

ACTIAN CORPORATION

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5. **LIMITATION OF LIABILITY.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL LICENSOR OR ITS LICENSORS BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES ARISING OUT OF, OR RELATED TO, THE PROGRAM MATERIALS OR THIS AGREEMENT, HOWEVER CAUSED AND UNDER ANY LEGAL THEORY, AND INCLUDING, WITHOUT LIMITATION, LOST PROFITS, DATA, REVENUE OR GOODWILL, OR BUSINESS INTERRUPTION, EVEN IF LICENSOR HAS BEEN ADVISED OF, KNOWS OF, OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES. LICENSOR'S AND ITS LICENSORS' TOTAL CUMULATIVE LIABILITY ARISING OUT OF OR RELATED TO THE PROGRAM MATERIALS OR THIS AGREEMENT, WHETHER IN CONTRACT, TORT, STATUTORY OR OTHERWISE, WILL NOT EXCEED ONE HUNDRED DOLLARS (\$100). THE PARTIES ACKNOWLEDGE THAT THIS SECTION 5 REFLECTS THE AGREED UPON ALLOCATION OF RISK BETWEEN THE PARTIES.

6. **TERMINATION.** This Agreement is effective until terminated. Customer may terminate this Agreement at any time by destroying all copies of the Program Materials. This Agreement will terminate immediately without notice from Licensor if Customer fails to comply with any provision of this Agreement. Either party may terminate this Agreement immediately should any Program Materials become, or in either party's opinion be likely to become, the subject of a claim of infringement or misappropriation of any intellectual property right. Upon termination, Customer must destroy all copies of the Program Materials. Sections 1, 3, 4, 5, 6, 7, 8, 9, 10, 12, 14, 15 and 16 shall survive termination or expiration of this Agreement.

7. **PROPRIETARY INFORMATION.** The Program Materials are licensed to Customer, not sold, and title to the

Program Materials and all associated intellectual property rights is retained by Licensor and its licensors.

8. **CONFIDENTIALITY**. Customer agrees that the Program Materials, and any other information, technical data, or know-how related to the Program Materials (including working papers), is Confidential Information of Licensor and its licensors. "Confidential Information" will not include any such information, technical data, or know-how which: (i) is already or otherwise becomes publicly known, not as a result of any action or inaction of the Customer; or (ii) is rightfully in the Customer's possession without a duty of confidentiality, prior to disclosure by Licensor, as can be shown by the files and records of Customer immediately prior to disclosure. Customer agrees not to use or disclose any Confidential Information except as expressly permitted by this Agreement, and to protect the confidentiality of all Confidential Information and to take the same steps to prevent unauthorized disclosure or unauthorized use of the Confidential Information as Customer takes with its own confidential information (and in no event less than those actions standard in Customer's industry).

9. **EXPORT CONTROLS**. Customer acknowledges and agrees that the downloading, exporting or re-exporting of the Program Materials, either directly or indirectly and via any means, including electronic transfer, must be in compliance with the U.S. Export Administration Regulations and the laws of host countries, and Customer will comply strictly with all such laws and regulations. Licensor assumes no responsibility or liability for Customer's failure to obtain any necessary export approvals. Specifically, no Program Materials may be downloaded or exported to Cuba, Iran, North Korea, Sudan, and Syria, or to any other embargoed or otherwise restricted countries or end-users. By downloading or using the Program Materials, Customer agrees to the foregoing and represents and warrants that a) Customer is not located in, under the control of, or a national or resident of any such country; b) Customer is not on any of the restricted lists including U.S. Bureau of Industry and Security Denied Parties List or Entity List, or the U.S. Office of Foreign Asset Control List of Specially Designated Nationals and Blocked Persons, or any similar lists maintained by other countries, and Customer will not export to anyone on such lists without the necessary export licenses.

10. **NOTICES**. All notices to Licensor under this Agreement must be delivered in writing in person, by courier or by certified or registered mail (postage prepaid and return receipt requested) at the following address and will be effective upon receipt: 2300 Geng Rd., Suite 150, Palo Alto, CA 94303, USA. To be

effective, such notice must be delivered to both (a) the legal department and (b) the Chief Executive Officer. Customer agrees that Licensor may provide notice to Customer electronically via e-mail or by posting the notice on the website at which this Agreement or the Program Materials were made available. Receipt of any such notice is the day that the notice is sent or posted by Licensor.

11. **RELATIONSHIP OF THE PARTIES; BENEFICIARIES.** The parties hereto are independent contractors. Nothing in this Agreement shall be deemed to create an agency, employment, partnership, fiduciary, or joint venture relationship between the parties. There are no third party beneficiaries to this Agreement.

12. **REMEDIES.** Except as specifically provided otherwise in this Agreement, the parties' rights and remedies under this Agreement are cumulative and there shall be no obligation to exercise a particular remedy. In the event of a party's breach of this Agreement, the non-breaching party may avail itself of all other rights, remedies and causes of action available at law, in equity or otherwise. Customer acknowledges that the Program Materials contain Licensor's valuable trade secrets and proprietary information and that any actual or threatened disclosure or unauthorized use or distribution of the Program Materials or Confidential Information will constitute immediate and irreparable harm to Licensor for which monetary damages would be an inadequate remedy and entitle Licensor to immediate injunctive relief without the need to post a bond or show actual monetary damages.

13. **FORCE MAJEURE.** Licensor shall not be liable to Customer for any failure or delay in performance caused by reasons beyond its control.

14. **U.S. GOVERNMENT END USERS.** The Program Materials 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 Program Materials 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).

15. **INDEMNIFICATION.** Customer agrees to indemnify Licensor against any and all damages, judgments, and costs (including reasonable attorneys' fees) arising

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16. **GENERAL PROVISIONS.** Any action related to this Agreement, and the validity, performance, construction and interpretation of this Agreement shall be governed by applicable Federal law and the laws of the State of California, United States of America, excluding its conflicts of laws rules, as applied to agreements entered into in California between California residents. The provisions of the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. Any action or proceeding arising from or relating to this Agreement must be brought exclusively in a federal court in the Northern District of California, or in a state court in San Mateo County, California, and each party submits irrevocably to the exclusive personal jurisdiction and venue of any such court in any such action or proceeding. Notwithstanding the foregoing, Licensor may enforce any judgment rendered by such court in any court of competent jurisdiction, and Licensor may seek injunctive or other equitable relief in any jurisdiction in order to protect its intellectual property rights. If any provision of this Agreement is held to be unenforceable, that shall not affect the enforceability of the remaining provisions. This Agreement may not be modified except in writing signed by a duly authorized representative of each party. Customer may not assign this Agreement or any right granted hereunder, in whole or in part, without Licensor's prior written consent. This Agreement represents the entire agreement between the parties and supersedes all prior agreements and understandings, whether written or oral, with respect to all matters covered in this Agreement. This Agreement is executed in the English language.

For inquiries please contact: Actian Corporation, 2300 Geng Rd., Suite 150, Palo Alto, CA 94303, U.S.A.

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