

Actian Corporation  
Customer License and Services Agreement

Revision Date: November 2017

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

This Customer 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 2300 Geng Road, Suite 150, Palo Alto, CA 94303 ("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. This Agreement governs the purchase and use of the software and services described in an Order (defined below). The "Effective Date" shall be deemed the date you click on the "Accept" button below.

## 1. DEFINITIONS

1.1 "Documentation" means the user documentation supplied by Us with the Product.

1.2 "Database Host" means Your licensed version of a Actian ZEN – PSQl database engine on which You will install the Software.

1.3 "Database Host License" means the license pursuant to which You licensed the Database Host.

1.4 "Order" means a document typically titled "Order Confirmation" or "Software and Support Services Order," 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.

1.5 "Products" means the machine-readable object code of the software programs specified in an Order, together with any Documentation and Updates thereto.

1.6 "Software" means all of the software You have received from Actian with this Agreement, including all applicable Updates.

1.7 "Support Services" means Product support services.

1.8 "Trial Software" means any Software downloaded or otherwise received from Actian for a limited time period for the purposes set forth in Section 2.3 below.

1.9 "Updates" means any patches, updates, or enhancement that is provided to You at Our discretion.

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

## **2. LICENSE**

2.1 License Grant. Subject to the terms and conditions of this Agreement, if You have properly received the Software, Actian grants to You a nonexclusive, nontransferable, nonsublicensable and revocable right to use the Software on one (1) Database Host, and (ii) use the Documentation in connection with Your use of the Software.

2.2 Use with Other Products. Your use of the Database Host will continue to be governed by the Database Host License, and your use of other Actian ZEN – PSQL products such as Client Server, Vx Server, Workstation, and Workgroup and any other software products from Actian or a third party which runs in conjunction with the Software (collectively, "Other Products") are and will continue to be governed by, and subject to, the terms and conditions of the license agreement provided by Actian or such third party when You obtained such Other Products. No rights are granted to You in this Agreement with respect to the Software or such Other Products.

2.3 Use of Trial Software. "Trial Software" is licensed to You for the purpose of internal evaluation and testing of the Software only. You may not distribute or deploy such Trial Software outside Your testing environment. In no event shall You use the Trial Software for development, production or commercial purposes.

2.4 Pre-Release Software. If the Trial Software provided to You under this Agreement is designated as pre-release or beta software by Actian ("Pre-Release Software"), then You acknowledge that such Pre-Release Software may contain faults. Notwithstanding anything to the contrary herein, neither Actian nor its suppliers will be liable for any damages whatsoever relating to Your use of such Pre-Release Software. Actian is under no obligation to make Pre-Release Software commercially available at any time.

2.5 License Terms for Updates. Any Updates made available to You by Actian shall be considered part of the Software and subject to the terms and conditions of this Agreement. Additional license terms may accompany Updates. By installing, copying, or otherwise using any Update, You agree to be bound by the terms accompanying each such Update. If You do not agree to the additional license terms accompanying such Updates, do not install, copy, or otherwise use such Updates.

## **3. PRODUCT OWNERSHIP.**

The copies of Products provided hereunder are licensed, not sold, and all intellectual property rights and title to the Products 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, except as necessary to configure the Product using the menus, options and tools provided for such purposes and contained in the Product. You shall not attempt to circumvent any user limits or other license, timing or use restrictions that are built in to 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 7 and 8 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-out devices, 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.

#### **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.

Except with the express written consent of Actian, You may not use the Software for multiplexing or to (1) permit third-party access to or use of the Software, or use, access, or allow access to the Software in any way to benefit third parties, including, but not limited to operating the Software in a service bureau, SaaS, ASP, or other similar hosted environment or (2) use the 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 Software. If You received this 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 Software with such software application. Notwithstanding the foregoing, if You have purchased a license to the Actian ZEN – PSQL Vx Server Edition (as defined in the Database Host License) for Your licensed version of the Database Host, and are using the Database Host in a “software as a service,” application service provider environment and/or on the Internet or by multiplexing (as defined in the Database Host License), You may use the Software in such environment in accordance with the Database Host License.

**4.2 Protection of Software.** You will take all necessary steps to protect the Software and Documentation from unauthorized copying or use. The 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 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 Software.

If you have purchased a license to the Product and the Order or other documentation provided with the Product indicates that the Product is a “Japanese” version, then the following additional license restriction shall apply: You may only use the Product with or on a Japanese version operating system platform, or where the operating system platform does not have an identified Japanese version all language settings must be set to ones appropriate for the Japanese language.

#### **5. SUPPORT AND ADDITIONAL SERVICES.**

**5.1 Support Services.** When Support Services are purchased from AG-Tech Corporation, the details of the Support Services can be found at <https://www.agtech.co.jp/support/supportservice/>. We or Our distributor 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.

5.2 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 or Our distributor 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. FEES.**

Fees or other charges shall be as specified in an Order. All amounts payable under this Agreement 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 price list, unless otherwise agreed between the parties.

## **7. LIMITED WARRANTY**

7.1 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.

7.2 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.

7.3 EXCEPT FOR EXPRESS WARRANTIES STATED IN THIS SECTION 7 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.

## **8. 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.

## **9. TERM AND TERMINATION.**

9.1 Unless sooner terminated as provided below, the term of this Agreement shall begin on the Effective Date and

continue for one year and then automatically renew for successive one-year terms, unless either party notifies the other party in writing of its intent not to renew at least ninety days prior to the expiration of the initial or then-current renewal term. 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.

9.2 This Agreement is effective from the date You download or install the 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 destroying the Documentation and the 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 Software, if any, You will destroy all other copies of the Software and Documentation, and upon request, You will certify such destruction to Actian. Sections 1, 3, 4, 6, 7.3, 8, 9, and 10 of this Agreement, will survive any termination hereof.

## **10. GENERAL CONDITIONS**

10.1 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: 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.

10.2 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.

10.3 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. The venue for any claims arising

under this Agreement shall be 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.

10.4 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. 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.

10.5 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.

10.6 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 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.

10.6 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.

10.7 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.

10.8 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, 2300 Geng Road, Suite150, Palo Alto, CA 94303. 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.

10.9 Marketing. 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.

10.10 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).

10.11 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.

10.12 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.

10.13 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.

10.14 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.

10.15 English is the controlling language of this Agreement.

10.16 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.

YOU ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTOOD THIS AGREEMENT AND HEREBY

AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT BY CLICKING ON THE "ACCEPT" BUTTON BELOW (OR TYPING "Y" OR "YES" IF YOU ARE INSTEAD ASKED FOR A "Y OR N" RESPONSE).