



Act-On Software, Inc.

Clickwrap Services Agreement

Last updated: August 16, 2023

By agreeing to this Clickwrap Services Agreement (“Agreement”) you represent that you have the right to bind your organization (“Customer”) to its terms and conditions. If you do not have such right you should not agree to this Agreement or use the Services.

1. Ordering

Customer may order from Act-On or an authorized Act-On reseller (a) licenses to access and use Act-On’s online service including any add-ons or modules (collectively, the “Services”) and/or (b) related professional services (collectively, “Professional Services”). The specifics of each Customer order will be set forth on an order form or similar document agreed to by the relevant parties (“Order Form”). Each Order Form constitutes a binding commitment to purchase the items described on such Order Form under this Agreement. All Order Forms are incorporated herein by reference.

2. Rights and Restrictions

2.1 Scope and Access Rights. Customer may access and use the Services in accordance with and subject to any restrictions set forth in this Agreement and other documents expressly referenced herein. Subject to the terms and conditions of this Agreement, Act-On hereby grants to Customer a limited, worldwide, non-exclusive, non-transferable, non-sublicensable right to (a) permit its designated users (“Users”) to access and use the Services for Customer’s business purposes in accordance with Act-On’s published technical documentation made available by Act-On (collectively, “Documentation”); and (b) use the Documentation in connection with the Services. If the Order Form indicates that Customer is an Agency (as defined in the Order Form) then Customer may use the Services for the benefit of its customers, subject to the restrictions set forth in the Order Form and this Agreement. The Services will include an interface component (“Interface”) to allow individual users and administrators designated by Agency Customers (“Agency Users”) to configure and manage the Services. Each Agency User will be provided access to and use of the Interface. Customer is responsible for ensuring the security and confidentiality



of all access credentials and for all liabilities incurred through use of the Services by Users and Agency Users.

2.2 Restrictions. Except as otherwise permitted hereunder, Customer agrees not to: (a) reverse engineer or otherwise attempt to discover the source code of or trade secrets embodied in the Services, except to the extent such restriction is not permitted by law; (b) distribute, transfer, sublicense, or otherwise make available the Services (or any portion thereof) to third parties other than Users, or as otherwise provided herein; (c) use the Services in violation of the Documentation or any applicable law, rule or regulation, including any export/import laws, or (d) in any way access, use, or copy any portion of the Services to directly or indirectly develop, promote, distribute, sell or support any competitive product or service.

2.3 Support Services. Act-On will provide Customer with technical support services pursuant to the terms and conditions set forth at <https://www.act-on.com/support-terms>.

2.4 Professional Services. Act-On or its third-party providers will perform the Professional Services set forth on the applicable Order Form (if any). The particulars of each Professional Services engagement will be as set forth in executed statements of work (each an "SOW") entered into by the parties. Certain Professional Services projects which are discreet in nature may be provided to Customer on a one-time basis without an executed SOW ("One-Time Services"). All One-Time Services shall be governed by this Agreement and shall be subject to the terms in the applicable SOW approved by Customer in writing. Act-On will retain all right, title and interest in and to all deliverables (including any and all intellectual property rights therein) provided under each SOW ("Deliverables") except to the extent that they contain any pre-existing Customer intellectual property. Customer's rights to the Deliverables shall be the same as Customer's rights to the Services to which such Deliverables pertain.

2.5 Customer Content. Customer (a) owns or has sufficient rights to all content and data that it uploads via the Services ("Customer Content") to permit Act-On to perform its obligations hereunder; (b) shall be solely responsible for the accuracy and quality of any and all Customer Content; (c) acknowledges that the performance of the Services is dependent on the accuracy and quality of Customer Content and Customer's compliance with industry best practices with respect to use of the Services; and (d) understands that Act-On cannot guarantee deliverability of the Customer Content to Recipients (defined below). Customer is allotted 4 gigabytes (GB) of media storage space ("Default Capacity"). Customer may purchase additional capacity beyond the Default Capacity in blocks of 10GB each. Act-On may collect and use information derived from general use and operation of the Services, including use of generative AI or machine learning ("Usage Data") for its own internal business purposes, and may only disclose Usage Data in an anonymous, aggregated format that in no way identifies Customer or any of the recipients of Customer Content ("Recipients").

2.6 Customer's Use of Generative AI. As a feature of the Service, Act-On may make generative artificial intelligence/machine learning tools available within the Service ("AI Feature"). If Customer elects to use the AI Feature, Customer acknowledges that the AI Feature is a third-party service that is not offered or made available by Act-On. The AI Feature is made available to Customer within the Service but is



provided by OpenAI, LLC pursuant to the ChatGPT terms and policies available at: <https://openai.com/policies> (“[ChatGPT Terms](#)”). ChatGPT will not use Customer inputs to train ChatGPT models, however, in connection with Customer’s use of the AI Feature, Customer acknowledges and agrees that (i) the information and content that Customer inputs into the AI Feature is not considered “Confidential Information,” such input is shared with ChatGPT, and that ChatGPT does not guarantee the confidentiality or anonymity of any information inputted into the AI Feature; (ii) the information and content that Customer inputs into the AI Feature is licensed to ChatGPT in accordance with the ChatGPT Terms; (iii) Customer inputs information and content into the AI Feature at Customer’s own risk and the AI Feature is made available “As-Is”; (iv) Act-On’s representations, warranties, covenants and indemnities do not apply to Customer’s use of the AI Feature, or to any action or inaction of OpenAI, LLC; (v) neither the input nor the output of the AI Feature is considered Customer Content, and such materials may not be protected as proprietary or intellectual property; (vi) Customer is prohibited from inputting sensitive information to the AI Feature, including, without limitation, personally identifiable information; and (vii) OpenAI, LLC is not intended to process personally identifiable information and therefore is not a subprocessor of Act-On. Customer shall indemnify, defend and hold Act-On and its partners harmless from and against any and all claims or liabilities of any kind arising out of its use of the AI Feature.

3. Compliance

3.1 Compliance. Customer warrants that it shall (a) comply with this Agreement, Act-On’s Acceptable Use Policy (found at: <https://www.act-on.com/acceptable-use-policy/>, and incorporated herein by this reference) (the “[AUP](#)”), and all applicable laws relating to its use of the Services, including, without limitation, any privacy laws applicable to the collection, use and sharing of Customer Content via the Services; (b) ensure that Customer and Act-On have the right to collect, use and share Customer Content via the Services; and (c) provide adequate notice to, obtain any necessary consents from, and establish any applicable terms and conditions with Recipients and any other third parties, as required under all applicable laws with respect to Customer Content, collected, used, transmitted and shared by Customer or by Act-On via the Services. Customer shall indemnify, defend and hold Act-On and its partners harmless from and against any and all claims or liabilities of any kind arising out of a breach of the foregoing warranties. Act-On shall comply with all applicable laws in its performance of its obligations under this Agreement.

3.2 Personal Data Transfers. To the extent that Act-On processes Customer’s Personal Data in its performance of its obligations under this Agreement, the Data Processing Addendum to the Agreement found at: <https://act-on.com/data-processing-addendum/> (the “[DPA](#)”) shall apply.

3.3 International Transfers. Customer authorizes Act-On and its sub-processors to transfer Customer’s Personal Data across international borders, including from the European Economic Area, Switzerland, and/or the United Kingdom to the United States. To the extent Customer’s Personal Data originating in



the European Economic Area, Switzerland, and/or the United Kingdom is transferred by Customer to Act-On in a country that has not been found to provide an adequate level of protection under the Data Protection Laws (as defined in the DPA), the parties agree that the terms of such transfer shall be subject to the DPA which includes the Standard Contractual Clauses incorporated as Annex 1.

4. Fees

All fees for licenses to the Services and/or for Professional Services (collectively, the “Fees”) will be set forth on the applicable Order Form. Act-On reserves the right to charge overage fees during the Subscription Term in the event Customer exceeds the scope of the license set forth in the Order Form. Unless otherwise agreed to in writing by the parties, Customer will pay to Act-On or its authorized reseller all Fees upon Act-On’s issuance of an invoice. Customer is responsible for any and all applicable sales, use and other taxes (other than taxes based on Act-On’s income). Each party is responsible for its own expenses under this Agreement. Customer agrees that its purchases are not contingent on (a) any specific level of deliverability of Customer Content or (b) the delivery of any future functionality or features or promises related thereto.

5. Term and Termination

5.1 Term. This Agreement shall continue in effect until terminated as set forth herein. The term of each license to the Services purchased by Customer will commence on the date set forth on the applicable Order Form and will continue for the period set forth on such Order Form, including any renewal term, as set forth below (collectively, the “Subscription Term”). Unless otherwise set forth on the applicable Order Form, Customer’s license to the Services will automatically renew for successive twelve (12) month terms with an automatic five percent (5%) increase in Fees for each subsequent renewal term, unless either party gives the other party written notice of its intent not to renew at least thirty (30) days prior to the end of the applicable Subscription Term.

5.2 Termination and Suspension. This Agreement and/or any Order Form, if applicable, may be terminated (a) by either party if the other party materially breaches this Agreement and does not cure the breach within thirty (30) days after receiving written notice thereof from the non-breaching party, (b) as set forth in Section 8.2 or (c) by either party if the other party provides proof that it has made a general assignment for the benefit of creditors, suffered or permitted the appointment of a receiver for its business or assets, or availed itself of or became subject to any proceeding under the US Federal Bankruptcy Act or any other foreign or domestic statute, law, rule or regulation relating to insolvency or the protection of rights of creditors. Act-On may suspend or terminate Customer’s access to or use of the Services if Customer (i) fails to make any overdue payments within ten (10) days of Act-On’s delivery of written notice to Customer of such overdue payments, (ii) violates any of the terms of this Agreement (including, but not limited to, over use of authorized API calls designated in Customer’s Order Form), the AUP, or any applicable law, (iii) uses the Services in a manner that harms or threatens to harm Act-On or



its customers, or (iv) is the subject of abuse complaints from Recipients or third parties. Any suspension or termination related to the foregoing will not relieve Customer of its payment obligations under this Agreement and any then current Order Forms.

5.3 Effect of Termination. Upon any termination of this Agreement or an Order Form (a) all rights licensed and obligations required thereunder shall immediately cease; provided that Sections 4, 5.3, 6, 7, 8.3, 8.4 and 9 shall survive termination, and (b) Customer shall pay to Act-On any Fees accrued or outstanding prior to the date of termination. Act-On will retain Customer Content for 30 days following termination or expiration of this Agreement or an Order Form. Upon request Act-On may permit Customer to have read-only access for a period not to exceed 2 business days to download a copy of the Customer Content. After such 30-day period all Customer Content will be permanently marked for deletion and can no longer be accessed by Customer.

6. Proprietary Rights

As between the parties, Act-On or its partners will retain all ownership rights in and to the Services, all updates and/or upgrades thereto, the Documentation, Deliverables, and other derivative works of the Services and/or Documentation that are provided by Act-On or its partners, including any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by Customer or any other party relating to the Services, and all intellectual property rights incorporated into or related to the foregoing. As between the parties hereto, Customer will retain all ownership rights in and to all Customer Content.

7. Confidentiality

“Confidential Information” means, with respect to a party (the “disclosing party”), information that pertains to such party’s business, including, without limitation, technical, marketing, financial, employee, planning, product roadmaps and documentation, performance results, pricing, and other proprietary information. Confidential Information will be designated and/or marked as confidential when disclosed, provided that any information that the party receiving such information (the “receiving party”) knew or reasonably should have known is considered confidential or proprietary by the disclosing party, will be considered Confidential Information of the disclosing party even if not designated or marked as such. The receiving party shall preserve the confidentiality of the disclosing party’s Confidential Information and treat such Confidential Information with at least the same degree of care that the receiving party uses to protect its own Confidential Information, but not less than a reasonable standard of care. The receiving party will use the Confidential Information of the disclosing party only to exercise rights and perform obligations under this Agreement. Confidential Information of the disclosing party will be disclosed only to those employees and contractors of the receiving party with a need to know such information. The receiving party shall not be liable to the disclosing party for the release of Confidential Information if such information: (a) was known to the receiving party on or before the effective date of



this Agreement without restriction as to use or disclosure; (b) is released into the public domain through no fault of the receiving party; (c) was independently developed solely by the employees of the receiving party who have not had access to Confidential Information; or (d) is divulged pursuant to any legal proceeding or otherwise required by law, provided that, to the extent legally permissible, the receiving party will notify the disclosing party promptly of such required disclosure and reasonably assists the disclosing party in efforts to limit such required disclosure.

8. Act-On Warranties, Act-On Indemnification, Limitation of Liability, Insurance

8.1 By Act-On. Act-On warrants that (a) the Services, as delivered and when used in accordance with the Documentation, will perform in all material respects as specified in the Documentation, (b) the Professional Services will be performed in a professional and workmanlike manner in accordance with the standards in Act-On's industry, and (c) Act-On will not knowingly introduce any "back door," "time bomb," "Trojan horse," "worm," "drop dead device," "virus," "preventative routines" or other computer software routines within the Services that are intentionally designed to permit unauthorized access to or use of either the Services or Customer's computer systems ("Viruses"). In the event of any breach of the warranty in subsections (a) or (b) above, Act-On shall, as its sole liability and Customer's sole remedy, diligently remedy any deficiencies that cause the Services or Professional Services, as applicable, to not conform to the foregoing warranty promptly after its receipt of written notice from Customer. Act-On will not be liable to the extent that any breach of the foregoing warranties are caused by (i) third-party components (including in combination with the Services) not provided by Act-On; (ii) unauthorized use or use of the Services other than in accordance with the Documentation or (iii) Viruses introduced by Customer or its agents (collectively, "Exclusions").

8.2 Indemnification. Act-On will defend at its own expense any action against Customer brought by a third party to the extent that the action is based upon a claim that the Services or Deliverables infringe or misappropriate any copyright or trade secret rights, and Act-On will pay those costs and damages finally awarded against Customer in any such action that are specifically attributable to such claim, or those costs and damages agreed to in a monetary settlement of such action. The foregoing obligations are conditioned on Customer notifying Act-On promptly in writing of such action, Customer giving Act-On sole control of the defense thereof and any related settlement negotiations, and Customer cooperating and, at Act-On's reasonable request and expense, assisting in such defense. If the Services (or any component thereof) or a Deliverable becomes, or in Act-On's opinion is likely to become, the subject of an infringement claim, Act-On may, at its option and expense, either (a) procure for Customer the right to continue exercising the rights licensed to Customer in this Agreement, or (b) replace or modify the Services or Deliverable so that it becomes non-infringing and remains functionally equivalent. If neither of the foregoing options are, in Act-On's reasonable opinion, commercially reasonable, Act-On may terminate this Agreement and will refund to Customer a pro-rata portion of any applicable prepaid Fees. Notwithstanding the foregoing, Act-On will have no obligation under this Section 8.2 or otherwise



with respect to any infringement claim based upon (i) any Exclusions or (ii) Customer Content. This Section 8.2 states Act-On's entire liability and Customer's sole and exclusive remedy for infringement claims and actions.

8.3 DISCLAIMER. THE EXPRESS WARRANTIES IN SECTION 8.1 ARE THE EXCLUSIVE WARRANTIES OFFERED BY ACT-ON AND ALL OTHER WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, ACCURACY, QUIET ENJOYMENT, TITLE, MERCHANTABILITY AND THOSE THAT ARISE FROM ANY COURSE OF DEALING OR COURSE OF PERFORMANCE ARE HEREBY DISCLAIMED.

8.4 LIMITATION OF LIABILITY. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR TO ANY THIRD PARTY, WHETHER UNDER THEORY OF CONTRACT, TORT OR OTHERWISE, FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, CONSEQUENTIAL, OR SPECIAL DAMAGES (INCLUDING ANY DAMAGE TO BUSINESS REPUTATION, LOST PROFITS OR LOST DATA), WHETHER FORESEEABLE OR NOT AND WHETHER SUCH PARTY IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ADDITION, BOTH PARTIES' AGGREGATE CUMULATIVE LIABILITY IN CONNECTION WITH THIS AGREEMENT, INCLUDING THE SERVICES, PROFESSIONAL SERVICES AND INTELLECTUAL PROPERTY PROVIDED HEREUNDER, SHALL NOT EXCEED, IN THE AGGREGATE AND REGARDLESS OF WHETHER UNDER THEORY OF CONTRACT, TORT OR OTHERWISE, THE TOTAL OF THE FEES ACTUALLY PAID BY CUSTOMER UNDER THIS AGREEMENT DURING THE ONE (1) YEAR PERIOD PRIOR TO THE DATE THAT SUCH LIABILITY FIRST ARISES. HOWEVER, THERE IS NO LIMITATION ON DIRECT LOSS, CLAIM OR DAMAGES ARISING AS A RESULT OF AN INFRINGEMENT OF EITHER PARTY'S INTELLECTUAL PROPERTY RIGHTS OR IN CONNECTION WITH A PARTY'S INDEMNIFICATION OBLIGATIONS.

8.5 Insurance. Act-On, at its own expense, will maintain at a minimum the following insurance coverages: (a) Commercial General Liability Insurance with coverage in an amount equal to or greater than US\$1,000,000 per occurrence combined single limit, (b) Commercial Automobile Liability Insurance with coverage in an amount equal to or greater than US\$1,000,000 per occurrence/aggregate, (c) Worker's Compensation Insurance with coverage complying with at least the statutory limits of coverage within the relevant state of employment, (d) Errors and Omissions Insurance with coverage in an amount equal to or greater than US\$5,000,000 per occurrence/aggregate and (e) Umbrella/Excess Liability Insurance with coverage in an amount equal to or greater than US\$10,000,000 per occurrence/aggregate.

9. Miscellaneous

Except with respect to Customer's payment obligations, each party will be excused from any delay or failure in performance hereunder solely to the extent it could not perform due to any occurrence or contingency beyond its reasonable control, including but not limited to acts of God, earthquake, labor disputes and strikes, riots, war and governmental requirements. The obligations and rights of the party so excused will be extended on a day-to-day basis for the period of time equal to that of the underlying cause of the delay. The parties are independent contractors with respect to each other, and nothing in



this Agreement shall be construed as creating an employer-employee relationship, a partnership or a joint venture between the parties. This Agreement controls the actions of all party representatives, officers, agents, employees and associated individuals. The terms of this Agreement shall be binding on the parties, and all successors to the foregoing. Except as otherwise set forth herein, neither party will assign, transfer or delegate its rights or obligations under this Agreement (in whole or in part) without the other party's prior written consent, except pursuant to a transfer of all or substantially all of such party's business and assets, whether by merger, sale of assets, sale of stock, or otherwise. Any attempted assignment, transfer or delegation in violation of the foregoing shall be null and void. All modifications to or waivers of any terms of this Agreement must be in a writing that is signed by the parties hereto and expressly references this Agreement. This Agreement shall be governed by the laws of the State of Oregon, without regard to its conflict of laws rules. The exclusive venue and jurisdiction for any and all disputes, claims and controversies arising from or relating to this Agreement shall be the state or federal courts located in Multnomah County, Oregon. Each party waives any objection (on the grounds of lack of jurisdiction, forum non conveniens or otherwise) to the exercise of such jurisdiction over it by any such courts. If any provision of this Agreement conflicts with governing law or if any provision is held to be null, void or otherwise ineffective or invalid by a court of competent jurisdiction, such provision shall be deemed to be restated to reflect as nearly as possible the original intentions of the parties in accordance with applicable law. 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 provisions hereof, and no waiver shall be effective unless made in writing and signed by an authorized representative of the waiving party. This Agreement includes any Order Forms agreed to by the parties in writing and all expressly referenced documents. Collectively the foregoing constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements or communications, including, without limitation, any quotations or proposals or other documents submitted by the parties. The terms on any purchase order or similar document submitted by Customer to Act-On will have no effect and are hereby rejected. All notices, consents and approvals under this Agreement must be delivered in writing by courier or by certified or registered mail, (postage prepaid and return receipt requested) to the other party at the address set forth in this Agreement and/or the applicable Order Form and, if sent to Act-On, will be sent to its General Counsel.



Addendum

The following terms and conditions supplement or modify the terms and conditions of the Agreement to the extent Customer has indicated on an applicable Order Form that Customer has its principal place of business in one of the jurisdictions set out below. In the event of any inconsistencies between this Addendum and the provisions of the Agreement, this Addendum shall prevail. Unless expressly amended in this Addendum, the provisions of the Agreement shall remain in full force and effect.

All countries in the Europe, Middle East and Africa (EMEA) region, except for France and Germany:

1. Notwithstanding any provision of the Agreement to the contrary, neither party excludes or limits its liability for (i) personal injury or death caused by its negligence, (ii) fraud or fraudulent misrepresentation, or (iii) any other liability which may not lawfully be excluded or limited.
2. At the end of Section 2.5 the following sentence is added: "In this Section 2.5, "data processor", "personal data" and "process" shall bear the meanings ascribed to them in the EU Data Protection Directive (95/46/EC) and all applicable local laws and regulations implementing such Directive and any other European Union data protection and privacy laws from time to time (including the General Data Protection Regulation when in force)."
3. References to "warranties" in section 8.3 (other than the first such reference) shall be deemed to include references to "conditions and other terms" and references in Section 8.4 to "tort" shall be deemed to include negligence. In Section 8.4, the words "in no event shall Act-On be liable to Customer or to any third party, whether under theory of contract, tort or otherwise, for any indirect, incidental, punitive, consequential, or special damages (including any damage to business reputation, lost profits or lost data), whether foreseeable or not and whether Act-On is advised of the possibility of such damages" is replaced with: "Act-On will not be liable (whether under theory of contract, tort including negligence or otherwise) under or in connection with the Services or the Agreement for any: (a) loss of profit; (b) loss of or damage to reputation or goodwill;(c) loss of opportunity;(d) loss of anticipated savings; (e) loss or waste of management or other staff time; or (f) indirect, consequential or special loss."
4. Each party acknowledges that in entering into the Agreement, it has not relied on any statement, communication, representation or misrepresentation not expressly set out in the Agreement.
5. Notwithstanding Section 9, the Agreement shall be governed by the laws of England and Wales. The exclusive venue and jurisdiction for any and all disputes, claims and controversies arising from or relating to the Agreement shall be the courts of England.



France:

1. In Section 5.2 and 8.2, the words “may be terminated”, “terminate Customer’s access” and “terminate this Agreement” are replaced with: “may be terminated as of right (“de plein droit”) without any judicial formalities”, “terminate as of right (“de plein droit”) without any judicial formalities Customer’s access” and “terminate as of right (“de plein droit”) without any judicial formalities”.
2. Section 5.2 (c) is modified as follows: “(c) subject to the receiver’s right to continue the Agreement, by either party if the other party makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets, or avails itself of or becomes subject to any proceeding under the US Federal Bankruptcy Act or any other foreign or domestic statute, law, rule or regulation relating to insolvency or the protection of rights of creditors.”
3. In Section 4, after the words “Unless otherwise agreed to in writing by the parties, Customer will pay to Act-On or its authorized reseller all Fees owed within thirty (30) days after Act-On’s issuance of an invoice”, the following is added: “In the event of failure to pay an invoice within this deadline, the unpaid amounts will give rise to the payment of late payment interest, equal to three (3) times the applicable legal interest as well as to a fixed amount of 40 euros to compensate for recovery costs. If the amount of the recovery costs exceeds that fixed amount of 40 euros and is duly documented, Act-On may ask for an additional compensation. Interest will begin to run on the day following the due date of the relevant invoice.”
4. Notwithstanding Section 9, this Agreement shall be governed by the laws of France. The exclusive venue and jurisdiction for any and all disputes, claims and controversies arising from or relating to this Agreement shall be the competent court within the jurisdiction of the Court of Appeal of Paris, France.

Germany:

1. In Section 2.1, after the word “non-exclusive” the word “non-perpetual” is added.
2. In Section 2.2, after the words “Except as otherwise expressly permitted hereunder” the following words are added: “or allowed according to §§ 69d et seq. of the German Copyright Act”.
3. If the Professional Services are regarded as works in terms of §§ 631 et seqq. of the German Civil Code (Bürgerliches Gesetzbuch, “BGB”), any defects in the Professional Services in terms of § 633 (2) BGB shall be remedied by Act-On through either free-of-charge removal of defects (repair) or replacement, in Act-On’s sole discretion. If the defect cannot be remedied within a reasonable period, or if the repair or replacement has failed for other reasons, Customer may, at its discretion, either withdraw from the relevant SOW or reduce the fees for the Professional Services. Act-On’s liability regardless of fault due to initial defects (§ 536a (1) Alt. 1 BGB) is excluded, unless Act-On acted intentionally.”
4. In Section 8.1, the following words are added: “Any warranty claims against Act-On shall expire after one year provided that Act-On did not cause a defect intentionally or in case of breach of a guarantee.”
5. Section 8.4 is replaced with the following words: “For damages with respect to injury to health, body or life caused by Act-On, Act-On’s representatives or Act-On’s agents in the performance of the contractual obligations, Act-On is fully liable. Act-On is fully liable for damages caused willfully



or by gross negligence by Act-On, Act-On's representatives or Act-On's agents in the performance of the contractual obligations. The same applies to damages which result from the absence of a quality which was guaranteed by Act-On or to damages which result from malicious action of Act-On. If damages, except for such cases covered by sentence no. 1 or sentence no. 4, with respect to a breach of a contractual core duty are caused by slight negligence, Act-On is liable only for the amount of the damage which was typically foreseeable. Contractual core duties, abstractly, are such duties whose accomplishment enables proper fulfillment of the Agreement in the first place and whose fulfillment a contractual party regularly may rely on. Act-On's liability based on the German Product Liability Act remains unaffected. Any further liability of Act-On is excluded. The limitation period for claims for damages against Act-On expires after one (1) year, except for such cases covered by sentences 1, 2 or 4.

6. In Section 7, the following words are added: "The receiving party's obligation under this Section 7 shall expire five years after the term of this Agreement."
7. NOTWITHSTANDING SECTION 9, THIS AGREEMENT SHALL BE GOVERNED BY THE LAWS OF GERMANY. THE EXCLUSIVE VENUE AND JURISDICTION FOR ANY AND ALL DISPUTES, CLAIMS AND CONTROVERSIES ARISING FROM OR RELATING TO THIS AGREEMENT SHALL BE THE COURTS OF HAMBURG, GERMANY.

All countries in the Japan and Asia Pacific (JAPAC) region including Singapore and Australia

1. Notwithstanding any provision of the Agreement to the contrary, neither party excludes or limits its liability for (i) personal injury or death caused by its negligence, (ii) fraud, or (iii) any other liability which may not be lawfully excluded or limited.
2. The following provision shall be added at the end of Section 2.5 of the Agreement: "To the extent (if any) that Act-On acts as a Data Intermediary in processing Personal Data in connection with the Services: (a) Act-On will only process such Personal Data for the purposes necessary for providing the Services and in accordance with Customer's written instructions (which Customer agrees will be consistent with the Agreement); and (b) The Customer represents and warrants to Act-On that it has obtained all necessary consents from all Users including any individual user of the Services for the transfer of any of their Personal Data and Recipient data to any party including third parties within and outside of Singapore, for Act-On to provide the Services under this Agreement; and (c) Act-On will provide reasonable security arrangements to prevent unauthorized access, collection, use, disclosure, copying, modification, disposal or similar risks with respect to Personal Data processed by Act-On in connection with the Services as required under the **Personal Data Protection Act 2012** (Singapore Statutes) ("**PDPA**")."

In this Section 2.5, "Data Intermediary", "Personal Data" and "process shall bear the meanings ascribed to them in the PDPA. References to any Singapore statute or Singapore statutory provision include, unless the context otherwise requires, a reference to that Singapore statute or Singapore statutory provision as modified, replaced, re-enacted or consolidated and in force from time to time prior to the date of this Agreement and any subordinate legislation made under the relevant statute or statutory provision (as so modified, replaced, re-enacted or consolidated) in force in Singapore from time to time prior to the date of this Agreement."

3. In Section 9 the following words are added: "A person who is not a party to this Agreement shall not be able to enforce any term in this Agreement under any laws purporting to grant such rights,



which shall be excluded to the fullest extent permissible.”

4. Notwithstanding Section 9, Customer acknowledges and agrees that in the event of any breach or threatened breach of this Agreement, Act-On shall be authorized and entitled to seek, from any court of competent jurisdiction, preliminary and permanent injunctive relief in addition to any other rights or remedies to which Act-On may be entitled. This Agreement shall be governed by and determined in accordance with the laws of the Republic of Singapore and the parties hereby submit to the non-exclusive jurisdiction of the courts of the Republic of Singapore.