

## SOFTWARE SERVICE TERMS OF USE

“YOU” OR “YOUR” SHALL REFER TO THE ENTITY ACQUIRING THE PRODUCTS AS LICENSEE AND, WITH REGARD TO THE RESTRICTIONS CONTAINED HEREIN, TO ANY PERSON(S) USING THE PRODUCTS OR ACTING ON LICENSEE’S BEHALF. BY ACTIVATING OR USING ANY ACTIANCE SOFTWARE SERVICE (“SOFTWARE SERVICE”) YOU BECOME A PARTY TO THIS AGREEMENT (“AGREEMENT”) AND AGREE TO BE BOUND BY ITS TERMS. IF YOU DO NOT AGREE TO THESE TERMS OF USE, YOU ARE NOT AUTHORIZED TO USE THE SOFTWARE SERVICE. YOU MAY CONTACT ACTIANCE BY VISITING OUR WEB SITE AT [WWW.ACTIANCE.COM](http://WWW.ACTIANCE.COM).

IF YOU HAVE ALREADY SIGNED A SEPARATE AGREEMENT WITH ACTIANCE, THE TERMS OF THAT SIGNED AGREEMENT WILL SUPERSEDE THE TERMS BELOW AND ACCEPTING THESE TERMS OF USE WILL NOT BIND YOU TO ANY TERMS INCONSISTENT WITH THAT SEPARATE AGREEMENT.

### 1. Software Service

1. Hosted Software. Actiance offers certain of its products on a hosted software service basis (each a “Software Service”). Use of Actiance each Software Service is provided for the number of Licensed Users purchased by Company for the period set forth in the applicable purchase documentation. A “Licensed User” is any Company network directory user entry or any user name or identity that is not mapped to the network user directory which uses a Software Service or which Company makes subject to the operation of a Software Service. Use of each Software Service is governed by these shared Terms of Use and the additional specific terms for each Software Service which are made part of this Agreement by this reference.
2. Initial Term. The first term of Company’s use of a Software Service shall begin on the Effective Date and end on the anniversary thereof after the expiration of the number of years of service purchased.
3. Renewal Terms. Each Software Service automatically renews on an annual basis unless a party provides the other with written notice of its decision not to renew a Software Service no less than sixty (60) days prior to the ending date of an existing term. Company agrees to prepay the Software Service fee for each renewal term prior to the expiration of the existing term.
4. Restrictions. Company shall not reverse engineer, disassemble or otherwise attempt to discover the source code or underlying ideas or algorithms of any Software Service; modify, translate, or create derivative works based on a Software Service, or resell, rent, lease, distribute, assign, or otherwise transfer rights to a Software Service or use a Software Service for timesharing or service bureau purposes. Company shall not take any action prohibited herein through an agent nor enable a third party to take any such action.

## 2. Fees.

1. Service Fees. Fees for each Software Service specified on the purchase documentation are due and payable thirty (30) days from the Effective Date for the initial term. The entire fee for each Software Service term must be paid in advance whether for a single year or a multi-year term. Fees for implementation service packages are due and payable at the same time as the fees for the Software Service being implemented. Unpaid balances are subject to a late payment charge of 1% per month, or the legal maximum, whatever is less. Company shall be responsible for the payment of all taxes, duties and tariffs in connection with this Agreement, except for any tax based on Actiance's net income. All fees are non-refundable.
2. Associated Costs. Company is responsible for all Internet access, communication and other costs associated with its connection to a Software Service. Company agrees to maintain reasonable physical and electronic security precautions to prevent unauthorized persons from using Company's account to access a Software Service or its systems. Fees related to Company's use of third-party providers or networks are not included in the Software Service fees. In the event that Actiance is required to collect fees for, or pay fees to, one or more third-party providers based on Company's use of such networks, Actiance will provide written notice to Company prior to invoicing Company for any such third-party fees.

## 3. Limitation of Liability.

1. IN NO EVENT WILL EITHER PARTY OR ITS DIRECTORS, EMPLOYEES, DISTRIBUTORS, SUPPLIERS, AGENTS OR RESELLERS BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES ARISING OUT OF OR IN ANY WAY RELATING TO THIS AGREEMENT OR THE USE OF OR INABILITY TO USE ANY SOFTWARE SERVICE INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF GOODWILL, WORK STOPPAGE, LOST PROFITS, LOSS OF DATA OR CONTENT, COMPUTER FAILURE OR ANY AND ALL OTHER COMMERCIAL DAMAGES OR LOSSES, EVEN IF ADVISED OF THE POSSIBILITY THEREOF AND REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED. IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY AMOUNTS IN EXCESS OF THE FEE APPLICABLE TO COMPANY'S USE OF SUCH SOFTWARE SERVICE FOR THE TWELVE (12) MONTHS PRIOR TO THE OCCURRENCE ON WHICH THE CLAIM IS BASED. IF APPLICABLE STATE LAW DOES NOT PERMIT THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, IN SUCH STATES LIABILITY SHALL BE LIMITED TO THE GREATEST EXTENT PERMITTED BY LAW.

## 4. Software Service Performance and Disclaimers.

1. Software Service Performance. Each Software Service shall operate and conform to the performance capabilities, specifications, functions and other descriptions as set forth in its applicable then-current documentation. Services provided hereunder shall be

performed in a good and workmanlike manner. If at any time Company discovers one or more material defects or errors in a Software Service, Actiance shall use reasonable efforts to correct such defect, error or non-conformity provided that Company provides adequate notice and description of the defect or error to Actiance. Actiance shall have a reasonable time period to correct such defect or error. Actiance provides support for the Software Services in accordance with the Actiance Maintenance and Support Policy at <https://www.actiance.com/support/terms>.

2. Service Level. Actiance shall use commercially reasonable measures to ensure that the functionality of each Software Service is available for Company’s use 99.95% of the time during each calendar month (the “Uptime Requirement”). Downtime for scheduled maintenance as well as during failures of the Internet and telecommunications systems not under the control of Actiance and downtime resulting from issues caused by Company shall not be considered downtime for purposes as determining whether the Uptime Requirement has been met. In the event Actiance fails to maintain the Uptime Requirement in a calendar month, Company shall be entitled to a credit calculated as a percentage of the Software Service Fee paid for such month and will be applied to the fee for the subsequent renewal period. The credit will be calculated according to the table below:

<b>Uptime Availability per Calendar Month</b>	<b>Month Service Credit</b>
Availability between 98% and 99.95%	10%
Availability between 95.0% and 98.0%	20%
Availability less than 95.0%	30%

3. Scheduled maintenance is defined as hardware or software maintenance on machines that host a Software Service of which Company has been notified five (5) business days in advance, or that is performed during a standard maintenance window between the hours of 11:00 pm Friday and 6:00 am Eastern Time Saturday, or 12:00 AM and 6:00 AM Eastern Time, Sunday through Friday. Scheduled maintenance periods shall not exceed eight (8) hours per week.
4. Configuration. Company is responsible for the management and archiving of all Company data routed through and/or logged by the Software Service (the “Content”). Actiance provides Company with access to a Software Service and Content through the programming interfaces and according to the network protocols specified in the documentation for each Software Service. Company shall be responsible for the configuration of its systems as necessary to route data to the Software Service for processing and manage the Content.
5. Content Protection and Restrictions. Actiance protects and maintains the privacy of Company data according the Actiance Privacy Policy at [www.actiance.com/privacy-](http://www.actiance.com/privacy-)

policy. The Software Services are not intended for the receipt or storage of consumer financial information, national identification numbers such as Social Security Numbers, or other governmentally issued identification numbers such as driver's license or passport numbers, bank account numbers, credit card or debit card numbers; or any "individually identifiable health information" as defined under the Health Information Portability and Accountability Act of 1996, as amended (collectively "Highly Sensitive Data"). Company is the data controller for all content processed by a Software Service and is responsible for complying with all applicable data protection or similar laws, and all legally required disclosures and authorizations, including those of EU Directive 95/46/EC and the implementing law pertaining to the processing of personal data ("Personal Data"). Company understands that each Software Service is based in the United States, and Company is responsible under applicable data protection laws for any transfer of Personal Data into the United States. Company is solely responsible for, and Actiance disclaims all liability for, any and all Highly Sensitive Data and Personal Data in the processed or stored by a Software Service.

6. Disclaimer. Software Services are subject to limitations, delays, and other problems inherent in the use of the Internet and electronic communications and may also be interrupted by unannounced configuration, content or interface changes by third-parties, such as social networks or other providers. Actiance is not responsible for any delays, delivery failures, or other damage resulting from such occurrences. Except as stated in this section 4, all information, technology and services provided by Actiance are provided "as is" without any representations or warranties of any kind, express or implied. Without limiting the generality of the foregoing, Actiance disclaims any implied warranties of fitness for a particular purpose or non-infringement with respect to such information technology and services.

## 5. Term and Termination.

1. Term. This Agreement shall commence on the Effective Date, and shall remain in effect until it expires or is terminated in accordance with this section. In the event of non-payment of fees, Actiance may suspend performance of all its obligations to Company until such time as all amounts owing have been fully paid and any such suspension of service shall not relieve Company of its obligation to pay fees.
2. Termination. Either party may terminate a Software Service if the other party materially breaches its obligations under this Agreement and such breach remains uncured for thirty (30) days following written notice of the breach given to the breaching party. Upon termination of a Software Service or this Agreement, Company shall cease use of the Software Service.
3. Survival Clause. Sections 1.4, 2.1 (for any payments owed as of the termination date), 3, 4.4, 4.5, 5 and 6 shall survive any termination or expiration of this Agreement.

**6. General.**

1. Force Majeure. Except as otherwise expressly provided in this Agreement, neither party shall be liable for any breach of this Agreement for any delay or failure of performance resulting from any cause beyond such party's reasonable control, such as: weather, strikes or labor disputes, war, terrorist acts, riots or civil disturbances, governmental regulations, acts of civil or military authorities, or acts of God, provided that the party affected takes all reasonably necessary steps to resume full performance.
2. Publicity. Within a reasonable time using the Products, Company agrees to work in good faith with Actiance to provide a mutually agreed upon quote or provide a reference about the success of the Products consistent with Company's experience. Any written quote will be reviewed by Company and approved before it is released. Actiance shall be permitted, during the term of the Agreement, to use the quote to promote and sell the Products. Actiance may list Company as one of its customers on its website and in sales presentations but shall not issue a press release or make any general announcement identifying Company as a customer without Company's prior approval.
3. Assignment. Company may not assign or otherwise transfer by operation of law or otherwise this Agreement or any rights or obligations herein without the prior express written consent of Actiance, which consent will not be unreasonably withheld. This Agreement shall be binding upon and shall inure to the benefit of the parties, their successors and permitted assigns. Any assignment or transfer in violation of this section is void.
4. Modifications. No changes, modifications, or waivers are to be made to this Agreement unless evidenced in writing and signed for and on behalf of both parties.
5. Severability. In the event that any provision of this Agreement shall be determined to be illegal or unenforceable, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable.
6. Notice. Any notices which are required to be given hereunder shall be in English, in writing and deemed sufficiently given (i) on the date sent by confirmed facsimile; (ii) on the date delivered personally to the party to whom the same is directed; (iii) one business day after deposit with a commercial overnight carrier, with written verification of receipt; or (iv) five business days after the mailing date, whether or not actually received, if sent by U.S. mail, return receipt requested, postage and charges prepaid, or any other means of rapid mail delivery for which a receipt is available. In the case of Actiance, such notice will be provided to the General Counsel at Actiance, Inc., 1400 Seaport Blvd., Building B, Redwood City, CA 94063. In the case of Company, notice shall be sent to the address on the purchase documentation, or to an address reasonably obtained by Actiance.

7. Choice of Law. The laws of the State of California, without giving effect to its conflicts of law principles, govern all matters arising out of or relating to this Agreement, including, without limitation, its validity, interpretation, construction, performance, and enforcement.
8. Arbitration. Any dispute or claim arising out of, in relation to, or in connection with this Agreement, or the interpretation, making, performance, breach or termination of this Agreement, will be finally settled by binding arbitration in San Mateo County, California, under the Commercial Arbitration Rules of the American Arbitration Association (the “Rules”) by an arbitrator appointed in accordance with said Rules. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction. This section shall not apply to any action by Actiance to enforce the fees payable under section 2.1.
9. Complete Understanding. This Agreement (together with the Special Service Terms Annex and any other terms attached hereto or specifically incorporated herein by reference) constitutes the complete understanding of the parties, and supersedes all prior or contemporaneous agreements, discussions, negotiations, promises, proposals, representations, and understandings (whether written or oral) between the parties, with regard to the subject matter hereof. The terms and conditions of this Agreement may not be superseded by, and shall prevail exclusively over, any written instrument submitted by Company, including a purchase order, and Company hereby disclaims any terms therein, except for terms therein relating to product description, quantity, pricing and shipment.

## **SPECIAL SERVICE TERMS ANNEX**

### **ADDITIONAL SOCIALITE AND VANTAGE CLOUD TERMS**

Temporary Content Storage. The Socialite and Vantage Cloud Software Services do not include management or archiving services for Content or other Company data. The Socialite and Vantage Cloud Software Services can facilitate off-peak and scheduled export of Content by providing temporary caching of the Content in unencrypted form for up to thirty (30) days. Temporary cache of Content is made available to Company for Company's convenience only. Notwithstanding any other confidentiality, non-disclosure or data security agreement with Company, Actiance does not assume responsibility or liability for Content in temporary storage. Company remains responsible for the management and timely export of all Content from the Socialite and Vantage Cloud Software Services. Content will be purged from the Socialite and Vantage Cloud Software Services after thirty (30) days.

Alcatraz Archiving. Company will receive free Actiance Alcatraz Software Service archiving of Content processed under Company's Socialite and/or Vantage Cloud Software Service for a rolling six (6) month period during the initial term of Company's Socialite and/or Vantage Cloud Software Service. The Alcatraz Software Service is provided in addition to the temporary storage of Content described above. Company may access and use its Content in the Alcatraz archive according to the terms of this Agreement. Company agrees to configure and maintain the Alcatraz archive settings to delete Content older than six months on an ongoing daily basis and agrees to pay for the Alcatraz Software Service at the regular applicable rate in the event Company elects to retain Content in the archive for a period of greater than six (6) months.

No Compliance Data Storage. Company acknowledges that Actiance expressly disclaims any and all responsibility or obligation imposed on third-party data storage providers by statute or by rule, regulation or opinion of any governmental agency, regulatory organization or similar institution, including without limitation, the U.S. Securities and Exchange Commission, the Financial Industry Regulatory Authority, or any securities exchange (each a "Regulatory Agency"). Notwithstanding the provisions above, Actiance will comply with any requests for Content received from a Regulatory Agency.

### **ADDITIONAL FEATURE CONTROL SOCIALITE TERMS**

Feature Control Socialite. Feature Control is a limited license that requires Company to access to the Socialite Software Service through the Socialite proxy server and restricts Company to the Socialite policy control functionality contained in the Usage Control tab of the Socialite administrative console. Company is not entitled or authorized to create any transcripts for Feature Control Licensed Users, or to use any policies provided on the Moderation and Archiving tab of the Socialite administrative console for Feature Control Licensed Users (e.g., policies related to capture, moderation, blocking or alerts).