

Actuate® Software License and Support Services Agreement

NOTE: By ordering, accepting, installing, copying, uploading, downloading or using software product(s) including license keys associated with the software ("Software") and support services provided by Actuate Corporation, its subsidiaries or affiliates ("Actuate"), you

- represent that, if you are not ordering, accepting, installing, copying, uploading, downloading or using the Software in an individual capacity, you are duly authorized to represent the legal entity that orders the Software or for whose benefit you are ordering, accepting, installing, copying, uploading, downloading or using the Software and support services (as an individual or in such representative capacity, the "Corporate End-User");
- represent that the Corporate End-User is the legal entity identified in the applicable quotations, purchase orders, invoices and/or other documentation related to the acquisition of the Software and support services;
- agree that you, on behalf of the Corporate End-User, will refrain from violating the terms of this Software License and Support Services Agreement ("SLA"), and will ensure that individual users employed or under contract with the Corporate End-User at all times comply with the terms and conditions herein; and
- represent that you are properly authorized to conclude a legally binding agreement based on the terms of this SLA between Actuate and the Corporate End-User.

If you do not agree with any of the terms of this SLA, Actuate does not grant any licenses to the Software and support services. In such event, you may not install, copy, upload, download or otherwise make any use of the Software support services, and you must return to Actuate the complete Software package, including the disks and printed materials immediately; or, if you downloaded the Software, notify Actuate in writing that you have de-installed the Software, within ten (10) days of your initial receipt of the Software. Upon receipt of such notification, Actuate, or a reseller or distributor with Actuate's authority, will issue a refund of any applicable license and support fees pre-paid by you, if any. If you do not comply with these return and notification requirements, you or the Corporate End-User will not be entitled to a refund. Use of the Software in the absence of a license authorized by Actuate constitutes an infringement of Actuate's intellectual property rights.

In the remainder of this SLA, you and/or the Corporate End-User are referred to as "You" and its derivative "Your(s)".

1. END-USER LICENSE.

1.1 **Software License Grant.** Unless Actuate, or a distributor with Actuate's authority, has expressly notified You in writing (e.g., in an order acknowledgement, through an Actuate web site order, invoice, or license key documentation) that one or more of the Licensing Methods and Deployment Types defined in Schedule 1 to this SLA apply to Software acquired by You, upon Your acceptance of all terms and conditions of this SLA and payment of the proper fees, Actuate hereby grants You a limited, non-exclusive, non-sublicenseable and non-transferable license to install one (1) copy of object code of the Software on one (1) computer, and to upload and execute and use that copy so installed as an Evaluation License only. The Software is licensed, and not sold, to You. You may not use any Software not listed in an ordering document, even if such unlicensed software is made available to You as part of Actuate's general delivery mechanism.

1.2 **Software License Parameters in Schedule 1.** The scope of Actuate's license grant to You is further defined and limited by the license parameters described in Schedule 1. The Licensing Method (e.g., Named User, Named Developer, CPU Based, etc.) for a given project or application must be consistent across Your Test and Production environments for such project or application. (e.g., If You use Named User-based Software licenses for Your payroll application in Production use, then any Test Software for such payroll application must be licensed on a Named User-basis also). The license parameters described in Schedule 1 may be applied in combination by Actuate (e.g., Named User and Test Software).

If You have any doubts about the applicability of the license parameters to the Software licensed by You, You must contact Actuate immediately. You agree that the burden of proof is on You: if You use the Software beyond the scope of the applicable license grant, You are committing a material breach of this SLA and a violation of Actuate's intellectual property rights. You should not rely on oral, written or email statements by Actuate services or sales professionals regarding Your entitlement to Software or any other rights under the SLA.

1.3 **No Cost and Evaluation Licenses.** Notwithstanding the foregoing, if the Software is being provided for on a No Cost basis, or for Evaluation purposes, then You agree: (a) to use the Software solely for such purposes; (b) that the

Software will not be used or deployed in any other type of Deployment environment; and (c) that such use shall automatically terminate upon the earlier of forty-five (45) days from the date You receive the right to install the Software or Your receipt of notice of termination from Actuate.

1.4 **Licenses to Updates and Information.** If Actuate provides You any Updates to the Software, such items are subject to all license limitations applicable to the Software to which the Updates relate.

1.5 **CPU Notice and Upgrade Requirements.** Prior to installation of the Software, You shall notify Actuate in writing in accordance with Section 7.15 of this SLA of the location, brand, host name, model name and number of the Server, and the number, type and speed of each of the CPUs, including thread count per CPU, of each Server on which any component of the Software is to be installed or the Software can Access, and any other information reasonably requested by Actuate ("Identifying Information").

Once installed, You must obtain Actuate's written consent before You discontinue the use of any Software from any Server (or CPUs within the Server) and begin use of the same Software on another Server (or CPUs within the Server) whether as part of a hardware and/or simultaneous hardware/software upgrade, or any other reason, which movement or transfer may be subject to a Server or CPU upgrade transfer license fee and related Maintenance Services fee at Actuate's discretion. Your request for Actuate's consent shall be submitted in writing in accordance with Section 7.15 of this SLA and must include the Identifying Information of the Server or CPU from and to which the Software is being moved. Actuate may withhold Software license key(s) if Actuate cannot verify that You are using the Software in an authorized manner. If Actuate grants its consent in a signed writing, You may reinstall the Software on the new Server or CPU on the condition that You delete the Software from the previous Server or CPU within five (5) days of successful reinstallation. The restrictions set forth in this Section apply to each time You desire to move the Software to a new Server.

Software may be "Node Locked." Node Locked Software uses a unique license key to activate Software on a specific instance of hardware (*i.e.*, the node identification information for the hardware is embedded in particular license key by Actuate). That license key is then verified against the hardware's node identification information before the Software's functionality can be enabled. To enable Node Locked Software, You must provide Actuate with the node identification information of Your hardware by running a utility that accompanies the Node Locked Software and following the instructions. Actuate will then send You a node lock key for that hardware and Software combination. The initial keys delivered with the Software will time out after 30 days. Node locked license keys will follow after necessary hardware, deployment type and other information is provided for each licensed Instance.

You agree to use each license key issued only for one (1) copy of the Software and on one (1) identified, properly licensed Server or cluster of Servers. For every new license key ("New Key") that is issued to replace an existing license key (the "Old Key"), You will (i) immediately and permanently destroy and stop all use of the Old Key, (ii) use the New Key only with Software that has been properly licensed and paid for by You, (iii) not transfer or assign the New Keys, (iv) without the prior consent of Actuate and the payment of an appropriate assignment or transfer fee, the New Key(s) cannot be installed on hardware other than the hardware where the Actuate software was originally installed, (v) each New Key may only be used for one Instance of the Actuate software on one (1) identified piece of hardware, or one (1) environment in the case of a properly licensed clustered environment. You represent and warrant that any individual requesting New Key(s) is authorized to do so on Your behalf and that the location, brand, model name and number of the server, and the number, type and speed of the CPUs of the server on which the license key(s) is to be installed or the Software can Access that You provide to Actuate, which may be done via email, is accurate.

1.6 **Territorial Limitation.** You may not install, copy, upload, download, execute, or otherwise use the Software outside of the country to which the Software was initially shipped.

1.7 **Copies.** After You have installed a copy of the Software in accordance with this SLA, You may keep the original copy (as downloaded from an Actuate website or delivered on a physical medium) for Archival Use purposes only. If any mandatory, non-waivable laws of any jurisdictions permit You to create one or more back-up emergency restart copies, You may exercise such rights but, except for such mandatory, non-waivable rights, You agree not to create any additional copies of the Software or accompanying documentation ("Documentation"). You acknowledge and agree that, among other methods of copying, Software is copied when it is loaded into temporary memory (*i.e.*, RAM) or installed into the permanent memory (*e.g.*, hard disk, CD-ROM, or other physical storage device) that can be accessed by the relevant computer. You further acknowledge and agree that any Hot/Warm Back-Up use is not permitted without payment of the appropriate license fee for such use.

1.8 **Open Source Software.** If You use open source software or any other Third-Party Component not supplied by Actuate in conjunction with the Software, You must ensure that its use does not: (a) create, or purport to create, obligations of use with respect to the Software, or (b) grant, or purport to grant, to any third-party any rights to or

immunities under Actuate's Proprietary Information. You also may not combine Software with programs licensed under the GNU General Public License ("GPL") or any similar license in any manner that could cause, or could be interpreted or asserted to cause, the Software or any modifications thereto to become subject to the terms of the GPL.

- 1.9 **Other Limitations.** You shall not rent, lease, loan, sell or otherwise distribute the Software or any derivative works of the Software. You may not grant access to the Software to any third-parties, except that You may enable customers to create content based on Your internal databases in Software that You host on Your premises under Your control (e.g., if You are a financial services provider and You have obtained the necessary licenses, You may enable Your customers to run reports on the status of their accounts with You through a web browser interface, but You may not transfer possession of copies of any portion of the Software to Your customers or allow them to run reports on Your customers' own databases). You may not engage in hosted application or service bureau activities whereby You execute the Software to create content using databases that Your direct or indirect customers own or otherwise supply or make available to You. You may not use the Software in connection with ultrahazardous activities, or any facility, activity or system for which failure of the Software might result in death or serious bodily injury to You or a third-party, including without limitation, nuclear, missile, or chemical and biological weaponry end uses. You shall not modify, adapt, translate, reverse engineer, decompile or otherwise attempt to derive or manipulate the source code of the Software, except as permitted under mandatory, non-waivable laws, and even then only after You have provided thirty (30) days prior written notice to Actuate, in accordance with Section 7.15 herein, that You intend to do so in order to give Actuate an opportunity, at Actuate's sole discretion, to provide information to You that alleviates the need for reverse engineering or other activities.
- 1.10 **Term.** Unless You have been notified that a shorter term or a Subscription or Evaluation license applies, the license granted in this SLA remains effective until terminated as provided herein.

2. OWNERSHIP; CONFIDENTIALITY.

- 2.1 **All Rights Reserved.** Except for the limited license granted to You herein, Actuate retains title, ownership and all rights and interests in and to the Software.
- 2.2 **Proprietary Information.** You agree that the Software and all computer code (in object and source form), inventions, algorithms, know-how and information embodied in or by the Software and all other business, technical and financial information You obtain from Actuate, whether designated confidential or not, constitute Actuate's confidential property ("Proprietary Information"). You also agree that any expression of Actuate's findings, analyses, conclusions, opinions, recommendations, ideas, techniques, know-how, designs, programs, enhancements, software, and other technical or business information provided to You by Actuate in the course of performing consulting, training, or support services related to the Software are the Proprietary Information of Actuate. All proprietary notices incorporated in or affixed to any Software, Documentation or materials shall be duplicated by You on all authorized copies of the Software, Documentation or materials, as applicable, and shall not be altered, removed or obliterated.
- 2.3 **Suggestions.** Actuate shall have a royalty-free, worldwide, irrevocable, perpetual license to use or incorporate into the Software and any support services any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by You or Your authorized users relating to the use of the Software or support services.
- 2.4 **Non-Disclosure.** You agree to keep the Proprietary Information in a secure place, under access and use restrictions designed to prevent disclosure of the Proprietary Information to unauthorized persons, and to instruct and effectively obligate Your personnel to keep the Proprietary Information confidential and use it only as expressly permitted by this SLA. The obligations specified in this Section 2.4 shall not apply to any Proprietary Information that: (a) is now available or becomes available to the public without breach of this SLA; (b) is lawfully obtained from a third-party or parties without a duty of confidentiality; (c) is known to You or independently developed by You without the use of any of Proprietary Information or any breach of this SLA, as documented and proven by You; or (d) is required to be disclosed by a valid court order, provided that You have first given Actuate reasonable written notice of such requirement and You fully cooperate with Actuate in seeking limitations to, and confidential treatment for, any such disclosure.
- 2.5 **Breach.** As any use or disclosure of Proprietary Information in breach of this SLA will cause irreparable injury to Actuate that cannot be compensated solely by monetary damages, You agree that any such use or disclosure: (a) constitutes a material breach of this SLA; (b) will terminate all licenses granted by this SLA; and (c) will entitle Actuate to seek injunctive relief in addition to any other remedies available under this SLA, at law, or in equity, without the need of placing a bond or proving damages. You further agree to promptly pay for any such breach at the higher of the non-discounted list price in effect (i) at the time any unlicensed use is discovered by, or made known to, Actuate or (ii) at the time You installed the Software.

3. SUPPORT.

The "Support Policy" applies to support services provided by Actuate for the Software and may be modified by Actuate from time to time. Support is mandatory for the first year of Your Software license and will be renewed annually unless You or Actuate elect not to renew it as further detailed in Section 6.2 herein. Neither Actuate nor any of its authorized resellers or distributors have any obligation to provide support services unless agreed otherwise in writing for a specified term and price, which shall not survive any termination of this SLA. Notwithstanding the foregoing, Actuate may, but is under no obligation to, support Evaluation Licenses or No Cost Software. The same level of support must be purchased for all Software installed on each Server or cluster of Servers or for a portion of an application even if the application is running on more than one (1) unit of hardware. Support may not be discontinued on a portion of the Software installed on a Server or cluster of Servers. All Software (a) on a particular Server or cluster of Servers or (b) used for an application must be on the highest common level of support. Support Policies for particular products are indicated at <http://www.actuate.com/supportpolicy>.

4. LIMITATION AND DISCLAIMERS OF WARRANTIES AND LIABILITIES.

- 4.1 **Limited Software Warranty.** If You obtained the Software directly from Actuate, then Actuate warrants that (a) the medium on which Actuate delivers the Software will be free from defects in workmanship and materials under normal use for a period of ninety (90) days after delivery of the Software, and that (b) the Software will substantially conform to its Documentation during the aforementioned period. This limited warranty extends only to You. Your sole and exclusive remedy, and Actuate's entire liability and its licensors under this limited warranty will be, at Actuate's option, repair, replacement or refund of the Software and applicable support fees, in which event this SLA shall terminate upon refund. THIS SHALL BE YOUR SOLE AND EXCLUSIVE REMEDY IN CASES OF DEFECTS OF ANY MEDIA OR THE SOFTWARE DELIVERED.

ACTUATE'S ENTIRE LIABILITY, AND YOUR EXCLUSIVE REMEDY, UNDER THIS LIMITED SOFTWARE WARRANTY SHALL BE for Actuate (a) to attempt, through commercially reasonable efforts, to correct any reproducible material non-conformity discovered within the 90-day warranty period, or (b) to replace the non-conforming Software. In the event Actuate is unable to cure the breach of warranty described in this Section 4.1 after attempting the remedies described in (a) and (b) above, You may return the Software and Actuate shall refund any fees paid by You directly to Actuate for the Software; provided that subscription fees will only be returned on a pro-rated basis for the portion of the initial subscription period during which the Software was unusable and after it was returned. The above remedies are available only if Actuate is promptly notified in writing, within the warranty period, upon discovery of the non-conformity by You. Notwithstanding the foregoing, this warranty does not apply to any Software which: (i) has been altered or modified, except by Actuate; (ii) has not been installed, operated, repaired or maintained in accordance with the Documentation; (iii) has been subjected to abnormal physical or electrical stress, misuse, negligence or accident; or (iv) is used in violation of any other term of this SLA. If You obtained the Software from an Actuate reseller or distributor, the terms of any warranty shall be as provided by such reseller or distributor, and Actuate provides You no warranty with respect to such Software or media.

- 4.2 **Limited Support Services Warranty.** Except where You have entered into a separate support agreement with Actuate, Actuate warrants that it will perform support services in a professional and workmanlike manner. If (a) Actuate substantially fails to meet the standard specified in the preceding sentence, (b) You provide Actuate a detailed written request to cure, and (c) Actuate fails to cure any substantial failure within thirty (30) days of receiving Your detailed written request to cure, then You may terminate the support component of this SLA within thirty (30) days of the date on which Actuate received Your last request to cure. Upon such termination, Actuate shall refund to You on a pro-rated basis any pre-paid support services fees for the time after Actuate's receipt of Your last written request to cure. THE TERMINATION AND REFUND RIGHT SPECIFIED IN THIS SECTION 4.2 SHALL BE YOUR SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO SUPPORT SERVICES OR ANY UPDATES, INFORMATION OR OTHER ITEMS PROVIDED IN CONNECTION WITH SUPPORT SERVICES. Termination of support services shall not terminate this SLA.

- 4.3 **Disclaimer.** EXCEPT AS EXPRESSLY SET FORTH IN SECTIONS 4.1 AND 4.2, AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, ACTUATE MAKES NO WARRANTIES OR REPRESENTATIONS WITH RESPECT TO THE SOFTWARE OR ANY SUPPORT SERVICES, AND YOU SHALL NOT HAVE ANY REMEDIES RELATING TO ANY FAILURE OF THE SOFTWARE OR SUPPORT SERVICES TO CONFORM TO SPECIFICATIONS OR THE WARRANTY STANDARDS SPECIFIED IN THIS SECTION 4. ACTUATE DISCLAIMS ANY IMPLIED WARRANTIES AND REPRESENTATIONS, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE NON-INFRINGEMENT, SATISFACTORY QUALITY OR ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. ACTUATE DOES NOT WARRANT AGAINST INTERFERENCE WITH YOUR ENJOYMENT OF THE SOFTWARE, THAT THE FUNCTIONS WITHIN THE SOFTWARE WILL MEET YOUR REQUIREMENTS, THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT DEFECTS IN THE SOFTWARE WILL BE CORRECTED. NO ORAL OR WRITTEN

INFORMATION OR ADVICE GIVEN BY ACTUATE OR A RESELLER OR DISTRIBUTOR SHALL CREATE A WARRANTY. NOTWITHSTANDING ANYTHING TO THE CONTRARY STATED IN THIS SLA, ACTUATE MAKES NO WARRANTIES WHATSOEVER, EXPRESS, IMPLIED OR STATUTORY, WHETHER ORAL OR WRITTEN, WITH RESPECT TO EVALUATION LICENSES AND NO COST SOFTWARE, WHICH SOFTWARE IS PROVIDED ON AN "AS IS" BASIS ONLY.

- 4.4 **Limitation of Liability.** ACTUATE SHALL NOT BE LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, SPECIAL, INDIRECT, PUNITIVE, OR EXEMPLARY DAMAGES FOR LOST REVENUE, LOST PROFITS, LOSS OF DATA, DAMAGE TO REPUTATION, BUSINESS INTERRUPTION, OR PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES) ARISING OUT OF THIS SLA, YOUR USE OR INABILITY TO USE THE SOFTWARE, OR THE PROVISION OF ANY SUPPORT SERVICES, EVEN IF ACTUATE HAS BEEN ADVISED OF THE POSSIBILITY OF THOSE DAMAGES AND EVEN IF THE LIMITED REMEDIES PROVIDED HEREIN FAIL OF THEIR ESSENTIAL PURPOSE. IN NO EVENT SHALL ACTUATE'S TOTAL LIABILITY EXCEED THE AMOUNT PAID OR PAYABLE BY YOU UNDER THIS SLA. THESE LIMITATIONS SHALL APPLY REGARDLESS OF THE THEORY ON WHICH DAMAGES ARE SOUGHT, INCLUDING, WITHOUT LIMITATION, CONTRACT, STATUTE OR TORT. THEY SHALL NOT APPLY, HOWEVER, IF AND TO THE EXTENT DAMAGES CANNOT NOT BE LIMITED UNDER APPLICABLE MANDATORY LAW.
- 4.5 **Third-Party Software Components.** The Software may contain components made by third-parties ("Third-Party Components"). Third-Party Components may be open-source products. You agree, for the benefit of Actuate and the third-party developers of or contributors to the Third-Party Components, that with respect to Third-Party Components: (a) Your use is entirely at Your own risk and You waive any rights or remedies; (b) THIRD-PARTY COMPONENTS ARE PROVIDED "AS IS", WITHOUT WARRANTIES OR CONDITIONS OF ANY KIND, including, but not limited to, any implied warranties of merchantability, fitness for a particular purpose, title or non-infringement; and (c) neither Actuate nor any other person or entity shall have any liability for damages, including without limitation direct, indirect, special, incidental and consequential damages, or lost profits. Additional information and applicable license terms related to Third-Party Components, and information how any available source code can be obtained, is contained in the actual files for such Third-Party Components if and when it is required by the relevant third party.
- 4.6 **Special Terms for Certain Third-Party Software Components.** In addition to the terms stated in Section 4.5, certain components provided with the Software including but not limited to PDCat from PDF Tools AG and FusionCharts, PowerCharts, FusionMaps and FusionWidgets from InfoSoft Global Private Limited may not be used in a standalone fashion and may only be used in conjunction with the contemporaneous use of the Software.

5. INTELLECTUAL PROPERTY RIGHTS INDEMNITY.

- 5.1 **Indemnification.** If You obtained the Software from Actuate directly, Actuate shall, at its own expense, defend or, at its option, settle, any claim or action brought against You by a third-party, and to indemnify You and Your officers, directors, and employees against all damages and costs, including reasonable legal fees finally awarded against You attributable to such claim or action, resulting from such claim or action, or the settlement by Actuate thereof, if and to the extent such claim or action is based on actual infringement of such third-party claimant's patent, copyright, trade secret or trademark under United States or Canadian laws by Your use in accordance with this SLA of Software or support services provided by Actuate. Actuate shall be released from the foregoing obligation unless You provide Actuate with (a) prompt written notice of any such claim or action, or possibility thereof, (b) sole control and authority over the defense or settlement of such claim or action, and (c) proper and full information and assistance to settle and/or defend any such claim or action.
- 5.2 **Right to Substitute.** Without limiting Section 5.1 hereof, if a final injunction is, or Actuate believes in its sole discretion is likely to be, entered prohibiting the use of Software or support services by You as contemplated herein, Actuate may, at its sole option and expense, either: (a) procure for You the right to use the infringing Software or support services as provided herein, (b) replace the infringing items with non-infringing, functionally equivalent products, (c) suitably modify the infringing items so that they are no longer infringing, or if (a), (b) or (c) above is not obtainable on commercially reasonable terms, (d) accept return of the infringing items and refund (i) for perpetual licenses, the then present value of the license fees paid for such Software, as amortized over a forty-eight (48) month life or (ii) for Subscription Licenses or support services, pre-paid fees on a pro-rated basis for the unused portion of the Subscription or support term. Except as specified above, Actuate will not be liable for any costs or expenses incurred without its prior written authorization.
- 5.3 **Exceptions.** Notwithstanding Sections 5.1 and 5.2 above, Actuate assumes no liability for infringement claims arising from (a) the combination of the Software or work product of any support services with other products not provided by Actuate, (b) any modification to the Software or support services work product unless such modification was made by Actuate, (c) use of the Software not in accordance with Actuate's user manual

Documentation, or (d) Third-Party Components.

- 5.4 **Limitation.** THIS SECTION 5 STATES THE ENTIRE LIABILITY AND OBLIGATIONS OF ACTUATE, AND YOUR EXCLUSIVE REMEDIES, WITH RESPECT TO ANY ACTUAL OR ALLEGED INFRINGEMENT OF ANY THIRD-PARTY RIGHTS BY THE SOFTWARE OR ANY SUPPORT SERVICES PROVIDED BY ACTUATE. THE FOREGOING INDEMNITY SHALL NOT APPLY TO THE EXTENT ANY INFRINGEMENT COULD HAVE BEEN AVOIDED BY USE OF THE THEN-CURRENT SOFTWARE RELEASE.

6. TERMINATION.

- 6.1 **Termination for Cause.** Either party may terminate this SLA if the other party commits a material breach of this SLA and fails to cure such breach within thirty (30) days of receipt of a written request to cure. Neither party may terminate this SLA except as expressly provided herein or in Section 1.3 (as it relates to No Cost and Evaluation Licenses).
- 6.2 **Termination for Support.** Once paid, support service fees are non-refundable. If You desire to reinstate support services that have been cancelled, You will pay Actuate the applicable reinstatement fees in addition to the support services fees that would otherwise have been due for the period between the effective date of cancellation of support services and the effective date of reinstatement and the support services fee for the one (1) year period from the effective date of reinstatement based on the non-discounted list price in effect at the time support is reinstated. If You cancel support services for any portion of the Software, Actuate reserves the right to adjust the discount applied to the support services fee for the remaining Software. Termination of support services shall not terminate this SLA.
- 6.3 **Obligations Upon Termination.** Upon termination or expiration of this SLA, You will immediately destroy or return to Actuate all Software, Documentation and Proprietary Information in Your possession and, upon Actuate's request, certify compliance with this obligation in a writing duly signed by an authorized representative. Actuate is not obligated to refund any payments, except as expressly provided otherwise in Sections 4 and 5 of this SLA.
- 6.4 **Effect of Termination.** Your obligation to pay accrued charges and any fees due as of the date of termination (including without limitation Section 2.5), as well as the following provisions, shall survive termination of this SLA: 2, 4.3, 4.4, 4.5, 6.4, 7, 8.2, and Schedule 1.

7. GENERAL TERMS AND CONDITIONS.

- 7.1 **Choice of Law; Arbitration.** This SLA and any dispute arising out of or in connection with this SLA, the Software, or any support services performed by Actuate ("Dispute") will be governed by California law. The Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act shall not apply. If You are based in the United States, You submit to the personal jurisdiction of the courts in San Mateo County, California, USA, and all Disputes shall be exclusively subject to the jurisdiction of such courts. Otherwise, all Disputes shall be resolved by final and binding arbitration before three (3) arbitrators pursuant to the rules and under the auspices of the International Chamber of Commerce. The arbitrators shall have the authority to determine issues of arbitrability and to award compensatory damages, but they shall not award punitive or exemplary damages. At either party's request, the arbitrators shall issue a written decision explaining the facts and legal reasoning on which their decision is based. The arbitration proceedings shall be conducted in London, England and in the English language. The prevailing party shall be entitled to attorneys' fees and costs, in addition to any other relief to which that party may be entitled, under either a legal action or arbitration proceeding.
- 7.2 **Complete Agreement.** This SLA and any writings issued by Actuate that are expressly incorporated herein (including, without limitation, Actuate's specification of the applicable license parameters and of the legal entity that is entitled to use the Software and support services, be in through an invoice or otherwise) represent the entire agreement and understanding between the parties and supersede any prior or contemporaneous agreements and understandings regarding the subject matter hereof including but not limited to the version of the Software provided with this SLA. Actuate does not accept, and Actuate hereby expressly rejects, any additional terms that You may present at any time on purchase orders or otherwise.
- 7.3 **Relationship.** The relationship between the parties created by this SLA is that of independent contractors and not partners, joint venturers, or agents.
- 7.4 **No Third-Party Beneficiaries.** There are no third-party beneficiaries to this SLA.
- 7.5 **Headings.** Section headings are for convenience of reference only and shall not affect the interpretation of this SLA.

- 7.6 **Force Majeure.** Neither party shall be liable or deemed in default for any delay or failure in performance of an order or any part of this SLA, other than a failure to pay, to the extent that such delay or failure is caused by the following, but not limited to: accident, fire, industry-wide strike, embargo, act of the government, war, terrorism or national emergency requirement, act of God, act of the public enemy or any other cause beyond the reasonable control of You or Actuate. If any of the foregoing condition occurs, the party delayed or unable to perform shall use commercially reasonable efforts to give notice to the other party and continue performing this SLA to the fullest extent possible.
- 7.7 **Mutual Non-Exclusivity.** Actuate may license Software and/or provide support services to other entities that may be in competition with You. You may work with other entities that may be in competition with Actuate. This is a non-exclusive arrangement.
- 7.8 **No Modification or Waivers.** This SLA cannot be modified or amended except (a) in a writing signed by an authorized Actuate officer or (b) by a subsequent click wrap license agreement distributed with an upgrade to a subsequent version of the Software. For example, if You upgrade Version 10 of the Software to Version 11, the click wrap license agreement distributed with Version 11 of the Software will replace your existing license agreement. No modification can be accomplished by course of conduct. To the extent Actuate provides You with enhancements to the Software or new versions of the Software accompanied by a revised version of this SLA, such revised version of this SLA shall, when accepted by You (e.g., by clicking an accept button) supersede and replace all previous versions of this SLA and govern Your use of such enhancements or new versions of Software as well as all previous versions of the Software supplied to You. Modifications to this Agreement may also be proposed by Actuate and accepted by You in connection with an online support renewal subject to new or modified support terms. Any failure or delay to exercise or any partial exercise of any right, power, or privilege hereunder by Actuate shall not operate as a waiver.
- 7.9 **No Assignment.** You cannot assign this SLA or any rights or obligation hereunder. Any purported assignment by You, whether by operation of law, change in control, or otherwise, shall be null and void. Actuate can assign or delegate performance under this SLA: (a) to an affiliated company, or (b) in the event of a merger, acquisition or sale of all or substantially all of the assets of Actuate or an Actuate business unit. Anything in this SLA or any agreement related to this SLA (a "Related Agreement") to the contrary notwithstanding, Actuate shall have the right, without Your prior written consent, at any time and in its sole discretion, to assign for security interest purposes any or all of its rights under this SLA and any Related Agreement to any lender providing financing to Actuate and any of such lender's permitted assigns, and, upon the occurrence and during the continuance of any event of default under the financing agreements between any such lender (or its permitted assigns) and Actuate, such lender (or its permitted assigns) may exercise any or all of the rights, interests, and remedies of Actuate under this SLA or any Related Agreement.
- 7.10 **Severability.** If and to the extent that any provision of this SLA is invalid or unenforceable under applicable law, then such provisions shall be interpreted in a manner that comes as close as possible to its original intent, and the remaining provisions shall nevertheless remain in full force and effect.
- 7.11 **Export Laws.** The Software and any technical data delivered under this SLA are subject to U.S. export laws and applicable laws of other countries. You shall strictly comply with all such laws and assume responsibility to obtain licenses to export, re-export, or import as may be required. You agree not to export or re-export to entities on the most current U.S. export exclusion lists or to any country subject to U.S. embargo or terrorist controls as specified in the U.S. export laws. You represent and warrant that You are not identified on any U.S. Government export exclusions list, including without limitation the Denied Persons List of the U.S. Department of Commerce. You shall indemnify Actuate from any costs and losses arising from or related to Your non-compliance with this section.
- 7.12 **Audit.** Upon reasonable notice, You shall permit Actuate or a designated third-party to audit Your books, records and computer systems to ensure that You are using all Software and support services in accordance with this SLA, including without limitation, an audit of the number of CPUs, Servers, Named Users, Named Developers and virtual users accessing or otherwise using the Software. You agree to maintain sufficient records so that Actuate can successfully perform the audit contemplated by this Section. Upon request by Actuate, You shall promptly furnish Actuate with a written certification by an officer of Your company verifying that the Software has always been used in accordance with this SLA. The certification shall include the locations, platforms, models, number of CPU's, Servers, Named Users, Named Developers and virtual users accessing the Software and the number of Instances and make and models and serial numbers of the hardware on which the Software has ever been installed, as well as all other information reasonably requested by Actuate.
- 7.13 **Publicity.** You agree that Actuate can publicly identify You as an Actuate customer. You agree that Actuate can use, among other things, Your name and descriptions of Your use or intended use of the Software in Actuate press releases, web sites, and marketing materials, and that Actuate does not need Your prior approval to publish such

materials.

- 7.14 **U.S. Government Rights.** The Software, support services and related Documentation 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 or 48 C.F.R. §227.7202, as applicable. Consistent with 48 C.F.R. §12.212 or 48 C.F.R. §227.7202-1 through 227.7202-4, as applicable, the Commercial Computer Software and Commercial Computer Software Documentation are being licensed to U.S. Government end users (a) only as Commercial Items and (b) with only those rights as are granted to all other end users pursuant to the terms and conditions herein. Unpublished-rights reserved under the copyright laws of the United States. Use of the Software, support services and related Documentation by the U.S. Government is further restricted according to the terms of this SLA and any amendment hereto.
- 7.15 **Written Form.** Any notices or other communications under or in connection with this SLA shall be ineffective unless the following form requirements are observed: (a) Actuate may provide notices to You in writing at any address listed on an ordering document or invoice from You; and (b) You may provide notices to Actuate in writing to its General Counsel at Actuate's then current corporate headquarters, as listed at <http://www.actuate.com> or its successor site.
- 7.16 **Governing Language.** The English version of this SLA is legally binding and shall prevail in case of any inconsistencies with any translated versions which are provided for convenience only.

8. SPECIAL TERMS FOR DIRECT CUSTOMERS ONLY.

This Section shall apply only You acquire Software or support services directly from Actuate. Software or support services acquired through resellers or distributors are not subject to the following terms.

- 8.1 **Shipping and Payment Terms.** Actuate shall provide the Software to You (a) electronically by making such Software available for You to download or (b) physically FOB point of shipment for shipments to destinations within the United States or FCA point of shipment for shipments to all other destinations. Upon shipment of the Software, Actuate will invoice You, if applicable, for such Software and respective support services. You will remit payment for invoices within thirty (30) days following receipt thereof. All fees will be non-refundable except as otherwise expressly provided herein and no right of set-off exists. Late charges in the amount of one and one half percent (1.5%) per month, or in the maximum amount permitted by applicable law, whichever is less, apply to any amounts that are overdue. You shall reimburse Actuate for all collection costs, including, but not limited to reasonable attorney's fees. If You request any third party service to facilitate, administer or be involved in any way with the processing of payments, You shall reimburse Actuate for all costs incurred by Actuate as a result of such third party's involvement. Neither the license to use the Software granted in this SLA nor the obligation to pay the license fees set forth above are dependent upon the performance by any party of any support services or the supply of any other software program or product.
- 8.2 **Taxes.** You shall be responsible for and pay all customs duties, sales, use, and excise taxes, VAT, and any like charges imposed by any federal, state, or local government for any Software or support services provided hereunder, excluding only U.S. taxes based solely on Actuate's net income. When Actuate has the legal obligation to collect such taxes, the appropriate amount shall be due upon invoice to You unless You provide Actuate with a valid tax exemption certificate authorized by the appropriate taxing authority. You shall hold Actuate harmless from all claims and liability arising from Your failure to pay any such taxes, duties or charges.

Schedule 1 to Actuate SLA

SOFTWARE LICENSE PARAMETERS

LICENSING METHOD

1. EVALUATION LICENSE.

If Actuate, or a reseller or distributor with Actuate's authority, notifies You in writing that You have received an Evaluation License to a particular item of Software, then the following license terms and conditions apply to You in addition to all other terms of the SLA:

- 1.1 **Evaluation.** "Evaluation" means that the Software will be used by You for analysis in relation to securing a future license to it from Actuate.
- 1.2 **Evaluation Parameters.** Evaluation Licenses are licenses that expire at the end of an evaluation term. Evaluation Licenses are to be used for internal, evaluation purposes only, and will be limited to either CPUs, Named Users, Named Developers, or any other conditions as specified by Actuate. Evaluation Licenses may not be used for migrating to a new operating system, a new hardware platform, or a new version of Software or software. For Evaluation Licenses, the license granted in this SLA will terminate (a) as of the expiration of the evaluation term provided by Actuate, or the earlier of (b) upon three (3) days written notice from Actuate, or (c) forty-five (45) days after Your acceptance of this SLA. Evaluation Licenses may not be renewed or extended without written authorization from Actuate.

2. BUNDLE LICENSE.

If You acquire the Software from a third-party and the Software is distributed for intended use with a third-party software application or embedded or bundled with a third-party software application, then You may only use the Software in combination and contemporaneously with that third-party software application and solely with data generated by such third-party software application and You may not use the Software in a standalone fashion, on a different computer, or with software or data not incorporated into or generated by the third-party software application.

3. NAMED USER LICENSE.

If Actuate, or a reseller or distributor with Actuate's authority, notifies You in writing that You have received a Named User License to a particular item of Software, or if any such writing indicates a maximum number of users, then the following license terms and conditions apply to You in addition to all other terms of the SLA:

- 3.1 **Named User.** A "Named User" means (a) an individual person, or (b) a user ID in the Software or in an external system, with Access to the Software. "Access" means: (x) being authorized to run, use, or execute or actually running, using, or executing the Software; or (y) being an intended recipient of content generated by the Software whether online, via e-mail, or in printed form (e.g., a monthly financial statement).

Named User Software is licensed on a per Named User, per Software component, per Instance, per Deployment Type basis.

"Instance" means each copy or implementation of the Software installed on a Server or clustered group of Servers.

Thus, each individual Named User, must have a separate Named User license for each Instance of a Software component they Access for each Deployment Type deployed. Actuate Multi-Tenant Option requires a separate Named User License for each "Encyclopedia Volume" (i.e., application) that a Named User Accesses.

- 3.2 **Access by Named Users.** You may not grant Access to the Software to any Named User unless You have allocated a lawfully obtained Named User license to such Named User and documented such allocation. You may not allocate Named User licenses to functions or shared positions. If You have allocated a Named User license to a particular employee or independent contractor who then leaves Your organization or moves to a position in which such individual will no longer use the Software, You may reallocate the Named User license to another Named User provided that (a) the previously allocated Named User no longer has Access to the Software and (b) You do not reallocate Named User licenses more than once every twelve months.
- 3.3 **Maximum Number of Named Users.** The number of Named Users shall be one (1) unless Actuate, or a reseller or

distributor with Actuate's authority, has agreed in writing to a greater number.

4. NAMED DEVELOPER LICENSE.

If Actuate, or a reseller or distributor with Actuate's authority, notifies You in writing that You have received a Named Developer License to a particular item of Software, or if any such writing indicates a maximum number of developers to such Software, then the following license terms and conditions apply to You in addition to all other terms of the SLA:

- 4.1 **Named Developer.** A "Named Developer" means (a) an individual person, or (b) a user ID in the Software or in an external system, with Access to the Software that is licensed for Development purposes.

Named Developer Software is allocated on a per Named Developer, per software component, per Instance basis. Thus, each Named Developer must have a separate Named Developer License for each Software component on each Instance they Access licensed for Development.

- 4.2 **Access by Named Developers.** You may not grant Access to Named Developer Software to any Named Developer unless You have allocated a obtained Named Developer Software license to such Named Developer and have documented such allocation. You may not allocate Named Developer Software licenses to functions or shared positions. If You have allocated a Named Developer Software license to a particular Named Developer who then leaves Your organization or moves to a position in which such Named Developer will no longer use the Named Developer Software license, You may reallocate the Named Developer Software license to another Named Developer provided that (a) the previously allocated Named Developer no longer has Access to the Software and (b) You do not reallocate Named Developer Software licenses more than once every twelve months.

- 4.3 **Identification of Named Developers.** In addition to the information required by Section 4.2 of this Schedule 1, You must: (a) identify the number of individual Named Developers using the Named Developer Software, and (b) identify each computer that each such Named Developer will use for Development.

5. CPU CORE BASED LICENSING.

If Actuate, or a reseller or distributor with Actuate's authority, notifies You in writing that You have received a CPU Core License to a particular item of Software, or if any such writing indicates a maximum number of CPUs, then the following license terms and conditions apply to You in addition to all other terms of the SLA:

- 5.1 **CPU.** A "CPU" means a single core (if applicable) of each processor, whether physical or virtual, on each computer. For products that are one hundred percent (100%) Java-based only, the number of CPU cores shall be the greater of (a) the number of CPU cores as reported by the JVM (*i.e.*, Java Virtual Machine) or (b) the number of CPU cores as defined in the preceding sentence.

CPU Core Software is licensed on a per CPU core, per software component, per Instance, per Deployment Type basis. Thus, each individual CPU core, whether physical or virtual, must have a separate CPU Core license for each Instance of each Software component installed for each Deployment Type.

- 5.2 **Software Configuration.** You shall configure the Software so that such Software Instance can only be executed or run on the number of licensed CPU Cores. The licensed number of CPU Cores is one (1) unless Actuate, or a reseller or distributor with Actuate's authority, specifies a greater number in writing. Every CPU Core on the reporting server environment including, but not limited to, remote clustered nodes that has the ability to execute or run Software, must be separately licensed.

6. SERVER LICENSE.

If Actuate, or a reseller or distributor with Actuate's authority, notifies You in writing that You have received a Server License to a particular item of Software, then the following license terms and conditions apply to You in addition to all other terms of the SLA:

- 6.1 **Server.** A "Server" means a computer capable of running software designed for use on a server. Each blade, hardware partition, or virtual partition is considered a separate Server for which a separate Server Software License is required.

- 6.2 **Server Configuration.** Server Software allows You unlimited use of Server Software installed on one (1) CPU on one (1) Server unless Actuate, or a reseller or distributor with Actuate's authority, specifies a greater number in writing.

7. PLATFORM LICENSE.

If Actuate, or a reseller or distributor with Actuate's authority, notifies You in writing that You have received a Platform License to a particular item of Software, then the following license terms and conditions apply to You in addition to all other terms of the SLA:

- 7.1 **Platform.** A "Platform" means the combination of a Server or CPUs and a certain number of Named Users.
- 7.2 **Platform Configuration.** Platform License Software may only be used: (a) on the number of CPUs and (b) by the number of Named Users specified. Use of Software licensed under a Platform License is also subject to the terms applicable for Named User Licenses and CPU Licenses. You shall configure the Software so that such Software can only execute and run the number of CPUs that are licensed. The licensed number of CPUs and Named Users is one (1), unless Actuate, or a reseller or distributor with Actuate's authority, specifies a greater number in writing.

8. WEB SERVER BASED LICENSE.

If Actuate, or a reseller or distributor with Actuate's authority, notifies You in writing that You have received a Web Server License to a particular item of Software, then the following license terms and conditions apply to You in addition to all other terms of the SLA:

- 8.1 **Web Server.** A "Web Server" means a computer or computer program responsible for accepting HTTP requests from client applications (e.g., a web browser running on a computer or phone) and serving them HTTP responses along with optional data contents, which usually are web pages such as HTML documents and linked objects (i.e., images, etc.).
- 8.2 **Web Server Configuration.** You shall configure the Software to allow one (1) Named User to Access a single Web Server. Use of Software licensed under a Web Server License is also subject to the terms applicable for Named User Licenses. Access of each additional Web Server by a separate Named User requires a separate Web Server License unless Actuate or a reseller or distributor with Actuate's authority has agreed in writing to a greater number.

9. REPOSITORY RESTRICTED BASED LICENSE.

If Actuate, or a reseller or distributor with Actuate's authority, notifies You in writing that You have received a Repository Restricted License to a particular item of Software, then the following license terms and conditions apply to You in addition to all other terms of the SLA:

- 9.1 **Repository.** A "Repository" means a distinguishable collection of records or information stored in a computer in a systematic (i.e., structured) way so that the Software can query it for its operation.
- 9.2 **Repository Configuration.** You shall configure the Software so that You are only allowed to save data to and report from one (1) Instance of one (1) Repository unless Actuate, or a reseller or distributor with Actuate's authority, has agreed in writing to a greater number. Access to each additional Instance of a Repository requires a separate Repository License.

10. READ ONLY LICENSE.

If Actuate, or a reseller or distributor with Actuate authority, notifies You in writing that You have received a Read Only License to a particular item of Software, then the following license terms and conditions apply to You in addition to all the other terms of the SLA:

- 10.1 **Read Only.** "Read Only" means the right to use the Software to receive content without any other rights.
- 10.2 **Read Only Configuration.** You shall allow one (1) individual to use the Software for Read Only Access. Use of Software licensed under a Read Only License is also subject to the terms applicable for Named User Licenses. Access by a separate Named User requires a separate Read Only License unless Actuate, or a reseller or distributor with Actuate's authority, has agreed in writing to a greater number.

11. SUBSCRIPTION LICENSE.

If Actuate, or a reseller or distributor with Actuate's authority, notifies You in writing that You have received a Subscription License to a particular item of Software, or if any such writing indicates a limited license term (except for Evaluation Licenses), then the following license terms and conditions apply to You in addition to all other terms of the SLA:

- 11.1 **Subscription.** "Subscription" means that You are granted the right to Access the Software for a specific period of time only. No perpetual licenses are implied or granted.

- 11.2 **Subscription Parameters.** Subscription Licenses are licenses which expire at the end of the subscription term. Subscription Licenses will be limited to either CPUs, Named Users, Named Developers, or any other conditions as specified by Actuate. For Subscription Licenses, the license granted in this SLA will terminate (a) as of the expiration of the subscription term provided by Actuate, or a reseller or distributor with Actuate's authority, or (b) twelve (12) months after Your acceptance of this SLA, whichever comes first.

12. CLIENT SOFTWARE LICENSE.

If Actuate, or a reseller or distributor with Actuate's authority, notifies You in writing that You have received a Client Software License to a particular item of Software, then the following license terms and conditions apply to You in addition to all other terms of the SLA:

- 12.1 **Client Software.** "Client Software" means Software that resides in a Named User's desktop or laptop computer, or mobile device, and not on a Server.
- 12.2 **Client Software Parameters.** "Client Software" products (e.g., e.Report Designer Professional, BIRT Spreadsheet Designer, etc.) are licensed for installation on one (1) client machine and for use by a single Named User. Client Software products may not be used to provide reports or information content to any other individual unless such individual receives such reports and/or information content via an appropriately licensed Server. Actuate Client Software products may not be used as, without limitation, a multi-user server platform to run, distribute and/or store reports.

13. UNLIMITED-INSTANCE LICENSE.

If Actuate, or a reseller or distributor with Actuate's authority, notifies You in writing that You have received an Unlimited-Instance License to a particular item of Software, then the following license terms and conditions apply to You in addition to all other terms of the SLA:

- 13.1 **13.1 Unlimited-Instance Parameters.** An Unlimited-Instance License allows You to run unlimited Instances of the Software subject to the Unlimited-Instance license on the number of licensed CPUs or Servers. An Unlimited-Instance License must be purchased: (a) for all Software on every CPU on each Server or cluster of Servers on which Software subject to the Unlimited-Instance License is installed, and (b) for all Software related to a particular application.

14. WORK UNIT LICENSE.

If Actuate, or a reseller or distributor with Actuate's authority, notifies You in writing that You have received a Work Unit License to a particular item of Software, then the following license terms and conditions apply to You in addition to all the other terms of the SLA:

- 14.1 **Work Unit.** "Work Unit" means a unit of work performed by the Software.
- 14.2 **Work Unit Configuration.** Work Unit Software is licensed on a per Work Unit, per software component, per Instance, per Deployment Type basis. Thus, each individual Work Unit must have a separate license for each Instance of each Software component installed for each Deployment Type. You shall configure the Software so that each Instance of the Software can only execute or run the number of licensed Work Units. The licensed number of Work Units is one (1) unless Actuate, or a reseller or distributor with Actuate's authority, specifies a greater number in writing.

15. CONCURRENT SESSIONS LICENSE.

"Session" means a (i) person, (ii) Server or (iii) computing device that (a) requests the execution of, or receives for execution, a set of commands, procedures, or applications from the Software or that is otherwise managed by the Software, or (b) who is Accessing the Software, be it directly or indirectly (e.g., via a multiplexing program, device, or application server, or by any other means). "Concurrent Sessions" means the peak/highest number of Sessions that exists at any point in time.

Concurrent Session Software is licensed on a per Concurrent Session, per Software component, per Instance, per Deployment Type basis. Thus, Licensee must have a separate license for each Concurrent Session, Instance, Software component, and Deployment Type. Licensee shall configure the Software so that each Instance of the Software can only execute or run the number of licensed Concurrent Sessions.

16. MIPS LICENSE.

"MIPS" means millions of instructions per second. The MIPS capacity of a computer shall be calculated by reference to the pertinent manufacturer's published schedules. In the event a special purpose processor, designed to perform one (1) or more dedicated functions, is being used as a general purpose processor, Actuate shall treat such processor as a general purpose processor in order to calculate MIPS capacity.

MIPS Software is licensed on a per MIPS, per Software component, per Instance, per Deployment Type basis. Thus, MIPS Software must be separately licensed for each Instance, Software component, and Deployment Type. Licensee shall configure the Software so that each Instance of the Software can only execute or run the number of licensed MIPS.

17. BIRT ANALYTICS LICENSE.

If Actuate, or a reseller or distributor with Actuate's authority, notifies You in writing that You have received a BIRT Analytics License to a particular item of Software, then the following license terms and conditions apply to You in addition to all other terms of the SLA:

BIRT Analytics Base, BIRT Analytics Data Row and BIRT Analytics Named User Software are licensed for use only together in combination and they may not be used separately.

BIRT Analytics Base Software is licensed on a per Instance, per Deployment Type basis. You shall configure the Software so that such Software can only execute and run the number of Instances and Deployment Types that are licensed. The licensed number of Instances is one (1), unless Actuate, or a reseller or distributor with Actuate's authority, specifies a greater number in writing. Thus, You must have a separate license for each Instance of BIRT Analytics Base Software installed for each Deployment Type.

BIRT Analytics Data Row Software is licensed on a per Data Row, per Instance, per Deployment Type basis. You shall configure the Software so that such Software can only (a) process, transfer or store the number of Data Rows that are licensed and (b) only execute and run the number of Instances that are licensed. The licensed number of Instances and Data Rows is one (1), unless Actuate, or a reseller or distributor with Actuate's authority, specifies a greater number in writing. Thus, You must have a separate license for each Instance of BIRT Analytics Data Row Software installed for each Deployment Type.

BIRT Analytics Named User Software is licensed on a Named User basis.

18. CLOUD LICENSE

In return for (a) payment of the initial annual Cloud License fee (such fee to be invoiced by Actuate in advance and to be paid by You within 30 days of the date of Actuate's invoice), (b) Your continued compliance with all of Your obligations under this SLA, and (c) payment of applicable upgrade license fees and Maintenance Services fees pursuant to this SLA, if any, Actuate grants You the following additional license right to the Software ("Cloud License").

During the twelve (12) month period starting on the date of order, You may use the Software subject to the Cloud License ("Cloud License Software") in "cloud" hardware environments, or other environments where the underlying Server hardware changes, so long as the hostname for such Server hardware remains static. Notwithstanding the foregoing, should the hostname for such Server hardware change, You shall request a new license key from Actuate, shall immediately and permanently stop all use of and destroy the old key, and certify to Actuate in writing that the old key has been destroyed. For the sake of clarity, the Cloud License only allows You to run one (1) Instance of the Cloud License Software within the licensed parameters at any time.

You shall provide identifying information for the Server hardware installed with the Cloud License Software at the beginning of the Cloud License term.

You and Actuate may elect to renew the Cloud License annually. You may cancel the Cloud License at the end of an annual term by providing written notice to Actuate at least sixty (60) days prior to the end of such term. Upon termination of the Cloud License, You must provide Actuate with the identifying information for the Server hardware to which You desire to fix the Cloud License Software.

Upon termination of the Cloud license, You may be required to pay a license upgrade fee and Maintenance Services fees for that Server hardware as compared to the Server hardware on which the Cloud License Software was installed at the start of the initial term of the Cloud License, if applicable and in accordance with the SLA. There will be no license upgrade fee and corresponding Maintenance Services fee owed upon termination of the Cloud License if the Server hardware on which the Cloud License Software is installed at the end of the Cloud License has a SPECInt rating that is less than or equal to the SPECInt rating for the Server hardware on which such software was installed prior to the start of the Cloud License. You will be obligated to pay applicable license upgrade fees and Maintenance Services fees upon commencement or termination of any subsequent Cloud License reinstatement along with the applicable annual Cloud License Fees in accordance with the terms of this SLA.

19. NO COST SOFTWARE.

Only the following Actuate software products may be licensed as "No Cost Software". Provided that No Cost Software is delivered electronically (*i.e.*, there will be no printed Documentation, materials or physical media, to deliver to You), Actuate agrees not to charge a license fee for such Software. No Cost Software products are:

- Actuate BIRT Spreadsheet Designer;
- Actuate BIRT Spreadsheet API; and
- Actuate BIRT Information Designer.

Actuate assumes no obligation to continue to offer these products as No Cost Software or otherwise or to update or maintain them. Please refer to Sections 1.3, 3, 4.3 and 6.1 of the SLA. Your license to No Cost Software does not include any right to distribute or sublicense, as further specified therein.

DEPLOYMENT TYPE

1. DEVELOPMENT.

If Actuate, or a reseller or distributor with Actuate's authority, notifies You in writing that You have received a Development License to a particular item of Software, then the following license terms and conditions apply to You in addition to all other terms of the SLA:

- 1.1 **Development.** "Development" means the Software may be used for (a) design, implementation, customization, integration and developer testing within a single-user development environment, or (b) for single-user testing activities, (*e.g.*, using the Software to verify that new or modified installations, designs, code, customizations, integration, *etc.*, behave and perform correctly in single-user environments). Examples of Development activities include functional testing, black-box testing and white-box testing.
- 1.2 **Development Parameters.** Software licensed for Development may not be used for any other Deployment activity such as Test, Production, or Hot/Warm Back-up.

2. TEST.

If Actuate, or a reseller or distributor with Actuate's authority, notifies You in writing that You have received a Test License to a particular item of Software, then the following license terms and conditions apply to You in addition to all other terms of the SLA:

- 2.1 **Test.** "Test" means that the Software may be used to verify that Software installations behave and perform correctly in multiple user environments, regardless of whether the users are real or simulated. Examples of Test activities include user acceptance testing (UAT), staging, load testing, and performance testing.
- 2.2 **Test Parameters.** Every simulated user in a multi-user environment requires a separate Test Software license.

3. PRODUCTION.

If Actuate, or a reseller or distributor with Actuate's authority, notifies You in writing that You have received a Production License to a particular item of Software, then the following license terms and conditions apply to You in addition to all other terms of the SLA:

- 3.1 **Production.** "Production" means the Software may be used in support of live business operations.

4. COLD BACK-UP.

If Actuate, or a reseller or distributor with Actuate's authority, notifies You in writing that You have received a Cold Back-Up License to a particular item of Software, then the following license terms and conditions apply to You in addition to all other terms of the SLA:

- 4.1 **Cold Back-Up.** "Cold Back-Up" means that You may periodically make restorable snapshots of the Production server as a back-up for Your Production Server, however the Software is not running. If the Production Server goes down, it will take some period of time and manual intervention to bring the Cold Back-Up Software into Production mode.

5. HOT/WARM BACK-UP.

If Actuate, or a reseller or distributor with Actuate's authority, notifies You in writing that You have received a Hot/Warm Back-Up

License to a particular item of Software, then the following license terms and conditions apply to You in addition to all other terms of the SLA:

- 5.1 **Hot/Warm Back-Up.** "Hot/Warm Back-Up" means that the Software is running but only as a back-up for the Production Software or there is automated failover when the Production Server goes down. You may use Hot/Warm Back-Up Software only temporarily in Production for the time period in which a Production Server is down.

6. DISASTER RECOVERY.

If Actuate, or a reseller or distributor with Actuate's authority, notifies You in writing that You have received a Disaster Recovery License to a particular item of Software, then the following license terms and conditions apply to You in addition to all other terms of the SLA:

- 6.1 **Disaster Recovery.** "Disaster Recovery" means that the Software does not run due to a natural disaster.
- 6.2 **Disaster Recovery Parameters.** You may install the Software at a remote location from a Production Server and use Disaster Recovery Software only temporarily for the time period in which a Production Server is down due to a natural disaster such as an earthquake, fire or power failure.

7. ARCHIVAL USE.

If Actuate, or a reseller or distributor with Actuate's authority, notifies You in writing that You have received an Archival Use License to a particular item of Software, then the following license terms and conditions apply to You in addition to all other terms of the SLA:

- 7.1 **Archival Use.** "Archival Use" means the Software is not installed.
- 7.2 **Archival Use Parameters.** You are authorized to store Archival Use Software remotely for historical retention purposes only. Archival Use never includes use of the Software for Cold Back-up or Hot/Warm Back-up.

8. MIGRATION.

If Actuate, or a reseller or distributor with Actuate's authority, notifies You in writing that You have received a Migration License to a particular item of Software, then the following license terms and conditions apply to You in addition to all other terms of the SLA:

- 8.1 **Migration.** "Migration" means that the Software is to be used temporarily and only for the limited purpose of Upgrading to a new version of the Software on the same hardware.
- 8.2 **Migration Parameters.** Migration Software may not be used for, without limitation, Production or Development purposes. Migration Software rights terminate on the earlier of (a) completion of the underlying Software migration for which the Migration Software is intended or (b) the term of the Migration License. You agree to certify in writing to Actuate within ten (10) days following the expiration or termination of the Migration License that You have ceased all use of the Migration Software and that the underlying license keys for such Software have been destroyed or returned to Actuate.

E-mail or call us if You have any questions:

If You are unsure about the Software License Parameters that apply to You, or if You are interested in changing either the Licensing Method or the Deployment Type of the Software, contact Actuate in accordance with the procedure set forth in Section 7.15 of the SLA.

