to the other party in connection with any awards that might be won in connection with the Works.

12.3. MIKROS may publicize, advertise and market the Works on its website(s), social media site(s), blog(s), in pitches to third parties, in connection with any appropriate industry awards, or in any other manner, as MIKROS may in its sole discretion decide, without the prior written consent of the Client.

12.4. The Client hereby grants to MIKROS a perpetual and royalty-free licence to use the Works throughout the world for the purposes of clause 12.1 above and in order for MIKROS to promote its business by whatever means it sees fit.

## **13. ARTIFICIAL INTELLIGENCE**

13.1. The Client acknowledges and agrees that MIKROS may utilize artificial intelligence as part of the performance of its Services and the creation and/or delivery of the Works, which shall include but not be limited to software, tools, or technologies (including, without limitation, natural language processing, deep learning algorithms, or machine learning models) that leverage artificial intelligence to analyze or adapt inputs, or create outputs, including, without limitation, the generation of images, video, audio, code, synthetic data or digital assets ("AI").

13.2. The Client and MIKROS acknowledge and agree that certain Works and Services under the Agreement may be provided utilizing AI and that Works created utilizing AI may hold limited or no intellectual property rights (including copyright). Accordingly, intellectual property rights in and to such Works (or parts thereof) may not be original or capable of being assigned by MIKROS to the Client for which MIKROS shall not be liable or held to be in breach of any provision of this Agreement. For the avoidance of doubt, to the extent any intellectual property rights (including copyright) exist in any Works created utilizing AI, MIKROS shall not be responsible for clearing the same.

13.3. MIKROS and the Client hereby agree and acknowledge that MIKROS' indemnity will not extend to cover any Works created utilizing AI to the extent such claims arise directly from element(s) of the Works that were developed using AI.

13.4. The Client acknowledges and agrees that Client Materials and information (including confidential information), for the purpose of providing the Services, may be placed, processed and/or used (i) by MIKROS as a training dataset to develop its own AI based technology and/or (ii) as a prompt through both local/on premise and offline and/or API and cloud based artificial intelligence tools, at the discretion of MIKROS.

## **14. FORCE MAJEURE**

In the event of the Services being prevented, delayed, or in any way interfered with by a force majeure event, MIKROS may, at its option, suspend performance of or cancel this Agreement, without liability to the Client for any resulting damage or loss, such suspension or cancellation being without prejudice to MIKROS' right to recover all sums owing to it in respect of Services and Works delivered and costs incurred up to the date of suspension or cancellation.

## **15. SUB-CONTRACTORS**

MIKROS shall be entitled to appoint one or more sub-contractors to carry out all or any of its obligations under this Agreement.

## **16. GENERAL**

16.1. Variation: No variation of this Agreement (including any of the Services or Works to be provided hereunder) shall be valid unless it is in writing and signed by, or on behalf of, each of the parties.

16.2. Assignment: The Client may not assign this Agreement, by operation of law or otherwise, without the prior written consent of MIKROS. This Agreement and any right or obligation under this Agreement can be assigned by MIKROS to a third party without the prior written consent of the Client.

16.3. Entire Agreement: This Agreement constitutes the entire agreement of the parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings and agreements, whether written or oral, with respect to such subject matter.

## **17. GOVERNING LAW AND JURISDICTION**

This Agreement or any dispute relating to its subject matter shall be governed by and construed exclusively in accordance with the following laws and jurisdictions, depending on the contracting entity, as follows:

.MIKROS ANIMATION SAS: Laws of France/ Courts of Nanterre;

.MIKROS ANIMATION INC: Laws of the province of Quebec/Courts of Montreal.