

# License Terms

As of November 11, 2015

The following conditions are applicable to the use of Software from ACTICO Pte. Ltd, #11-04, 11 Collyer Quay, The Arcade, Singapore 049317, [www.actico.com](http://www.actico.com) (hereafter “**Licensor**”). The Customers and the Licensor are hereinafter known collectively as “**Parties**” or individually as “**Party**”.

## 1 Software

- 1.1. The object of these License Terms is the concession of usage rights to the Licensor’s Software defined in more detail in a separate document (hereafter “**Software**”). This Software consists of the executable program code and the corresponding documentation in electronic form. Unless otherwise stipulated in Section 1.2 or in a separate agreement in accordance with Section 4.7, the source code is not the object of the agreement.
- 1.2. The Software contains open source software components. The Customer shall be provided with an up-to-date list of the open source software components contained in the Software and the applicable open source software license terms on request prior to conclusion of the agreement or, at the latest, upon delivery of the Software. The Customer has the right to use the open source software components to the extent described in Section 2 of these License Terms. Any use in excess of this (e.g. transfer of the open source software components to third parties, processing of the open source software components beyond the extent set forth in Section 2) is permissible if the Customer accepts the open source software license terms and thereby acquires further rights directly from the respective licensor of the open source software components. In this case, the use of the open source software components is governed solely by the respective open source software license terms. The Customer accepts that new versions of the Software might contain other or additional open source software components and that the open source software license terms might change and shall also comply with changes in the legal obligations to this extent. The Licensor shall notify Customers upon delivery of new versions of the Software or at the time of subsequent deliveries of the open source software components contained in the Software and the applicable open source software license terms. If the open source software license terms of the open source software components contained in the Software include the obligation to provide the source code the Licensor will make the source code

available on an appropriate medium and within an adequate timeframe for use and transfer according to the open source software license terms upon Customer’s request.

- 1.3. Insofar as software products from third-party providers are also supplied along with the Software, they should exclusively be used in conjunction with the Software.
- 1.4. The Licensor is entitled to technically secure the Software against unauthorized usage, e.g. by blocking programs. The Customer must not remove or circumvent such protective measures. To activate the Software following installation and when changes are made to the software and hardware environment, it may be necessary to apply for a license key.

## 2 Usage Rights

- 2.1. Upon payment in full of the license remuneration as defined in Section 3, the Customer shall receive the non-exclusive right to use the Software in accordance with the respective license model and the following provisions; this right shall be unlimited in time. Permissible usage comprises installation of the Software, loading it onto a computer’s internal memory, and use by the Customer for its intended purpose. The Software must be used only for the agreed purposes and only in compliance with the specifications in the documentation and within the scope agreed under the respective license model. Usage shall be permitted only in those countries for which a usage agreement exists. Unless otherwise specifically agreed, this shall be the country in which the Customer has its registered office.
- 2.2. The Customer must use the Software only for the purposes of transacting its own business. In particular, the following are permitted only following the prior written approval by the Licensor: (i) operating a data center for third parties; (ii) temporarily making the Software available to anyone other than Group Companies (e.g. as application service providing, software as a service, or a cloud service); or (iii) using the Software to train people who are not employees of the Customer.

- 2.3. Duplicating the Software is permitted only insofar as necessary for proper usage under the terms of the agreement. The Customer is entitled to make the required amount of backup copies of the Software in accordance with standard industry practice. Backup copies on portable data storage media should be marked as such and furnished with the copyright notice of the original data storage medium.
- 2.4. If the Customer purchases Software as a development license, then the Customer must use the Software exclusively for non-productive purposes (i.e. in test and development environments). In all other respects, the provisions of these License Terms apply also to development licenses.
- 2.5. The Customer is not entitled to sub-license the Software or usage of the Software without the prior written approval of the Licensor.
- 2.6. The Customer must not remodel the Software unless such work is necessary to remove compatibility problems in how the Software interacts with other programs the Customer needs and the Licensor is either not willing or able to remove these problems in return for appropriate remuneration in line with standard market rates.
- 2.7. The Customer has the right to edit the components of the Software that are linked to program libraries licensed under the GNU Lesser General Public License (LGPL Version 2.1) for the Customer's internal use and to analyze and reengineer them for this purpose. With respect to components of the Software that are linked to program libraries licensed under the GNU Lesser General Public License (LGPL Version 3), the Customer has the right to analyze and reengineer them in order to edit the program libraries licensed under the LGPL Version 3 and to be able to rectify errors in the proprietary components. The information obtained through the aforementioned action and the edited proprietary components may not be disclosed.
- 2.8. The Customer must not hire third parties who are competitors of the Licensor to carry out the work specified in Section 2.6., unless the Customer demonstrates that the risk of disclosure of important trade secrets belonging to the Licensor (in particular concerning the functions and design of the Software) is entirely ruled out.
- 2.9. Decompilation of the Software is not permitted unless otherwise expressly authorized by Licensor or allowed under any applicable law.
- 2.10. Should, in the course of subsequent performance or maintenance, the Licensor

transfer to the Customer new versions of the Software that replace earlier versions, these new versions shall also be subject to the usage provisions laid down in these License Terms. Following installation of the new Software version, the rights of the Customer to the previous version shall cease at the end of a transition phase lasting three (3) months.

- 2.11. The Licensor shall retain all other rights to the Software that have not been explicitly conceded, in particular the right to make amendments to the Software, to market and sell the Software, and/or to use the Software for purposes other than those in pursuit of the Customer's business activities; the Licensor shall also retain all rights to the brand, the trade secrets, and other intellectual property of the Software.

### **3 Remuneration for the Licensor**

- 3.1. In return for the transfer and use of the Software in accordance with the scope of usage defined in Section 2 above, the Customer shall pay the Licensor the remuneration including all applicable taxes agreed in a separate document or in the absence of such, those specified in the Licensor's current valid price list.
- 3.2. All invoices from the Licensor must be paid without any deductions to a bank account specified by the Licensor within 14 days of the billing and due date of the invoice. Default interest amounting to seven and a half percent (7.5%) per annum will be charged.

### **4 Delivery, Transfers, Deposits**

- 4.1. Unless otherwise agreed, the software shall be delivered in the version that is current at the time of delivery. The licensor makes the software available for download via internet. The licensor provides the customer the data required for the download, in particular the URL and required passwords, upon conclusion of agreement or at the time, the concerned programs are available. Sentences 1 and 2 of this Section 4.1 apply mutatis mutandis for deliveries undertaken in the context of subsequent performance.
- 4.2. The Customer shall be permitted to cede the Software to a third party only by transferring the entirety of the Software as a single unit and completely and definitively relinquishing its own usage of the Software and where the conditions set out in Section 4.3 below are satisfied (hereafter "**Transfer**").
- 4.3. Transferring the Software requires the written approval of the Licensor, who shall grant such approval when (i) the Customer assures the

Licensor in writing that the Customer has handed over all original copies of the Software to the third party and deleted all copies that the Customer itself had made, and (ii) the third party has declared its consent to the Licensor in writing to be bound by the conditions of usage and Transfer agreed here.

- 4.4. If the Customer purchases the Software as a download, the Customer shall be entitled to copy the Software onto a data storage medium for the purpose of transfer.
- 4.5. If the Customer (i) supplies data storage media, hard drives or other hardware on which Software is saved (whether fully or partially, unchanged or adapted) to third parties in circumstances that do not amount to a transfer or (ii) cedes direct ownership of the abovementioned items, then the Customer shall ensure that the Software saved on the items in question is completely and permanently deleted first.
- 4.6. If the Customer's usage right ceases (e.g. by means of withdrawal from the contract or delivery of a replacement product), the Customer shall delete all copies of the Software (in the case of a replacement, only the previous Software versions) and shall confirm this deletion to the Licensor in writing on request.
- 4.7. Insofar as entitled to do so, the Licensor shall deposit the source code of the Software at an external depository at the explicit request of the Customer. The costs this entails shall be borne by the Customer. Insofar as they exist, the framework conditions agreed between the Licensor and the deposit institution shall apply to the deposit; otherwise, the conditions separately agreed by the Parties and the deposit institution shall apply.

## **5 The Customer's Cooperation and Information Obligations**

- 5.1. The Customer shall bear the risk for the Software meeting its expectations and needs; if in doubt on any point, the Customer should seek advice or clarification from the Licensor or third parties with professional expertise before signing the agreement.
- 5.2. Setting up a hardware and software environment for the Software of adequate size and dimensions is the sole responsibility of the Customer. The Customer shall thoroughly test the Software before use to ensure it is free from defects and works properly in the existing hardware and software configuration. This applies also to Software that the Customer receives within the framework of warranty and

maintenance. The Customer undertakes to check the results generated with the Software prior to actual use and to promptly notify the Licensor of any possible faults in the Software. The Customer must supply all necessary information in this regard at the Licensor's request.

- 5.3. The Customer shall observe the instructions provided by the Licensor regarding operation of the Software; moreover, the Customer shall keep abreast of current instructions and notices by visiting the Licensor's website ([www.actico.com](http://www.actico.com)) at regular intervals and take this information into account during operation.
- 5.4. The Customer shall give the Licensor access to the Software for the purpose of finding and correcting errors; this can occur directly and/or via remote access at the Licensor's discretion.
- 5.5. The Licensor is entitled to verify whether the Software is being used in compliance with the usage rights granted to the Customer. For this purpose, the Licensor shall be permitted to demand information from the Customer, in particular concerning the period and scope of usage of the Software, as well as being further entitled to inspect the Customer's books and records, hardware and software insofar as they yield information about the period and scope of usage of the Software. For this purpose, the Licensor must be granted access to the Customer's business premises during normal working hours following notice of at least 2 weeks. The Customer shall make all reasonable efforts to ensure that the audit by the Licensor can take place and will cooperate with the audit. The Licensor shall use all information it becomes aware of during the audit exclusively for the purposes of verifying that the license is being used in the proper, agreed, legal manner. The Customer is entitled to require that the audit be carried out on site by a representative of the Licensor who is bound to professional confidentiality. The costs of the audit shall be borne by the Licensor, unless the audit determines that the Customer is using or has used the Software beyond the agreed scope (license does not cover actual usage). In this case, the Customer shall bear the costs of the audit. In the case of the license not covering actual usage, the Customer shall be further required to purchase the missing rights on the basis of the list prices for comparable services that are generally valid at the time of the audit plus liquidated damages of 10% of the value of the lacking coverage.
- 5.6. The Customer shall make appropriate provisions for the eventuality of the Software not working properly either in part or in full (e.g.

by means of daily data backups, fault diagnosis, regularly checking data processing results, etc.). Unless the Customer explicitly states otherwise in advance, the Licensor shall be entitled to assume that all Customer data it can come into contact with is backed up.

- 5.7. Markings on the Software – in particular copyright notices, trademarks, serial numbers, etc. – must not be removed, altered, or rendered indecipherable.
- 5.8. The Customer is responsible for installing the Software. At the Customer's request, the Licensor can carry out the installation in return for a fee to be separately agreed.
- 5.9. The Customer shall absorb the costs of all disadvantages and extra charges that accrue to the Licensor as a result of the Customer breaching the above cooperation and information obligations.

## 6 Warranty

- 6.1. Upon purchase of the Software, the Licensor warrants for a period of three (3) months (hereafter "**Warranty Period**") that the Software is in compliance with the product description as well as the specifications according to the product manual. The said warranty shall be subject to the Customer complying with its obligations under this agreement. Any warranty claims of the Customer after this Warranty Period shall be time barred.
- 6.2. Any defects in the Software arising during the Warranty Period shall be remedied by the Licensor within a reasonable period of time (subsequent performance). It shall be at the Licensor's discretion whether the problem be resolved by means of correcting the defect or supplying a defect-free replacement item or pointing out an effective workaround to the Customer, whereby the latter option shall be exercised only insofar as the Customer deems it acceptable in light of the effects of the defect and the level of inconvenience presented by the workaround solution. In the case of minor defects, no warranty claims shall apply. For claims relating to fault-based material defects, Section 7 shall additionally apply.
- 6.3. EXCEPT AS EXPRESSLY PROVIDED HEREIN, LICENSOR MAKES NO OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED. BY WAY OF EXAMPLE, BUT NOT OF LIMITATION, LICENSOR MAKES NO REPRESENTATIONS OR WARRANTIES CONCERNING THE SOFTWARE'S MERCHANTABILITY OR FITNESS AND FOR ANY PARTICULAR PURPOSE OR THAT THE SOFTWARE IS FREE FROM ERRORS.

## 7 Liability

- 7.1. IN NO EVENT SHALL LICENSOR BE LIABLE FOR ANY LOSS OF PROFITS, LOSS OF BUSINESS, LOSS OF DATA, LOSS OF ANTICIPATED SAVINGS, LOSS OF GOODWILL OR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, OR OF WHATEVER NATURE ARISING DIRECTLY OR INDIRECTLY IN RESPECT OF THE TRAINING PROVIDED PURSUANT TO THIS AGREEMENT.
- 7.2. IN ANY EVENT AND FOR THE AVOIDANCE OF DOUBT, LICENSOR'S MAXIMUM AGGREGATE LIABILITY AGAINST ANY CLAIMS HOWSOEVER ARISING OUT OF OR RELATED TO THIS AGREEMENT SHALL BE LIMITED TO THE REMUNERATION PAID FOR THE LICENSES HEREIN.

## 8 Third-Party Rights

- 8.1. The Licensor guarantees for the period of the warranty in accordance with the following provisions that the Software does not violate any third-party rights at the time of the transfer of risk:
  - (a) Should third parties assert a claim against the Customer that their rights have been violated, the Licensor shall exempt the Customer from all resulting claims for damages that are legally established without further recourse by a court of law and for which the Licensor is responsible. The Licensor shall support the Customer in the in-court and out-of-court settlement of such disputes with third parties.
  - (b) If the Customer is ordered to desist from using the Software or a part thereof by means of either (i) the non-appealable decision of a court of law or (ii) being served with a temporary injunction, then the Licensor shall at its own discretion either procure the Customer the right to continue using the Software, replace or modify the Software so as to remove the infringement while retaining the agreed functionalities, or, if the two abovementioned alternatives prove impossible or unreasonably onerous for the Licensor to achieve, cancel the Customer's rights to the Software in writing and reimburse the value of the Software while taking into account a three (3) year usage life for the Software (i.e. linear depreciation on the remuneration paid for the usage rights). Insofar as acceptable for the Customer, the cancellation shall be limited to the extent required to prevent the infringement.

- 8.2. The Customer's claims under this Section 8 shall be subject to the proviso that (i) the Customer promptly notifies the Licensor about the assertion of claims by third parties; (ii) the Customer furnishes the Licensor with copies of all correspondence with the claimant and courts in this regard promptly after receiving the respective items of correspondence; (iii) the Customer supplies the Licensor with the information necessary to defend against the claim; and (iv) the sole right to conduct the case through the Customer as well as the right to be the final arbiter on whether to conclude proposed in-court and out-of-court settlements remains with the Licensor.
- 8.3. In the event of the Software violating third-party rights in the view of the Licensor or a third party, the Licensor shall be entitled at its own discretion, although with due regard for the interests of the Customer, to replace or modify the Software so as to remove the alleged or suspected infringement while retaining the agreed functionalities.

## 9 Reference List

The Licensor is entitled to include the Customer – both its name and company logo – in its reference list and present this list to third parties and publish it for advertising purposes. However, the Customer shall be entitled at any time to require that this usage stop in the future. This shall not, however, oblige the Licensor to recall or modify advertisements that have already been published at the time the Customer makes this demand

## 10 Confidentiality

- 10.1. The Customer undertakes to treat as confidential Software (excluding the open source software components) and other materials that the Licensor has marked as confidential or that should otherwise be deemed confidential (hereafter "**Confidential Information**") and not to make them available to third parties, except where necessary for the exercise of the rights accorded to the Customer under these License Terms. To safeguard the Confidential Information, the Customer must apply the same degree of care (although never less than a reasonable degree) as it applies to its own Confidential Information of similar importance.
- 10.2. The obligation to confidentiality defined in Section 10.1 does not apply to Confidential Information (a) that the Customer already lawfully possessed before the Licensor passed it on; (b) that is or becomes public knowledge without any breach of duty on the part of the Customer; (c) that the Customer has lawfully

received from third parties without confidentiality restrictions; (d) that the Licensor discloses to third parties without confidentiality restrictions; (e) that the Customer generates of its own accord; (f) that must be disclosed by act of law; or (g) that the Customer discloses with the prior written approval of the Licensor.

## 11 Export Controls

- 11.1. Should it transpire prior to delivery that fulfillment of the agreement on the part of the Licensor is obstructed on account of national or international export control provisions, in particular embargos or other sanctions, the Licensor shall be entitled to withdraw from the agreement. Delays due to export inspections or licensing procedures shall be deemed to obstruct observance of the delivery deadline unless the Licensor is responsible for these delays.
- 11.2. The Customer undertakes to furnish all information and documentation that is required for delivery purposes for the export or shipment of the Software to be delivered under the agreement and which originate from within the orderer's ambit.
- 11.3. Where the Customer passes on, transfers, or otherwise cedes the Software to be delivered by the Licensor under the agreement to third parties in this country or abroad, the Customer must observe the applicable provisions of customs and (re-)export control law and obtain the authorizations and licenses required for this purpose.
- 11.4. The Software to be delivered must not be used for military purposes or in the service of nuclear technology.

## 12 Termination

- 12.1. Without limiting the generality of any other clause in this agreement, the Licensor may terminate this agreement immediately by notice in writing if:
- (a) Customer is in breach of any of the terms of this agreement and fails to remedy such breach where it is capable of being remedied within thirty (30) days of notification by Licensor;
  - (b) Customer for any reason destroys or disposes of or loses custody of the Software;
  - (c) Customer ceases to carry on business or goes into liquidation (other than voluntary liquidation for the purpose of a bona fide solvent reconstruction or amalgamation) or is dissolved or struck off;

- (d) There is a change in control of the Customer which in the Licensor's reasonable opinion adversely affects the Licensor's position, rights or interests.

12.2. If notice is given to the Customer pursuant to Clause 12.1 above, Licensor may, in addition to terminating the agreement:

- (a) Repossess any copies of the Software, documentation, manual or any other property in the possession, control or custody of the Customer;
- (b) Retain any moneys paid;
- (c) Be regarded as discharged from any further obligations under this agreement; and/ or
- (d) Pursue any additional or alternative remedies provided by law.

### **13 General Provisions**

13.1. To the extent permitted by law, the exclusive place of jurisdiction for disputes shall be Singapore.

13.2. These License Terms as well as all agreements between the Licensor and the Customer in this regard shall be subject to Singapore law. In the event Parties are unable to amicably settle any dispute in relation to this agreement including but not limited to the validity and terms of this agreement, such dispute shall be settled by way of arbitration in accordance to the Rules of the Singapore International Arbitration Centre (SIAC), which may be in force from time to time. The Chairman of the tribunal shall be a qualified expert/specialist/lawyer and the seat of arbitration shall be Singapore. The English language shall be the language of the proceedings.

13.3. Should a provision be or become invalid, this shall not affect the validity or effectiveness of the other provisions. In such a case, the invalid provision should be replaced by a valid agreement that is as similar as possible to the commercial intention of the original, invalid provision.

ACTICO Pte. Ltd.