

## ACTIAN CORPORATION

### GENERAL TERMS AND CONDITIONS

These General Terms and Conditions form an integral part of the agreement between “You” — the person or company who licensed a copy of the Products (as defined below) or purchased Services (as defined below) from Actian Corporation, a Delaware company with its offices located at 710 Hesters Crossing, Suite 250, Round Rock, TX 78681 (“Us,” “Our,” “We,” or “Actian”) And “You” includes You and any of Your affiliated entities with access to any Products. You and Actian are each a “Party,” and are collectively, the “Parties.”

This Agreement governs the purchase and use of the Products and Services described in an Order (defined below).

#### 1. DEFINITIONS.

- 1.1. “Agreement” means the agreement comprised of the Order or purchase You have made of Services or Products along with the license terms incorporated in the Order or if none the license terms that were included with the delivered Product copies, and includes these General Terms and Conditions as an integral part.
- 1.2. "Customer Subsidiaries" means those companies that are Your wholly-owned subsidiary on the Effective Date of this Agreement. “Wholly owned subsidiary” is defined as an entity in which You own a 100% shareholding.
- 1.3. "Documentation" means the user documentation supplied by Us with the Product.
- 1.4. “Effective Date” means the earliest of You executing an Order, paying for Products or Services, or installing Products on Your computer.
- 1.5. "Order" means a document, typically titled "Order Confirmation," executed by the parties, or (in the absence of an executed written document) an invoice issued by Actian, that refers to this Agreement and describes in greater detail Your order-specific information and use restrictions including, but not limited to: Your billing information, lists of Products and Services ordered, permitted number of cores with which the Products can be used, and pricing.
- 1.6. "Outsourcer" means a third party engaged by You for internal data processing, consulting, product customization, or internal information management.
- 1.7. "Products" means the specific number of copies of machine-readable object code of Actian’s software programs specified in an Order, together with any Documentation and Updates thereto, to which Actian provides You access to use under this Agreement.
- 1.8. “Services” means any and all services provided by Actian to You.
- 1.9. "Subscription Term" means one year from the date of the applicable Order or as otherwise specified in the Order or an addendum to this Agreement.
- 1.10. “Support Services" means Services that Actian provides to support the use of Products and to maintain and Update the Products You have ordered.

- 1.11. "Updates" means any update, release, or enhancement to the Products that is provided to You at Our discretion under Support Services.
- 1.12. "Warranty Period" means thirty (30) days from the date of initial delivery to You of the applicable Product (excluding Updates).

## **2. PRODUCTS AND SUPPORT SERVICES.**

- 2.1. Products. Your right to access and use Actian software is limited to the Products itemized in Your Order, and the rights conveyed in the software license agreement signed by Actian and You, or if none, by the end-user license agreement (each, a "EULA") that is included in the Product copy Actian delivers to You.
- 2.2. Support Services. Your entitlement to Support Services is detailed in Actian's then-current Support Services policies. Those policies are standard for Actian customers and are subject to change by Actian, and can be found at: <http://supportservices.actian.com/support-services/support#policy>. We may suspend or terminate Support Services for all Product(s) in the event that You do not pay fees for Support Services when due. If You purchase Support Services for a Product, then You shall purchase Support Services for all licenses and copies of such Product. You may not use or access support services (i) for a software product not covered in a then-current Order, or (ii) for a Product not covered by a then-current paid Actian support plan. You may not use or access Support Services for the benefit of a third party, or provide access to or permit the use of Support Services by a third party.
- 2.3. A violation of a EULA or Actian's Support Services policies constitutes a violation of this Agreement, entitling Actian to appropriate remedies.
- 2.4. Additional Services. Consulting Services or training may be obtained by You on an as-available basis and at mutually agreed rates in accordance with a separate agreement. Should We agree to provide consulting Services, the payment of the Product license and Support Services fees under this Agreement shall not be contingent under any circumstances upon the performance of any such Services including installation and implementation Services.

## **3. FEES; TAXES; PAYMENT TERMS; PURCHASE ORDERS; SHIPPING.**

- 3.1. Fees. Fees or other charges shall be as specified in an Order. All amounts payable under this Agreement shall be payable in advance, and shall be non-refundable and not subject to set-off or deduction by You. In the event that You wish to renew Your subscription for a Product or Support Services, the applicable price shall be that stated within the then-current Actian price list, unless otherwise agreed between the Parties.
- 3.2. Taxes. Our fees are exclusive of, and You are responsible for, duties and taxes (other than taxes on Our income).
- 3.3. Invoicing and Payment. All payments of fees and charges under this Agreement shall be made in U.S. dollars within thirty (30) days of the date of the applicable invoice sent to You by Us. Any amount payable by You to Us hereunder that is past due may be subject to a late payment charge equal to one and a half percent (1.5%) per month, or the highest rate permitted by law,

whichever is less. The receipt or request for payment of such amounts shall not prejudice Our rights with respect to Your failure to pay on the due date.

- 3.4. Orders and Shipping. We have no obligation to accept purchase orders, including without limitation, purchase orders for renewal of Support Services. Any fulfillment of purchase orders shall be solely in accordance with the terms of this Agreement and We expressly reject any conflicting terms and conditions in Your purchase order. Products and Documentation are shipped FOB origin, Our site. Delivery will be by electronic or physical means, at Our election, and all Products shall be deemed accepted by You immediately upon the earlier of download or receipt from Us.

#### **4. LIMITED WARRANTIES.**

- 4.1. We warrant that, during the Warranty Period, the Products (excluding Updates) will operate substantially in conformity with the applicable Documentation. Updates are not included within the definition of Products for the purposes of any warranty or Warranty Period.
- 4.2. Provided that We are notified in writing of a Product's non-conformance with the warranty set forth in Section 4.1 within the applicable Warranty Period, We shall, at Our option: a) repair or replace the defective Product, or b) refund the license fees paid for the Product in exchange for a return of the defective Product. In the event of a refund, Your license to use the Product will immediately expire. This Section 4.2 is Your exclusive remedy for breach of the limited warranty in Section 4.1. The above warranties specifically exclude defects resulting from Your or any third party's accident, abuse, misapplication or unauthorized repair, modifications, enhancements and installation in an incompatible environment. We do not warrant that use of the Products will be uninterrupted or error-free.
- 4.3. EXCEPT FOR EXPRESS WARRANTIES STATED IN THIS SECTION 4 AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE PRODUCTS AND SERVICES ARE PROVIDED "AS IS," AND WE, AND OUR SUPPLIERS DISCLAIM ALL OTHER WARRANTIES AND CONDITIONS, WHETHER EXPRESS OR IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY (I) OF MERCHANTABILITY OR SUITABILITY, (II) OF FITNESS FOR A PARTICULAR PURPOSE, OR (III) OF NON-INFRINGEMENT OF THIRD-PARTY RIGHTS.

#### **5. LIMITATION OF LIABILITY.**

To the maximum extent permitted by applicable law, in no event will We or Our suppliers be liable to You or any third-party for any indirect, special, incidental, consequential or punitive damages arising out of or related to this Agreement, including without limitation, any lost profits or revenues, loss or inaccuracy of any data, or cost of substitute goods, regardless of the theory of liability (including negligence) and even if We have been advised of the possibility of such damages. We and Our suppliers' aggregate liability to You or any third party for any cause whatsoever shall not exceed the total fees paid by You to Us under this Agreement during the 12 months preceding the date that the claim arose. In no event shall You raise any claim under this Agreement more than two years after (i) the discovery of the circumstances giving rise to such claim; or (ii) the effective date of the termination of this Agreement. The limitations in this Section 5 shall apply even if any remedy fails of its essential purpose. Nothing in this Agreement shall exclude or limit either Party's liability for death or personal injury caused by that Party's negligent act or omission or by willful default.

## **6. THIRD-PARTY CLAIMS.**

- 6.1. We shall: (i) defend, or at Our option, settle any legal proceeding brought against You to the extent that it is based on a claim that a Product infringes a third-party patent, trademark or copyright of the country in which You take delivery of the Product; and (ii) pay all damages and costs finally awarded against You by a court of competent jurisdiction to the extent attributable to such a claim or agreed to by way of a settlement entered into by Us, provided that: You (i) notify Us promptly of each such claim; (ii) give Us sole control of the defense and/or settlement of the claim; (iii) fully cooperate with Us in the defense or settlement of the claim; (iv) mitigate such damages and costs as far as is reasonably possible; and (v) take no action that may prejudice Our ability to defend the claim.
- 6.2. If all or any part of a Product is, or in Our opinion is likely to become, the subject of a claim of infringement, We may at Our sole discretion: (i) procure for You the right to use the Product or the affected part thereof; (ii) replace the Product or affected part with other software that has the same or additional functionality; (iii) modify the Product or affected part to make it non-infringing; or (iv) if none of the foregoing remedies is commercially feasible as determined by Us in Our sole discretion, terminate Your license to the Product and upon return of the Product, refund a pro-rated (over a 12 month period on a straight-line basis) portion of the payments paid by You to Us over the preceding 12 months for the Product or the affected part.
- 6.3. We shall have no liability or other obligations to the extent a claim is based on: (i) failure to use an Update provided by Us, if infringement could have been avoided by use of the latest version of the Products; (ii) the combination, operation, or use of Products with other products not provided by Us, if such infringement would have been avoided in the absence of such combination, operation, or use; (iii) Your use of Product in any manner inconsistent with the applicable license terms and conditions; (iv) any modification, alteration, or enhancement to the Product not performed or expressly authorized by Us; (v) the furnishing to You of any information, service or technical support by a third party; (vi) non-licensed use of the Products; or (vii) Our compliance with Your designs, specifications or instructions.
- 6.4. THE FOREGOING PROVISIONS OF THIS SECTION 6 STATE THE ENTIRE LIABILITY AND OBLIGATION OF US AND YOUR EXCLUSIVE REMEDY FOR CLAIMS OF INFRINGEMENT OF THIRD-PARTY RIGHTS.

## **7. TERM AND TERMINATION.**

- 7.1. Unless sooner terminated as provided below, the term of this Agreement begins on the Effective Date and continues for the duration of time set forth in the Agreement (often specified in an Order with respect to specified Products or Services). If the Agreement term is not renewed, it shall be deemed to expire upon the earlier of (i) one year from the end of the then-current term, or (ii) the end of the last remaining Subscription Term. If a Product is obtained under a perpetual license, the Agreement shall be deemed not to expire for purposes of that Product only.
- 7.2. Notwithstanding the foregoing, either Party may terminate this Agreement or an Order (i) by written notice of breach of the Agreement or such Order, provided the other Party fails to cure such breach within thirty days after such notice, or (ii) forthwith if the other Party makes an assignment for the benefit of creditors or proceedings are commenced by or for such other

Party under any bankruptcy, insolvency, or debtor's relief law. Upon termination or expiration for any reason, all rights (including all license rights) and obligations shall terminate except as provided in this Section 7.2 (and Section 7.1 in the case of expiration only), and such termination or expiration shall not relieve You from Your obligation to pay fees that remain unpaid and shall not limit either Party from pursuing other available remedies. Upon termination or expiration of this Agreement or any part thereof, We shall have no obligation to refund to You any fees paid by You. If an Order is terminated or expired, You must certify in writing to Us that You have immediately un-installed and destroyed or returned all copies of the Product within thirty (30) days of such termination or expiration. The following Sections survive termination or expiration of this Agreement: 1 ("Definitions"), 5 ("Limitation of Liability"), and 8 ("General").

## **8. GENERAL.**

- 8.1. Confidential Information. Each Party receiving Confidential Information ("Recipient") shall retain in confidence and require its employees, agents, and contractors to retain in confidence all Confidential Information of the other Party ("Discloser"). "Confidential Information" means (i) for Us: the terms and conditions of this Agreement, all pricing and financial terms and conditions relating to our Products and Support Services, as well as results of any Product benchmark or similar tests (whether performed by Us, You, or any third party) involving Products or Support Services; and (ii) for either Party: any information, in written or other tangible form, that is reasonably necessary to enable Us to provide Support Services or deliver Products, and has been conspicuously marked by Discloser as "confidential" or "proprietary" or if not so marked, if it should reasonably be regarded as secret due to the nature of the information being disclosed. Recipient shall protect Discloser's Confidential Information in the same manner Recipient protects its own Confidential Information of similar importance, but in no event with less than reasonable care. Confidential Information shall remain the sole property of the Discloser and shall not be disclosed to any third party (except, solely to employees, attorneys, consultants, and subsidiaries, who need to know and are bound by a written agreement with Recipient to maintain the confidentiality of such Confidential Information in a manner consistent with this Agreement) or used except as permitted under this Agreement. Confidential Information shall not include any information that: (i) is or becomes publicly known without the Recipient's breach of any obligations owed to the Discloser; (ii) is rightfully disclosed to the Recipient from a source other than the Discloser without a breach of an obligation of confidentiality; or (iii) is independently developed by the Recipient without any access to the Discloser's Confidential Information. Notwithstanding the foregoing, We may disclose that You are Our customer. In addition, either Party may disclose information in compliance with applicable law or a court order, provided the Discloser is given reasonably prompt notice thereof and the Recipient provides cooperation and assistance in any attempt to prevent or limit such disclosure. The obligations set forth herein with respect to Confidential Information shall continue in full force and effect for a period of three years after the date of termination of this Agreement.
- 8.2. Relationship of the Parties. This Agreement is not intended to and shall not create a relationship such as a partnership, franchise, joint venture, fiduciary, agency or employment relationship. Neither Party may act in a manner that expresses or implies a relationship other than that of an independent contractor, nor bind the other Party.

- 8.3. **Governing Law and Venue.** Any action arising out of or related to this Agreement shall be governed by California law and controlling U.S. federal law, and the choice of law rules of any jurisdiction shall not apply. The Parties agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. All disputes arising out of or relating to this Agreement shall be brought exclusively in the federal courts located in the Northern District of California or the state courts located in Santa Clara County, California, and the parties agree to submit to the exclusive jurisdiction of such courts. Notwithstanding the foregoing, a Party may enforce any judgment rendered by such court in any court of competent jurisdiction, and Actian may seek injunctive or other equitable relief in any appropriate jurisdiction in order to protect its intellectual property rights. In any legal action to enforce the terms of this Agreement, the prevailing Party is entitled to recover its attorneys' fees and costs from the other Party.
- 8.4. **Assignment.** You shall not assign or transfer this Agreement or any rights or obligations hereunder, including by operation of law or a merger, acquisition, change of control, or division of a limited liability company without the prior written consent of Actian. Any attempted assignment or transfer by You in violation of the foregoing will be void. When permitting an assignment of this Agreement, Actian reserves the right to request a written guarantee from You, the assignor, the assignee, or the ultimate owner of the assignee. For clarity, Actian may assign this Agreement without consent to an affiliated entity or in connection with a merger, acquisition, or purchase of the majority or more of its assets, or the assets of the Actian business responsible for the Product or Services. Subject to the above, this Agreement will bind and inure to the benefit of each Party's permitted successors and assigns.
- 8.5. **Severability.** If any provision of this Agreement is declared unlawful, void, or unenforceable, then that provision shall be limited to the extent enforceable, or otherwise severed, and will not affect the validity and enforceability of the remaining provisions.
- 8.6. **Audits.** During the term of this Agreement and continuing until two years after termination or expiration, You shall keep and retain complete and accurate records regarding Your use of the Products.
- i) **Self-Audits.** To help manage Your use of the Products or Support Services and Your compliance with this Agreement, You agree to perform a self-audit upon 10 working days' prior written notice from Us, on the self-audit form made available by Us. If Your self-audit form reveals a discrepancy that You have previously or are currently using more of Our Products and Support Services than You have valid Orders or licenses for, You must pay Us the unpaid amounts at the same time as returning the self-audit form to Us. In the event that You are late in submitting a self-audit form We may delay accepting orders and/or suspend Support Services until We receive the self-audit form and We may instigate the Formal Audit process defined below.
  - ii) **Formal Audits.** We, or Our designated agent, may, upon five working days prior written notice to You, inspect any of Your facilities where Products are used and audit records for the purpose of confirming Your use of the Products or Support Services and Your compliance with this Agreement. We may perform only one formal audit per 12 month period unless a previous audit reveals a discrepancy. Our audit shall be performed at Our sole expense; provided, however, that if, as a result of Our audit, it is determined that You

have underpaid Us by more than 5% of the amount owed during the period audited, then You shall bear the reasonable cost of Our audit. In the event of any underpayment, You shall pay all past-due fees immediately in accordance with the terms of this Agreement. This Section 8.6 (ii) survives termination of this Agreement for two years.

- 8.7. Force Majeure. Except with respect to the obligation to pay fees when due hereunder, neither Party shall be deemed in default of this Agreement because of a delay or failure in performance of its obligation resulting from any cause beyond its reasonable control (a "Force Majeure"), provided it gives reasonably prompt notice of the Force Majeure condition to the other Party and uses reasonable efforts to mitigate the delay or failure.
- 8.8. Notices. Any notices required or permitted to be given hereunder shall be delivered by personal delivery, express courier, or recorded delivery, postage prepaid, return receipt requested, to a Party's address set forth in an Order, or if to You to Your headquarters or to Us to: Actian Corporation, Attn: Legal Department, 710 Hesters Crossing Road, Suite 250, Round Rock, TX 78681. A notice shall be deemed effective when actually delivered. Either Party may change its address for purposes of this Agreement by written notice given in accordance herewith.
- 8.9. Marketing. Except if required to do so by the Securities Exchange Commission, regulatory authority or similar body, neither Party shall provide copies of this Agreement or otherwise disclose its terms to any third Party, without the prior written consent of the other, which consent shall not be unreasonably withheld or delayed. The parties agree that within 30 days of the Effective Date We may issue a press announcement describing the relationship of the Parties. You agree to allow Us to reference and identify You, and use Your logo in Our advertising, sales promotion, press releases, public filings, website usage, and other publicity matters relating to the Products furnished and/or the related Services performed pursuant to this Agreement, so long as such use is without any modification of Your name, mark, or logo. You agree to act as a "Reference Account" for Us. In such cases where You have agreed to serve as a "Reference Account," We shall be allowed to refer other customers, potential customers, press, analysts, etc., to Your executives, who are familiar with Your relationship with Us, to act as a reference for Us.
- 8.10. U.S. Government End Users. The Products are "commercial items" as that term is defined at 48 C.F.R. 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, all U.S. Government end users acquire the software with only those rights set forth under this Agreement. Any technical data provided that is not covered by the above provisions shall be deemed "technical data-commercial items" pursuant to 48 C.F.R. 252.227.7015(a). Any use, modification, reproduction, release, performance, display or disclosure of such technical data shall be governed by the terms of 48 C.F.R. 252.227.7015(b).
- 8.11. High Risk Activities. The Products are not fault-tolerant and not designed, manufactured or intended for use or resale as online control equipment in hazardous environments requiring fail-safe performance, such as in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, direct life support machines, or weapons systems, in which the failure of the Product could lead directly to death, personal injury, or severe physical

or environmental damage ("High Risk Activities"). We and Our suppliers specifically disclaim any express or implied warranty of fitness for High Risk Activities.

- 8.12. Third-Party Rights. Notwithstanding any other provision in this Agreement, nothing in this Agreement shall create or confer any rights or other benefits in favor of any person not a Party hereto.
- 8.13. Injunctive Relief. You acknowledge that the Products and Services contain Our and Our licensors' valuable trade secrets and proprietary information and that any actual or threatened disclosure or unauthorized use or distribution of the Products or Our or Our licensors' Confidential Information will constitute immediate and irreparable harm to Us for which monetary damages would be an inadequate remedy and entitle Us to immediate injunctive relief without the need to post a bond or show actual monetary damages.
- 8.14. Claim Accrual. NO CLAIM BASED ON A BREACH OF THIS AGREEMENT BY YOU OR AN INFRINGEMENT OF OUR RIGHTS BY YOU WILL ACCRUE UNTIL WE OBTAIN ACTUAL KNOWLEDGE OF THE BREACH OR INFRINGEMENT. WITHOUT LIMITING THE FOREGOING, AND BY WAY OF EXAMPLE ONLY, IF YOU MAKE A COPY OF THE PRODUCTS FOR WHICH YOU MUST PAY US A LICENSE FEE, ANY STATUTE OF LIMITATIONS, LACHES, OR OTHER SIMILAR TIME-BASED DEFENSE, THE PASSAGE OF TIME DOES NOT BEGIN TO RUN UNTIL WE OBTAIN ACTUAL KNOWLEDGE OF THAT COPY AND THE FACT THAT YOU FAILED FOR PAY FOR SUCH COPY.
- 8.15. Integration and Amendment. This Agreement constitutes the entire agreement between the parties and supersedes all prior or contemporaneous conditions, agreements, communications or representations, whether oral or written, relating to the subject matter hereof. Neither Party has relied on any statement or representation by an employee or agent of the other Party in entering into this Agreement. Any additional or different terms in Your documents (including any terms contained on Purchase Orders) shall not apply and are hereby deemed to be material alterations and notice of objection to, and rejection of them is hereby given. Except as permitted herein, this Agreement may not be modified or any term or condition waived except in writing signed by a duly authorized representative of each Party. No waiver of any breach of any provision of this Agreement shall constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provision hereof. Headings are for convenience only and shall not affect the interpretation of any provision hereunder.

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