Zen v17 AI License and Support Services Agreement

Revision Date: July 2026

PLEASE READ THIS AGREEMENT CAREFULLY BEFORE DOWNLOADING OR INSTALLING THE SOFTWARE.

This License and Support Services Agreement ("Agreement") is a legal agreement between the end user downloading or installing the Software ("You") and Actian Corporation, with its principal place of business located at 2600 Great America Way, Suite 401, Santa Clara, CA 95054 ("Us," "Our," or "We"). IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR AN ENTITY, YOU REPRESENT THAT YOU ARE THE EMPLOYEE OR AGENT OF SUCH COMPANY OR ENTITY AND YOU HAVE THE AUTHORITY TO ENTER INTO THIS AGREEMENT AND LEGALLY BIND YOUR COMPANY OR ENTITY. For purposes of this Agreement, "You" or "Your" includes You and any of Your companies or entities that You have bound under this Agreement. BY DOWNLOADING, INSTALLING OR USING THE SOFTWARE OR BY CLICKING THE "I ACCEPT" BUTTON BELOW (OR TYPING "Y" OR "YES" IF YOU ARE INSTEAD ASKED FOR A "Y OR N" RESPONSE), YOU ARE AGREEING TO BE BOUND BY THIS AGREEMENT. IF YOU DO NOT ACCEPT THE TERMS OF THIS AGREEMENT, THEN YOU MUST CLICK ON THE "DECLINE" OR "I DO NOT ACCEPT" BUTTON BELOW (OR TYPE "N" OR "NO" IF YOU ARE INSTEAD ASKED FOR A "Y OR N" RESPONSE) AND YOU MAY NOT DOWNLOAD, INSTALL OR USE THE SOFTWARE. The "Effective Date" shall be deemed the date You click on the "Accept" button below.

1. DEFINITIONS

1.1 "Client Software" means the Software You have received from Actian with this Agreement, including all Updates, that operates on a computing Device and allows such Device to be incorporated into a Communications Network and access the Server Software through the Communications Network. "Client Software" also includes software You may obtain from a third party that connects to the Software.

1.2 "Communications Network" means a data communication system which allows a number of independent Devices to communicate with each other, including its internal bridges and the workstations physically attached to it.

1.3 "Concurrent User" means an end user authorized by You to access and use the Server Software, or a non-human operated Device configured by or for You to access and use the Server Software.

1.4 "Concurrent User License" means a type of license granted hereunder with respect to the Zen AI Enterprise Server that is limited by Concurrent Users and otherwise subject to the terms and conditions of this Agreement. If You cannot accurately track the number of Concurrent Users accessing the applicable Server Software under a Concurrent User License and maintain appropriate Records in accordance with Section 11.6 below, then You may not purchase a Concurrent User License.

1.5 "Core Count" means the number of Cores (as defined in Actian's support policy) specified for the license purchased by You that are utilized by the engine in the applicable Server Software.

1.6 "Data in Use" means the total size of data files authorized to be opened concurrently by the Zen AI Cloud Server as specified in the license purchased by You.

1.7 “Device” means a single computing system, including but not limited to a virtual (or otherwise emulated) device.

1.8 “Documentation” means the user documentation and any sample code supplied by Us with the Software.

1.9 “Internet” means the publicly accessible computer Communications Network for information distribution.

1.10 “Intranet” means a privately accessible Communications Network for information distribution within Your company, its subsidiaries or remote offices, and does not include connection to the Internet.

1.11 “Local Area Network” or “LAN” means a privately accessible Communications Network for information distribution within Your company but does not include Your Intranet or the Internet.

1.12 “Multi-Server License” means a Zen AI Enterprise Server Concurrent User License or Zen AI Cloud Server License granted hereunder which in addition authorizes installation and use of the applicable Server Software on the number of Servers specified in the license purchased by You.

1.13 “Order” means a document typically titled “Order” that is executed by the parties or is electronically provided to You by Us, 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 Support Services ordered, permitted number of cores with which the Products can be used, and pricing. Such Order(s) is (are) hereby incorporated into this Agreement by reference.

1.14 “Products” means the machine-readable object code of the Client Software and Server Software specified in an Order, together with any Documentation and Updates thereto.

1.15 “Server” means a single computing system that runs the Server Software as either a standalone computing system or a system capable of operating remotely over a Communications Network, including but not limited to a primary network server, a fail over server, or a virtual (or otherwise emulated) server.

1.16 “Server Software” means the Zen AI Enterprise Server and/or Zen AI Cloud Server You received from Actian with this Agreement, including all applicable Updates.

1.17 “Software” means all or any portion of the commercially and generally available proprietary object code software products of Actian referenced in this Agreement and any Updates that may be made available to You by Actian, in its discretion, during the term of this Agreement. The term “Software” shall not include any source code.

1.18 “Support Services” means support services for the Server Software and Client Software.

1.19 “Trial Software” means any Server Software downloaded or otherwise received from Actian for thirty (30) days from the date of delivery (or such longer period if agreed by the parties in an Order or other writing signed by the parties) for the purposes set forth in Section 2.4 below.

1.20 “Updates” means any patches (i.e., an update to the z in version x.yz) to the Server Software or Client Software provided to You at Our discretion.

1.21 “Upgrades” means a major or minor version release of the Software (i.e., an update to either the x or y in version x.yz) and sold separately by Us.

1.22 “User Count” means the number of Concurrent Users specified for the license purchased by You that are authorized to simultaneously access and use the Zen AI Enterprise Server. Notwithstanding the number of Concurrent Users licensed hereunder, the number of Concurrent Users able to access a Server may be technically limited by the maximum number of concurrent connections allowed by Your operating system.

1.23 “Vector Count” means the maximum number of AI vector embeddings authorized to be stored and processed by the Software as specified in the license purchased by You.

1.24 “Warranty Period” means thirty (30) days from the date of initial delivery to You of the applicable Product (excluding Updates).

1.25 “Zen AI Cloud Server” means the Software designated as Zen AI Cloud Server in an Order and that You have received from Actian with this Agreement, which operates on a Server that may be incorporated into a Communications Network, including all applicable Updates.

1.26 “Zen AI Cloud Server Capacity-based License” means a type of license granted hereunder with respect to the Zen AI Cloud Server which is limited by Data in Use and may be used as more particularly set forth in Section 2.1(b) below, and otherwise subject to the terms and conditions of this Agreement.

1.27 “Zen AI Enterprise Server” means the Software designated as Zen AI Enterprise Server in an Order and that You have received from Actian with this Agreement, which operates on a Server that may be incorporated into a Communications Network, including all applicable Updates.

2. LICENSE

2.1 License Grant.

a. Zen AI Enterprise Server License Grant.

Conditioned on Your compliance with the terms and conditions of this Agreement, if You have properly purchased a license to the Zen AI Enterprise Server, Actian grants to You a nonexclusive, nontransferable, nonsublicensable and revocable right to (i) use the Zen AI Enterprise Server on a Server with no more than the Core Count; (ii) use the Client Software and Documentation in connection with Your use of the Zen AI Enterprise Server; (iii) with respect to a Zen AI Enterprise Server Concurrent User License, permit a total number of Concurrent Users that is not greater than the User Count to simultaneously access and use the Zen AI Enterprise Server; and (iv) embed the Zen AI Enterprise Server within Your application for use by Your customers, subject to the usage limits in the applicable Order. Under Zen AI Enterprise Server Concurrent User Licenses, You may use the Zen AI Enterprise Server solely for Your internal business purposes or as expressly embedded within Your application. If You cannot accurately track the number of Concurrent Users accessing the Zen AI Enterprise Server under the Concurrent User License and maintain appropriate Records in accordance with Section 11.6 below, then You must purchase a Zen AI Cloud Server License.

b. Zen AI Cloud Server License Grant.

Conditioned on Your compliance with the terms and conditions of this Agreement, if You have properly purchased a license to the Zen AI Cloud Server, Actian grants to You a nonexclusive, nontransferable, nonsublicensable and revocable right to (i) use the Zen AI Cloud Server on no more than the Core Count purchased under a Zen AI Cloud Server Multi-Server License; or if a Multi-Server License is not purchased, on a Server subject to the total Data in Use purchased pursuant to a Capacity-based License; (ii) use the Client Software and Documentation in connection with Your use of the Zen AI Cloud Server; and (iii) embed the Zen AI Cloud Server within Your application for use by Your customers, subject to the usage limits in the applicable Order. Notwithstanding anything to the contrary in this Agreement, there are no restrictions on use of the Zen AI Cloud Server as a "software as a service," in an application service provider environment, and/or on the Internet or Intranet or by multiplexing (as defined below).

c. Client Software License Grant.

Conditioned on Your compliance with the terms and conditions of this Agreement, if You have properly purchased a license to the Client Software, Actian grants to You a nonexclusive, nontransferable, nonsublicensable and revocable right to (i) use and reproduce the Client Software on one or more Devices solely for the purpose of accessing and using the Server Software; and (ii) use the Documentation in connection with Your use of the Client Software.

d. Insurance Software License Grant.

If You have properly licensed the Zen AI Enterprise Server and/or the Zen AI Cloud Server and if the Server running such software has failed, Actian grants to You a nonexclusive, nontransferable, nonsublicensable and revocable right to no more than three (3) limited consecutive terms of up to seven (7) consecutive days per term to use a replacement copy of such software provided by Actian (the "Insurance Software") in accordance with the applicable licenses granted herein. The Insurance Software contains a limiting device that will render it inoperable after the applicable term has expired.

e. Developer Program License Grant.

If You have properly purchased a Developer Program License to the Server Software, Actian grants to You a nonexclusive, nontransferable, nonsublicensable and revocable right to use the Server Software solely to develop applications for use with the Zen AI engine. The Developer License contains a limiting device that will render it inoperable one year after it is created (not after install). If You only have a Developer License, You may not use the Server Software for production or commercial purposes under such license.

2.2 Multiplexing.

If You use hardware or software to pool connections, reroute information, and reduce the number of Devices, Servers or users that directly access or use the Server Software, or reduce the number of Devices, Servers or users the Server Software directly manages (sometimes referred to as "multiplexing" or "pooling"), then You are required to purchase the Zen AI Cloud Server Capacity-based License.

2.3 License Terms for Upgrades.

Any Upgrades made available to You by Actian for purchase shall be considered part of the Server Software or Client Software, as applicable, and conditioned on Your compliance with the terms and conditions of this Agreement. Additional license terms may accompany Upgrades. By installing, copying, or otherwise using any Upgrades, You

agree to be bound by the terms accompanying each such Upgrade. If You do not agree to the additional license terms accompanying such Upgrades, do not install, copy, or otherwise use such Upgrades.

2.4 Trial Software.

"Trial Software" is Server Software that is licensed to You for the purpose of internal evaluation and testing of the Server Software only. You may not distribute or deploy such Trial Software outside Your testing environment. Notwithstanding anything to the contrary herein, neither Actian nor its suppliers will be liable for any damages whatsoever relating to Your use of such Trial Software. In no event shall You use the Trial Software for development, production or commercial purposes. Notwithstanding Section 8 below, the Trial Software is provided to You on an AS IS basis, and Actian hereby disclaims all warranties and conditions, whether express, implied or statutory, including the implied warranties of merchantability, fitness for a particular purpose, title and non-infringement. The Trial Software may be designated by Actian as pre-release or beta software, may contain faults, and Actian is under no obligation to make pre-release or beta software commercially available at any time.

3. PRODUCT OWNERSHIP.

The copies of Products provided hereunder are licensed, not sold, and all intellectual property rights and title to the Products (including Server Software, Client Software and Documentation) shall remain with Us and Our suppliers and no interest or ownership therein is conveyed to You. No right to create a copyrightable work, whether joint or unitary, is granted or implied; this includes works that modify (even for purposes of error correction), adapt, or translate the Product or create derivative works, compilations, or collective works therefrom. You shall not attempt to circumvent any Vector Count limits, user limits, or other license, timing or use restrictions that are built into the Products. Certain items of software code provided along with the Products are subject to "open source" licenses ("Third Party Code") provided with the Products. The Third Party Code is not subject to the terms and conditions of this Agreement, except for Sections 8 and 9 of this Agreement. Nothing in this Agreement limits Customer's rights under, or grants Customer rights that supersede the terms and conditions of any applicable license for the Third Party Code, including any rights to copy, modify or distribute Third Party Code under the applicable license. You are hereby notified that the Products may contain time-bomb, counter devices, and/or other devices intended to ensure the limits of a particular license will not be exceeded ("Limiting Devices"). If the Products do contain Limiting Devices, We shall ensure that You receive any keys or other materials necessary to use the Products to the limits of Your license. You will not remove or in any manner alter or obscure the copyright, trademark, and other proprietary rights notices of Actian and its licensors appearing on the Server Software or documentation. You will have no right to register or seek to register any of Actian's or its licensors' trademarks, service marks, or trade names, or add any other notices or markings to the Server Software, Client Software or Documentation.

4. RESTRICTIONS

4.1 No Rental, No Commercial Hosting; Other Limitations.

Except as expressly authorized in this Agreement, You will not use, rent, lease, sublicense, distribute, transfer, copy, reproduce, display, modify, create derivative works of, time share or dispose of the Software or Documentation or any part thereof. You may use the Software and Documentation solely for Your internal business purposes in accordance with the Documentation, or to embed within Your application for use by Your customers as expressly permitted in Section 2 above.

4.2 Restrictions on Third-Party Access.

Except with the express written consent of Actian, or as expressly permitted in Section 2 with respect to the Zen AI Cloud Server or the embedding use cases described herein, You may not use the Server Software (1) for multiplexing or (2) to permit third-party access to or use of the Server Software or Client Software, or use, access, or allow access to the Server Software or Client Software in any way to benefit third parties, including but not limited to operating the Zen AI Enterprise Server in a service bureau, SaaS, ASP, or other similar hosted environment; or (3) to use the Server Software or Client Software to provide or operate hosting or Application Service Provider (ASP) services, Software as a Service, service bureau, marketing, training, outsourcing services, or consulting services, or any other commercial service related to the Server Software. If You received this Server Software or Client Software bundled with or embedded with any other software application (e.g., from an Authorized Reseller or OEM of Actian), You may only use the Server Software or Client Software with such software application.

4.3 Protection of Software.

You will take all reasonable steps to protect the Software and Documentation from unauthorized copying or use. The Server Software and Client Software source code represents and embodies trade secrets of Actian or its licensors. The source code and embodied trade secrets are not licensed to You and any modification or addition thereto, or deletion therefrom is strictly prohibited. You will not disassemble, decompile, or otherwise reverse engineer the Server Software or Client Software, except and only to the extent that applicable law expressly permits such actions, despite this limitation. You may not develop software using any components within the Server Software or Client Software.

5. AUTHORIZATION; VALIDATION.

If applicable, in order to use the Server Software, You will need to obtain authorization to use the Server Software. "Authorization" associates the use of the Server Software with a specific Server. After Authorization, Actian may verify that use of the Server Software has been authorized and that the Server Software is properly licensed ("Validation"). Validation may re-occur on a periodic basis, when the Server Software is restarted and may also occur during Server Software installation, un-installation, updates and license management activities. A validation failure could result in automatic suspension of the Software. Suspension recovery instructions are found in the Documentation. In most instances where Actian is unable to validate the Server Software, You will have notice (via an alert or log in the Server Software) before any such suspension or termination in order to permit You to obtain a valid license for the Server Software. Failure by Actian to suspend or terminate Your use of the Server Software despite having an invalid license does not constitute a waiver by Actian of any rights or remedies Actian may have for Your unauthorized use of the Server Software. In the event You uninstall the Server Software and reinstall on a different Server during the transfer itself or during a subsequent upgrade process, You may be required to repeat on-line Authorization and/or Validation of Your Server Software. For purposes of clarification, except as may be permitted pursuant to a Multi-Server License, You may not copy the Server Software and install such additional copy on a Server without the payment of additional license fees. During Authorization and any subsequent Validation, the Server Software will send information about the Server Software and Server to Actian. The information sent to Actian includes, but is not limited to: (i) product authorization key, (ii) information derived from the hardware configuration of the Server, such as host name, hard drive serial number, NIC card MAC addresses, BIOS firmware, CPU type and OS type, and (iii) information about existing or past Actian installations and items of a similar nature. For more information about what is sent during Server Software authorization and validation, see https://www.actian.com/databases/zen/. By using the Server Software and Documentation, You consent to the transmission of this information during Server Software Authorization and/or Validation.

6. SUPPORT AND ADDITIONAL SERVICES.

6.1 Support Services.

The details of the Support Services can be found at https://communities.actian.com/s/supportservices/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 use of support services by a third party.

6.2 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.

6.3 Availability.

There are no support services available from Actian for Trial Software.

7. FEES; TAXES; PAYMENT TERMS; PURCHASE ORDERS; SHIPPING.

7.1 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 the subscription of a Product, the applicable price shall be that stated within the then-current Actian price list, unless otherwise agreed between the parties.

7.2 Taxes.

Our fees are exclusive of, and You are responsible for, duties and taxes (other than taxes on Our income).

7.3 Invoicing and Payment.

All payments of fees and charges under this Agreement shall be made in U.S. dollars in advance or within thirty (30) days of the date of the applicable invoice sent to You by Us. Any amount payable by You to Us hereunder which 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.

7.4 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.

8. LIMITED WARRANTY

8.1 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.

8.2 Within the Warranty Period, if You detect a defect in a Product's physical media, You may return the defective media to Us and We will replace it free of charge.

8.3 EXCEPT FOR EXPRESS WARRANTIES STATED IN THIS SECTION 8 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. WE DO NOT WARRANT THAT ANY SOFTWARE WILL BE PROVIDED ERROR FREE, WILL OPERATE WITHOUT INTERRUPTION OR THAT ANY SOFTWARE WILL FULFILL YOUR REQUIREMENTS. TO THE EXTENT THAT LICENSOR CANNOT DISCLAIM ANY SUCH WARRANTY AS A MATTER OF APPLICABLE LAW, THE SCOPE AND DURATION OF SUCH WARRANTY WILL BE THE MINIMUM REQUIRED UNDER SUCH LAW.

9. 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 2 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 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.

10. TERM AND TERMINATION.

This Agreement is effective from the date You download or install the Server Software and will remain in force until terminated. The term of this Agreement with respect to Trial Software is governed by the key delivered with the Trial Software at the time of download; however, in no event will the term of the license for Trial Software be more than thirty (30) days from the date of installation without express written approval from Actian. You may terminate this Agreement at any time by deinstalling and destroying the Documentation, Client Software and the Server Software together with all copies and adaptations thereof. This Agreement will terminate immediately without notice from Actian if You fail to comply with any terms of this Agreement. Upon termination of this Agreement by Actian, You will return the media on which You received the Server Software, if any, You will destroy all other copies of the

Server Software and Documentation, and upon request, You will certify such destruction to Actian. Sections 1, 3, 4, 7, 8.3, 9, 10 and 11 of this Agreement will survive any termination or expiration of the Agreement.

11. GENERAL CONDITIONS

11.1 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 financial terms and conditions contained in Our quotation, and the Products as well as results of any Product benchmark or similar tests (whether performed by Us, You, or any third party); and (ii) for either party: any information, in written or other tangible form, which has been conspicuously marked by Discloser as "confidential" or "proprietary" or if not so marked, if it should reasonably be regarded as confidential 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 (3) years after the date of termination of this Agreement.

11.2 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 independent contractor, nor bind the other party.

11.3 Governing Law and Venue.

Any action 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 and venue 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 jurisdiction in order to protect its intellectual property rights.

11.4 Assignment.

Neither this Agreement nor any right, obligation, or Product licensed hereunder may be assigned by You without Our prior written consent. Any purported assignment, including in case of a merger, acquisition or change of control or purchase of more than fifty percent or more of Your assets in violation of the foregoing is void. We 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 Our business line responsible for the Product or Services. Additionally, We may assign this Agreement or any receivables under this Agreement in the context of factoring operations or any other similar financial operations, without limitation. Subject to the foregoing, the provisions of this Agreement shall be binding upon and inure to the benefit of the parties, and their permitted successors and assigns.

11.5 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.

11.6 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 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 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 (5) working days prior written notice to You, inspect any of Your facilities where Products are used either physically or virtually and audit records for the purpose of confirming Your use of the Products and Your compliance with this Agreement. We may perform only one formal audit per twelve (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 survives termination of this Agreement for two (2) years.

11.7 Product Export.

Any person or entity exporting or re-exporting Products or services directly or indirectly and via any means, including electronic transfer, is wholly responsible for doing so in accordance with the U.S. Export Administration Regulations and the laws of host countries and You agree to comply strictly with all such laws and regulations. We assume no responsibility or liability for Your failure to obtain any necessary export approvals. Specifically, no Product or services may be exported to embargoed or otherwise restricted countries or end-users. This provision shall survive the expiration or earlier termination of this Agreement.

11.8 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.

11.9 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.

11.10 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 thirty (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 Support 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.

11.11 U.S. Government End Users.

The software is "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).

11.12 High Risk Activities.

The Products are not fault-tolerant and not designed, manufactured or intended for use or resale as on-line 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.

11.13 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.

11.14 Injunctive Relief.

You acknowledge that the Products contain Our and Our licensees' 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 licensees' 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.

11.15 Operating System.

It is Your responsibility to fully comply with applicable license agreements for any operating systems or other software You may use with the Software.

11.16 Controlling Language.

English is the controlling language of this Agreement.

11.17 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.