

Actual Software Inc.
End User License Agreement (“EULA”)

Last updated September 9, 2015. Replaces the August 20, 2015 version and all prior versions in their entirety.

These terms govern your use of our website or services and software that we include as part of the Services (collectively, “**Services**”), including any applications, scripts, instruction sets, and any related documentation (collectively “**Software**”).

By using the Services or Software, you agree to the terms and conditions of this license agreement (“EULA”) with Actual Software Inc. (“ACTUAL”).

If you have entered into another agreement with us concerning specific Services or Software, then the terms of that agreement controls where it conflicts with these terms.

1. How this Agreement Works

1.1 Choice of Law. The Services and Software are governed by the law of Minnesota, U.S.A. You may have additional rights under the law. We do not seek to limit those rights to the extent prohibited by law.

1.2 Eligibility. You may only use the Services or Software if you are (a) over 13 years old and (b) allowed by law to enter into a binding contract.

1.3 Privacy. The Privacy Policy at <http://www.actualsoftware.com/privacy.html> governs any personal information you provide to us. By using the Services or Software you agree to the terms of the Privacy Policy.

1.4 Availability. Web pages describing the Services are accessible worldwide but this does not mean all Services or service features are available in your country, or that user-generated content available via the Services is legal in your country. We may block access to certain Services (or certain service features or content) in certain countries. It is your responsibility to make sure your use of the Services is legal where you use them. Services are only available in English

1.5 **New Terms**

New Terms may be added and updated from time to time. We will publish the new terms on our website with an updated date. We will not attempt to notify you of updates even if we have your contact information. Your continued use of the Services or Software constitutes your agreement to the updated terms. You are responsible for monitoring the changes and updates to the terms.

1.6 **Modification.** We may modify, update, or discontinue the Services, Software (including any of their portions or features) at any time without liability to you or anyone else. However, we will make reasonable effort to notify you before we discontinue the Services. If we discontinue a Service in its entirety, we will give you one year to use any remaining Virtual Goods after which any unused Virtual Goods will expire.

1.7 **Additional Terms**

Some Services or Software are also subject to the additional terms available separately (the “**Additional Terms**”). The Additional Terms will be found in the same location as these terms. We may modify Additional Terms at any time. You are responsible for monitoring for changes to or the addition of Addition Terms.

1.8 **Order of Precedence.**

If there is any conflict between the terms in this Agreement and the Additional Terms, then the Additional Terms govern in relation to that Service or Software.

2. **Use of Service**

2.1 **License.** Subject to your compliance with these terms and the law, you may access and use the Services. The Software or Services are being licensed to you and you hereby acknowledge that no title or ownership in the Software or Services is being transferred or assigned and this EULA is not to be construed as a sale of any rights in the Software.

2.2 **Actual Software Intellectual Property.** We (and our licensors) remain the sole owner of all right, title, and interest in the Services and Software. We reserve all rights not granted under these terms.

2.6 **Other License Types**

Pre-release Version. We may designate the Software or Services as a pre-release or beta version (“Pre-release Version”). Pre-release Version does not represent the final product and will contain bugs that may cause system or other failure and data loss. We may choose not to commercially release the Pre-release Version. You must promptly cease using the Pre-release Version and destroy all copies of Pre-release Version if we request you to do so, or if we release a commercial version of the Pre-release Version. Any separate agreement we enter into with you governing the Pre-release Version will supersede the provisions on Pre-Release Version set out in this section.

3. Your Content

3.1 Ownership. You retain all rights and ownership of your content. We do not claim any ownership rights to your content.

3.2 Licenses to Your Content in Order to Operate the Services. We require certain licenses from you to your content to operate and enable the Services. When you upload content to the Services, you grant us a non-exclusive, worldwide, royalty-free, sub-licensable, and transferrable license to use, reproduce, modify (so as to better transmit your content, for example), and translate the content as needed in response to user driven actions. **This license is only for the purpose of operating or improving the Services or Software.**

3.3 Our Access. We will not access, view, or listen to any of your content, except as reasonably necessary to perform the Services. Actions reasonably necessary to perform the Services may include (but are not limited to) (a) responding to support requests; (b) detecting, preventing, or otherwise addressing fraud, security, unlawful acts, or technical issues; and (c) enforcing these terms.

3.6 Feedback. You have no obligation to provide us with ideas, suggestions, or proposals (“**Feedback**”). However, if you submit Feedback to us, then you grant us a non-exclusive, worldwide, royalty-free license that is sub-licensable and transferrable, to make, use, sell, have made, offer to sell, import, reproduce, publicly display, distribute, modify, publicly perform the Feedback and generally profit from the Feedback.

4. Account Information

You are responsible for all activity that occurs via your account. Please notify ACTUAL immediately if you become aware of any unauthorized use of your account.

5. User Conduct

5.1 **Misuse.** You must not misuse the Services, Software, or content that we provide to you as part of the Services. For example, you must not:

(a) Copy, reverse engineer, decompile, disassemble, host derivative works based on or otherwise modify, host, stream, sublicense, or resell the Services, Software, or content;

(b) Remove, obscure or modify any copyright, trademark or other proprietary rights notices, marks or labels contained on or within the Software or Services;

(d) Access or attempt to access the Services by any means other than the interface we provided or authorized;

(e) Circumvent any access or use restrictions put into place to prevent certain uses of the Services;

(f) Upload content that violates anyone's Intellectual Property Right ("**Intellectual Property Rights**" means copyright, trademark, trade dress, patent, trade secret, unfair competition, right of privacy, right of publicity, and any other proprietary rights.);

(g) Upload content that is unlawful, harmful, threatening, abusive, tortuous, defamatory, libelous, vulgar, lewd, profane, invasive of another's privacy, or hateful;

(h) Impersonate any person or entity, or falsely state or otherwise misrepresent your affiliation with a person or entity;

(i) Attempt to disable, impair, or destroy the Services, software, or hardware;

(j) Disrupt, interfere with, or inhibit any other user from using the Services (such as stalking, intimidating, or harassing others, inciting others to commit violence, or harming minors in any way) or engage in any activity that could result in a Denial of Service attack.

(k) Use any data mining or similar data gathering and extraction methods in connection with the Services; or

(l) Violate applicable law.

(m) The Services and Software may include measures to control access to the Service, to prevent unauthorized copies, or otherwise attempt to prevent anyone from exceeding the limited rights and licenses granted under this EULA. Only Services or Software subject to a valid license can be used to access online resources, upload data, and download updates and patches. You may not interfere with such access control measures or attempt to disable or circumvent such security features. If you disable or otherwise tamper with the technical protection measures, the Services will not function properly and we may terminate your license without notice.

(n) The Software will require an internet connection to access the Services or its internet-based features, authenticate the Software, or perform other functions. In order for certain features of the Software and Services to operate properly, you may be required to have and maintain (a) an adequate internet connection and/or (b) a valid and active account with an internet service provider. By using the Software or Services, you acknowledge and agree that third party data transfer fees may apply depending on your data plan. Please consult your carrier or internet service provider for further information. If you do not maintain such accounts, then the Software or Services or certain features of the Software or Services may not operate or may cease to function properly, either in whole or in part.

6. Fees and Payment.

6.1 Payments and Purchases of Virtual Goods

Actual Software may license to you certain virtual goods (“Virtual Goods”) to be used within Services. Unless otherwise specified, these Virtual Goods shall be deemed an integral part of the Software. These Virtual Goods may be licensed both for a fee using “real world money” and without any separate fee, as applicable from time to time.

Any and all Virtual Goods are licensed to you on limited, personal, non-transferable, non-sub-licensable and revocable basis.

Please note that any payment for licenses for Virtual Goods or redemption of third party virtual currency is always FINAL AND NON-REFUNDABLE.

Actual Software may manage, regulate, control, revalue, modify or eliminate Virtual Goods at any time, with or without notice. Actual Software shall have no liability to you or any third party in the event that Actual Software exercises any such rights.

YOU ACKNOWLEDGE THAT ACTUAL SOFTWARE IS NOT REQUIRED TO PROVIDE A REFUND FOR VIRTUAL GOODS FOR ANY REASON, AND THAT YOU WILL NOT RECEIVE MONEY OR OTHER COMPENSATION FOR UNUSED VIRTUAL GOODS, WHETHER YOUR LOSS OF LICENSE UNDER THIS EULA WAS VOLUNTARY OR INVOLUNTARY.

6.2 Taxes and Third-Party Fees. You must pay any applicable taxes, and any applicable third-party fee (including, for example telephone toll charges, mobile carrier fees, internet service provide charges, data plan charges, credit card fees, foreign exchange fees) incurred in accessing our Software or Services. We are not responsible for these fees. We may take steps to collect the fees you owe us. You are responsible for all related collection costs and expenses.

7. Your Warranty and Indemnification Obligations.

7.1 Indemnification. You will indemnify us and our subsidiaries, affiliates, officers, agents, employees, partners, and licensors from any claim, demand, loss, or damages, including reasonable attorneys' fees and expenses, arising out of or related to your content, your use of the Services or Software, or your violation of these terms.

8. Disclaimers of Warranties

8.1 Unless stated in the Additional Terms, the Services and Software are provided "AS-IS." To the maximum extent permitted by law, we disclaim all warranties express or implied, including the implied warranties of non-infringement, merchantability, and fitness for a particular purpose. We make no commitments about the content within the Services. We further disclaim any warranty that (a) the Services or Software will meet your requirements or will be constantly available, uninterrupted, timely, secure, or error-free; (b) the results that may be obtained from the use of the Services or Software will be effective,

accurate, or reliable; (c) the quality of the Services or Software will meet your expectations; or that (d) any errors or defects in the Services or Software will be corrected.

8.2 We specifically disclaim any liability for any actions resulting from your use of any Services or Software. You may use and access the Services or Software at your own discretion and risk, and you are solely responsible for any damage to your computer system or loss of data that results from the use and access of any Service or Software.

9. Limitation of Liability.

9.1 Unless stated in the Additional Terms, we are not liable to you or anyone else for: (a) any loss of use, data, goodwill, or profits, whether or not foreseeable; and (b) any special, incidental, indirect, consequential, or punitive damages whatsoever (even if we have been advised of the possibility of these damages), including those (x) resulting from loss of use, data, or profits, whether or not foreseeable, (y) based on any theory of liability, including breach of contract or warranty, negligence or other tortious action, or (z) arising from any other claim arising out of or in connection with your use of or access to the Services or Software. Nothing in these terms limits or excludes our liability for gross negligence, for our (or our employees') intentional misconduct, or for death or personal injury.

9.2 Our total liability in any matter arising out of or related to these terms is limited to US \$1 or the aggregate amount that you paid for access to the Service and Software during the three-month period preceding the event giving rise to the liability, whichever is smaller. This limitation will apply even if we have been advised of the possibility of the liability exceeding the amount and notwithstanding any failure of essential purpose of any limited remedy.

9.3 The limitations and exclusions in this Section 9 apply to the maximum extent permitted by law. You agree we make take any lawful action to enforce this Section 9.

10. Termination

10.1 Termination by You. You may stop using the Services at any time. Termination of your account does not relieve you of any obligation to pay any outstanding fees.

10.2 Termination by Us. We may at any time terminate these terms (and your access to Services or Software) with you if:

- (a) You breach any provision of these terms (or act in a manner that clearly shows you do not intend to, or are unable to, comply with these terms);
- (b) You fail to make the timely payment of fees for the Software or the Services, if any;
- (c) We are required to do so by law (for example, where the provision of the Services or Software to you is, or becomes, unlawful);
- (d) We elect to discontinue the Services or Software, in whole or in part, (such as if it becomes impractical for us to continue offering Services in your region due to change of law); or
- (e) There has been an extended period of inactivity of your account

10.3 Survival. Upon expiration or termination of these terms, any perpetual licenses you have granted, your indemnification obligations, our warranty disclaimers or limitations of liabilities, and dispute resolution provisions stated in these terms will survive. Upon the expiration or termination of the Services, some or all of the Software may cease to operate without prior notice.

11. Investigations

11.1 Disclosure. We may access or disclose information about you, or your use of the Software or Services, (a) when it is required by law (such as when we receive a valid subpoena or search warrant); (b) to respond to your requests for customer service support; or (c) when we, in our discretion, think it is necessary to protect the rights, property, or personal safety of us, our users, or the public.

12. Export Control Laws

The Software, Services, content, and your use of the Software, Services, and content, are subject to U.S. and international laws, restrictions, and regulations

that may govern the import, export, and use of the Software, Services, and content. You agree to comply with all the laws, restrictions, and regulations.

13. Dispute Resolution

13.1 Process. For any concern or dispute you may have, you agree to first try to resolve the dispute informally by contacting us. If a dispute is not resolved within 30 days of submission, you must resolve any claims relating to these terms, the Services, or the Software through final and binding arbitration.

13.2 Rules. JAMS will administrate the arbitration in Ramsey County, Minnesota pursuant to its Comprehensive Arbitration Rules and Procedures. There will be one arbitrator that you and Actual Software both select. The arbitration will be conducted in the English language, but any witness whose native language is not English may give testimony in the witness' native language, with simultaneous translation into English (at the expense of the party presenting the witness). Judgment upon the award rendered may be entered and will be enforceable in any court of competent jurisdiction having jurisdiction over the parties.

13.3 No Class Actions. You may only resolve disputes with us on an individual basis, and may not bring a claim as a plaintiff or a class member in a class, consolidated, or representative action. This includes any and all disputes regarding our privacy policy.

13.4 Injunctive Relief. Notwithstanding the foregoing, in the event of your or others' unauthorized access to or use of the Services or content in violation of these terms you agree that we are entitled to apply for injunctive remedies (or an equivalent type of urgent legal relief) in any jurisdiction.

15. Modification

We may modify these terms or any additional terms that apply to a Service or Software to, for example, reflect changes to the law or changes to our Services or Software. You should look at the terms regularly. We will post notice of modifications to these terms on this page. We may post notice of modified or additional terms in the applicable Service or Software. By continuing to use or access the Services or Software after the revisions come into effect, you agree to be bound by the revised terms.

16. Miscellaneous.

16.1 Notices to Actual Software Inc. You may send the notices to us to at the following address: Actual Software Inc., 180 East Fifth Street, Suite 228, St. Paul MN 55101.

16.2 Notices to You. We may notify you by fax, email, postal mail, postings within the Services, or other legally acceptable means.

16.3 Entire Agreement. These terms, including any Additional Terms and Privacy Policy, constitute the entire agreement between you and us regarding your use of the Services and Software and supersede any prior agreements between you and us relating to the Services.

16.4 Non-Assignment. You may not assign or otherwise transfer these terms or your rights and obligations under these terms, in whole or in part, without our written consent and any such attempt will be void. We may transfer our rights under these terms to a third party without notice.

16.5 Severability. If a particular term is not enforceable, the unenforceability of that term will not affect any other terms.

16.6 No Waiver. Our failure to enforce or exercise any of these terms is not a waiver of that section or of anything else in this EULA.