

# Terms of Service

*Last Modified: January 8th, 2018*

The following are the terms and conditions for use of the ObjectGears online service (the "Service") between Terannum s.r.o. and you (either an individual or a legal entity that you represent as an authorized employee or agent). Please review this Terms of Service Agreement carefully. The Service may be used by individuals who are at least eighteen (18) years old or minors who have parental permission to open and maintain an account; provided, however, in no event is any individual under the age of thirteen (13) years old permitted to use the Service.

BY CLICKING THE "I ACCEPT" BUTTON, COMPLETING THE REGISTRATION PROCESS AND/OR USING THE SERVICE, YOU ARE STATING THAT YOU ARE ELIGIBLE FOR AN ACCOUNT AND THAT YOU AGREE TO BE BOUND BY THIS TERMS OF SERVICE (THIS "AGREEMENT").

The offering of the Service is conditioned on your acceptance without modification of this Agreement.

You also agree to ObjectGears' Acceptable Use Policy, the current version of which is posted at <https://www.objectgears.eu/terms-and-conditions>.

## **DEFINITIONS**

"Account" refers to the billing account for the Service.

"Customer Data" means the data in collections or other files stored in your Account which is collected through use of the ObjectGears.eu website (the "Site").

"Servers" means the servers controlled by ObjectGears or its partners upon which the Processing Software and Customer Data are stored.

"Service" has the meaning ascribed to such term in the first paragraph of this Agreement.

## **MEMBER ACCOUNT, PASSWORD, AND SECURITY**

To register for the Service, you shall provide ObjectGears with current, complete and accurate information as prompted by the registration form, including your e-mail address. You are solely responsible for any and all activities that occur under your Account. You agree to notify ObjectGears immediately upon learning of any unauthorized use of your Account or any other breach of security.

## **NON-EXCLUSIVE LICENSE**

Subject to the terms and conditions of this Agreement, ObjectGears hereby grants you a limited, revocable, non-transferable, non-exclusive license to use the Software.

Subject to the terms and conditions of this Agreement, you may remotely access the Service at ObjectGears.eu and other Servers provided by ObjectGears. Your use of and access to the Software and the Service is conditioned upon the following:

You shall not (i) copy, modify, adapt, translate or otherwise create derivative works of the Software, or permit others to do so; (ii) reverse engineer, de-compile, disassemble or otherwise attempt to discover the source code of the Software, except to the extent expressly permitted by the law in effect in the jurisdiction in which you are located, or permit others to do so; (iii) rent, lease, sell, assign or otherwise transfer rights in or to the Deploy Code or the Service; (iv) remove any proprietary notices or labels on the Deploy Code or placed by the Service; or (v) use, post, transmit or introduce any device, software or routine which interferes or attempts to interfere with the operation of the Service or the Software. You shall use the Software and Service solely for your own use, and will not make the Software or Service available for timesharing, application service provider or service bureau use. You shall comply with all applicable laws and regulations in your use of and access to the Software and Service.

Unless otherwise agreed in writing between ObjectGears and you, you may not use or access the Service if you are (i) an entity or individual that markets, distributes or provides database software or services or (ii) an entity or individual that will access or use the Service on behalf of an entity or individual that markets, distributes or provides database software or services.

This license will terminate immediately if you fail to comply with the terms of this Agreement. Upon such termination, you shall destroy all originals and copies of the Deploy Code in your possession and cease any further use of the Service without the express written consent of ObjectGears.

## **USAGE RULES**

The Service is offered to you to help you with the operation of your business. You agree not to use the products or services provided through or in connection with the Service to: (i) conduct any business that is unlawful, (ii) infringe or otherwise violate a third party's rights, (iii) collect information about third parties, without their express consent; or (iv) interfere with or disrupt the Service or Servers.

ObjectGears reserves the right to disclose any information or materials as necessary to satisfy any applicable law, regulation, legal process or government request, or to edit, refuse to post or to remove any information or materials, in whole or in part, from the Servers, at ObjectGears' sole and absolute discretion, without notice.

## **FEES AND SERVICES**

The fees for the Service are as posted at <https://www.objectgears.eu/license> unless otherwise stated on a valid written or electronic purchase order (which has been accepted by ObjectGears in writing); provided, however, that any additional or conflicting terms contained in any purchase order, standardized form or correspondence, which are in addition to or conflict with this Agreement, shall be null and void unless such terms and conditions are contained in an

amendment to this Agreement duly executed by both parties hereto. ObjectGears reserves the right to suspend or terminate your access to the Service for your failure to remit payment in a timely manner. ObjectGears may change its fees and payment policies for the Service from time to time. The changes to the policy are effective after ObjectGears provides you with at least thirty (30) days' notice of the changes by posting the changes at <https://www.objectgears.eu/license>. Unless otherwise stated, all fees are quoted in Euro. You are responsible for paying all fees associated with your Account.

Amounts not paid by you to ObjectGears when due may bear interest at the lesser of (i) one and one-half percent (1.5%) per month, and (ii) the maximum rate permitted by applicable law.

You understand and agree that your Service fee consists of a monthly fee. The monthly fee applies to all Accounts even if your Account is inactive. Monthly fees automatically recur every month unless you properly close your account with ObjectGears. Monthly fees are charged at the beginning of your monthly cycle and continuing every month thereafter.

Accounts can be closed at any time. If the account is closed before the end of the term no refunds are available for the remainder of that current term.

## **TERM; AUTOMATIC RENEWAL**

The term of Accounts is indefinite unless terminated at any time in ObjectGears' sole and absolute discretion. This Agreement, as may be amended from time to time, shall remain in full force and effect for so long as your Account is valid.

## **FREE TRIALS**

From time to time ObjectGears may offer a free trial of the Service to prospective customers. ObjectGears reserves the right to discontinue the offering of free trial Service without notice. Free trials are meant to let prospective customers experience the Service before committing to it. Use of a free trial Service for anything other than the above is prohibited. Furthermore, you agree that you are not allowed to (i) open more than one trial account, and/or (ii) upon termination of your free trial account open a new trial account.

One type of free trial offering requires payment information at the time of sign up. This type of free trial account automatically converts to a regular paying Account at the end of the trial period. If the trial account is not closed within the trial period, regular fees will apply immediately thereafter.

Another type of free trial account requires no payment information at sign up. Unless you convert your free trial account to a paying account within thirty (30) days of opening your account, ObjectGears reserves the right to discontinue your account at the end of such thirty (30) day trial period and delete all of your Customer Data and account information without notice.

Free trial account users additionally agree that you (i) will not use more capacity and resources than allocated to your account, (ii) will not hide or otherwise tamper with ObjectGears branding

on your confirmation pages, (iii) will maintain accurate and up to date contact and, to the extent collected by ObjectGears, billing information, and (iv) agree to receive sales and marketing emails from ObjectGears and its partners. ObjectGears may, in its sole and absolute discretion, immediately terminate your service, upgrade your free account to a regular, paying Account, and/or charge appropriate fees if any of the requirements above are not met.

## **BETA PROGRAMS**

From time to time, ObjectGears may offer access to beta software to interested parties. Beta software is software that is not officially released, and may contain problems or bugs, and is not warranted by ObjectGears in any way. Any beta services are provided "as is" for evaluation and testing purposes only, and beta users are advised to not rely on the features or performance of such services for any reason. By registering for and using beta services, you acknowledge that you are accessing a pre-release evaluation of such services and that such services and/or any products and services offered in connection therewith may contain bugs, may not operate properly or perform all intended functions, may interfere with the functioning of other applications, and may cause errors, data loss or other problems. ObjectGears shall not be liable for any damages, including but not limited to direct, indirect, incidental or consequential damages or for loss of data, profits, or revenue incurred by you or third parties.

As a beta user, you agree that you shall promptly report to ObjectGears any failure of the applicable beta service to perform in accordance with applicable documentation, and will provide such other information relating to the beta service as ObjectGears may reasonably request. At ObjectGears' request, you will provide a written evaluation of the beta service in a form reasonably requested by ObjectGears. You grant ObjectGears an unrestricted, royalty-free right to use all such feedback for purposes of marketing, public relations, correcting and/or enhancing the beta service and developing additional products and services.

ObjectGears' beta programs have a fixed duration. At the end of a beta program you may be offered the opportunity to convert your beta account to a regular Account. Beta accounts that are not converted to a regular Account are deleted at the end of the beta program and all Customer Data is lost. You agree that if you do not convert your beta account to a regular Account, you will remove all ObjectGears Software and Deploy Code from your websites immediately at the conclusion of the beta program.

## **PRIVACY**

By registering for the Service, you authorize ObjectGears to collect, store and process Customer Data subject to the terms of this Agreement and the ObjectGears Privacy Policy (the "Privacy Policy"), the current version of which is posted at <https://www.objectgears.eu/terms-and-conditions>, and you represent and warrant that the collection, storage and processing of such Customer Data, as provided in this Agreement and consistent with the Privacy Policy, does not breach or violate any contractual or legal obligations that you may have to any party. You further understand and agree that the Privacy Policy may change from time to time without notice in ObjectGears' sole and absolute discretion.

When you initially create an account, you may be asked whether or not you wish to receive marketing and other non-critical Service-related communications from ObjectGears and our partners from time to time. You may opt out of receiving such communications at that time or at any subsequent time by changing your preference under Account Information. Free ObjectGears account users will not have the option of opting out unless they terminate their free account or upgrade to a paying Account. Please be aware that because the Service is a hosted online application, ObjectGears occasionally may need to notify all users of the Service (whether or not they have opted out as described above) of important announcements regarding the operation of the Service. If you are or become a paying customer of the Service, you agree that ObjectGears can disclose the fact that you are a paying customer and the edition of the Service that you are using.

You shall ensure that during use of the Service, the Website shall have a privacy policy that (i) clearly and conspicuously notifies visitors to the Website that the Website is using services hosted by ObjectGears; (ii) provides a direct link to the Privacy Policy web-page with the following language, "You should refer to the ObjectGears Privacy Policy to learn how they collect and use information. You can find the ObjectGears Privacy Policy here: <https://www.objectgears.eu/terms-and-conditions>"; (iii) otherwise fully complies with applicable law; and (iv) protects privacy in a manner consistent with the Privacy Policy and with the principles of an industry-approved privacy certification program in the applicable jurisdiction.

## **ACCOUNT INFORMATION AND DATA**

ObjectGears does not own any Customer Data. You, not ObjectGears, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of all Customer Data, and ObjectGears shall not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any Customer Data. ObjectGears reserves the right to withhold, remove and/or discard Customer Data without notice for any breach of this Agreement, including, without limitation, your non-payment. Upon termination of your Account, your right to access or use Customer Data immediately ceases, and ObjectGears shall have no obligation to maintain or forward any Customer Data.

## **TAXES**

ObjectGears shall not be liable for taxes and other governmental fees and assessments to be paid which are related to purchases made from you or from the Server. You agree that you shall be solely responsible for all taxes, fees, and assessments of any nature associated with products or services sold through the use of or with the aid of the Services.

## **SECURITY AND STORAGE OF INFORMATION**

ObjectGears has certain security measures in place to help prevent the loss, misuse or adulteration of Customer Data stored on the Servers. These measures include Secure Socket Layer encryption and the use of a firewall. Any questions or concern about security can be addressed at <https://www.objectgears.eu/contact>. Notwithstanding the foregoing, ObjectGears

shall have no obligation or responsibility to preserve, archive, store or otherwise protect the integrity of the Customer Data against corruption, deletion or destruction. Customer Data is not stored for an indefinite amount of time.

## **ENHANCING AND MODIFYING THE SERVICE**

ObjectGears reserves the right to enhance, upgrade, or modify the Service with or without notice to you. ObjectGears shall not be liable to you or any third party should ObjectGears exercise its right to enhance or modify the Service.

## **INDEMNIFICATION**

You shall indemnify, hold harmless and defend ObjectGears, at your expense, against any and all third-party claims, actions, proceedings, and suits brought against ObjectGears or any of its officers, directors, employees, agents or affiliates, and all related liabilities, damages, settlements, penalties, fines, costs or expenses (including, without limitation, reasonable attorneys' fees and other litigation expenses) incurred by ObjectGears or any of its officers, directors, employees, agents or affiliates, arising out of or relating to (i) your breach of this Agreement, (ii) your negligence or misconduct in connection with the Service, or (iii) your violations of applicable law in connection with the Service.

## **THIRD PARTY TERMS**

If you provide access to your forms, your Account or any portion thereof to any third party or use the Service to collect information from or on behalf of any third party (a "Third Party"), whether or not you are authorized to do so by ObjectGears, these Third Party Terms shall apply to you.

You shall ensure that each Third Party abides by the terms of this Agreement. Any information of a Third Party that is considered confidential information of such Third Party shall be treated as confidential by you and shall not be disclosed to any other third party. Each Third Party shall be considered a customer of you, and not a customer of ObjectGears; provided, however, that ObjectGears reserves the right to enforce the terms of this Agreement against such Third Parties and you shall provide that ObjectGears is a third party beneficiary with respect to your agreement with the Third Party.

ObjectGears makes no representations or warranties for the direct or indirect benefit of any Third Party. With respect to Third Parties, you shall take all measures necessary to disclaim any and all representations or warranties that may pertain to ObjectGears, the Service or the Software, or use thereof. You shall indemnify, hold harmless and defend ObjectGears, at your expense, against any and all third-party claims, actions, proceedings, and suits brought against ObjectGears or any of its officers, directors, employees, agents or affiliates, and all related liabilities, damages, settlements, penalties, fines, costs or expenses (including, without limitation, reasonable attorneys' fees and other litigation expenses) incurred by ObjectGears, or any of its officers, directors, employees, agents or affiliates, arising out of or relating to (i) any representations and warranties made by you concerning any aspect of the Service or the Software to Third Parties;



(ii) any claims made by or on behalf of any Third Party pertaining directly or indirectly to your use of the Service or the Software; (iii) violations of your obligations of privacy to any Third Party; and (iv) any claims with respect to acts or omissions of Third Parties in connection with the Service or the Software that would otherwise be a breach of this Agreement by you.

## **DISCLAIMER OF WARRANTIES**

ObjectGears does not warrant or represent that the use of the Service will be correct, accurate, timely or otherwise reliable. You specifically agree that ObjectGears shall not be responsible for unauthorized access to or alteration of the Customer Data or data from the Website.

THE SERVICE AND THE SOFTWARE ARE PROVIDED "AS IS" AND THERE ARE NO WARRANTIES, CLAIMS OR REPRESENTATIONS MADE BY OBJECTGEARS, EITHER EXPRESS, IMPLIED, OR STATUTORY, WITH RESPECT TO THE SERVICE AND THE SOFTWARE INCLUDING WARRANTIES OF QUALITY, PERFORMANCE, NON-INFRINGEMENT, MERCHANTABILITY, TITLE OR FITNESS FOR A PARTICULAR PURPOSE, NOR ARE THERE ANY WARRANTIES CREATED BY COURSE OF DEALING, COURSE OF PERFORMANCE, OR TRADE USAGE. OBJECTGEARS DOES NOT WARRANT THAT THE SERVICE AND/OR THE SOFTWARE WILL MEET YOUR NEEDS OR BE FREE FROM ERRORS, OR THAT ERRORS WILL BE FIXED, OR THAT THE OPERATION OF THE SERVICE WILL BE UNINTERRUPTED. THE FOREGOING EXCLUSIONS AND DISCLAIMERS ARE AN ESSENTIAL PART OF THIS AGREEMENT AND FORMED THE BASIS FOR DETERMINING THE PRICE CHARGED FOR THE SERVICE. SOME STATES DO NOT ALLOW EXCLUSION OF AN IMPLIED WARRANTY, SO THIS DISCLAIMER MAY NOT APPLY TO YOU.

## **LIMITATION OF LIABILITY**

OBJECTGEARS SHALL NOT BE LIABLE TO YOU OR ANY THIRD-PARTY CLAIMANT FOR ANY DIRECT, INDIRECT, SPECIAL, PUNITIVE, CONSEQUENTIAL (INCLUDING, WITHOUT LIMITATION, LOST REVENUE, PROFITS OR DATA COLLECTED THROUGH THE SERVICE), OR INCIDENTAL DAMAGES, WHETHER BASED ON A CLAIM OR ACTION OF CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY, OR OTHER TORT, BREACH OF ANY STATUTORY DUTY, INDEMNITY OR CONTRIBUTION, OR OTHERWISE, EVEN IF OBJECTGEARS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE EXCLUSION CONTAINED IN THIS PARAGRAPH SHALL APPLY REGARDLESS OF THE FAILURE OF THE EXCLUSIVE REMEDY PROVIDED IN THE FOREGOING PARAGRAPH.

SOME STATES DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE LIMITATIONS OR EXCLUSIONS IN THIS AND THE FOREGOING PARAGRAPH MAY NOT APPLY TO YOU.

ObjectGears' cumulative liability to you or any other party for any loss or damages resulting from any claims, demands, or actions arising out of or relating to this Agreement shall not exceed the total fees paid by you to ObjectGears for use of the Service.

## **PROPRIETARY RIGHTS NOTICE**

Title, ownership rights, and intellectual property rights in and to the Software, ObjectGears' confidential information, and any other ObjectGears information and materials, and the Service, shall remain with ObjectGears. ObjectGears reserves all rights not expressly granted to you in this Agreement.

## **CUSTOMER REFERENCE**

You hereby grant ObjectGears the right to use your trade name and/or your corporate logo in connection with ObjectGears' promotional materials and/or website to identify you as a customer of ObjectGears.

## **CONFIDENTIALITY**

You may have access to information that is confidential to ObjectGears ("Confidential Information"). Confidential Information shall include any information that is clearly identified in writing at the time of disclosure as confidential as well as any information that, based on the circumstances under which it was disclosed, a reasonable person would believe to be confidential. ObjectGears' Confidential Information shall include, without limitation, the Service, Software, documentation, formulas, methods, know how, processes, designs, new products, developmental work, marketing requirements, marketing plans, licensee names, prospective licensee names, the terms and pricing under this Agreement, and the results of any comparative or other benchmarking tests with respect to the Service or the Software, in each case regardless of whether such information is identified as confidential. Confidential Information includes all information received from third parties that you are obligated to treat as confidential and oral information that is identified by ObjectGears as confidential. This obligation of confidentiality does not apply to any information that is or becomes a part of the public domain through no act or omission by you, was in your lawful possession prior to the disclosure without any restriction on disclosure, or is independently developed by you without use of or reference to such Confidential Information. If you are required to disclose such Confidential Information to any court or government authority, then you agree to provide ObjectGears with sufficient written notice prior to your disclosure to enable ObjectGears to seek a protective order or otherwise prevent such disclosure. Such obligations of confidentiality shall survive any termination of this Agreement indefinitely.

You agree, unless required by law, (i) not to make Confidential Information available in any form to any third party (including but not limited to entities or individuals that market, distribute or provide web database software or services) except to your employees or agents who are required to know such Confidential Information to allow you to exercise your rights under this Agreement, and (ii) not to use the Confidential Information for any purpose other than in the performance of this Agreement. You shall not disclose the results of any performance tests of the



Software or Service to any third party without ObjectGears' prior written approval. You agree to take all necessary steps to ensure that Confidential Information is not disclosed or distributed by your employees or agents in breach of this Agreement. You acknowledge and agree that, due to the unique nature of Confidential Information, there can be no adequate remedy at law for breach of this section of the Agreement and that such breach would cause irreparable harm to ObjectGears, therefore ObjectGears shall be entitled to seek immediate injunctive relief, in addition to whatever remedies it might have at law, in equity and/or under this Agreement.

## **TERMINATION**

This Agreement and the license granted herein will terminate automatically if you fail to comply with any of the terms and conditions hereof. Upon termination, you must remove the Deploy Code and all other ObjectGears materials and information from the Website. ObjectGears reserves the right to terminate this Agreement and your use of the Service for any reason or no reason.

To terminate your use of the Service, you must contact us through <https://www.objectgears.eu/contact> and ask to "Delete Account" to request the termination of your Account. Upon receipt and verification, an ObjectGears representative will delete your Account and all of your Customer Data. You must also remove the Deploy Code from your Website. You will be charged for the billing period in which you terminate your account according to the terms of this Agreement. If you do not formally request the termination of your Account, you will continue to be billed for the Service.

## **MODIFICATIONS TO TERMS OF SERVICE AND OTHER POLICIES**

ObjectGears reserves the right to change or modify any of the terms and conditions contained in this Agreement, the Service, or any policy governing the Service, at any time, by posting the new agreement to the Site. You are responsible for regularly reviewing the site. Your continued use of the Site or the Services shall constitute your acceptance of any such changes and your agreement to be legally bound thereby.

## **MISCELLANEOUS; APPLICABLE LAW AND VENUE**

ObjectGears shall be excused from performance hereunder to the extent that performance is prevented, delayed or obstructed by causes beyond its reasonable control. This Agreement (including any amendment agreed upon by the parties in writing) represents the complete agreement between the parties concerning its subject matter, and supersedes all prior agreements and representations between them. If any provision of this Agreement is held to be unenforceable for any reason, such provision shall be reformed to the extent necessary to make it enforceable, and all other provisions of this Agreement shall remain in full force and effect. The waiver by either party of any default or breach of this Agreement shall not constitute a waiver of any other or subsequent default or breach. Neither this Agreement nor any rights granted hereunder may be sold, leased, assigned, or otherwise transferred, in whole or in part, by you, and any such attempted assignment shall be void and of no effect without the advance written consent of ObjectGears, such consent not to be unreasonably withheld, conditioned or delayed. This

Agreement shall be binding upon and will inure to the benefit of the parties and their respective heirs, successors, permitted assigns, and legal representatives. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania without regard to its conflict of laws principles. You agree, in the event any claim or suit is brought in connection with ObjectGears' provision of the Services to you, to submit to the jurisdiction of the Commonwealth of Pennsylvania, and agree to the courts of Philadelphia County, Pennsylvania as the appropriate forum.

## **FOR MORE INFORMATION**

If you have any questions or comments about this Agreement, the Service, or your experience with the Service, please contact ObjectGears online at <https://www.objectgears.eu/contact> or Support portal <https://partner.objectgears.cz/>.