



## Actian Lead Referral Terms and Conditions

IMPORTANT: PLEASE READ THIS LEAD REFERRAL TERMS AND CONDITIONS (THIS “**AGREEMENT**”) CAREFULLY AND MAINTAIN A COPY FOR YOUR RECORDS. BY COMPLETING THE ACTIAN CORPORATION (“**ACTIAN**”) FORM TO REGISTER A LEAD AT <https://www.actian.com/partners/lead-referral> (THE “**SITE**”) AND CLICKING THE “I AGREE TO THE ACTIAN LEAD REFERRAL TERMS AND CONDITIONS” BUTTON, YOU ACCEPT AND AGREE TO BE BOUND BY THIS AGREEMENT, WHICH MAY BE MODIFIED OR UPDATED BY ACTIAN IN ITS SOLE DISCRETION FROM TIME TO TIME AND SUCH MODIFICATIONS OR UPDATES ARE HEREBY INCORPORATED INTO AND FORM PART OF THIS AGREEMENT. ACTIAN WILL PROVIDE YOU NO LESS THAN THIRTY (30) DAYS WRITTEN NOTIFICATION OF SUCH CHANGES. IF YOU DO NOT AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, THEN YOU MUST NOT CLICK ON THE “I AGREE TO THE ACTIAN LEAD REFERRAL TERMS AND CONDITIONS” BUTTON AND YOU SHALL HAVE NO RIGHTS UNDER THIS AGREEMENT. THIS AGREEMENT IS BETWEEN ACTIAN AND THE LEGAL ENTITY THAT CLICKS ON THE BUTTON, “I AGREE TO THE LEAD REFERRAL TERMS AND CONDITIONS” (“**YOU**”, “**YOUR**”). IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU ARE AN EMPLOYEE OR AGENT OF SUCH COMPANY OR ENTITY AND YOU HAVE THE AUTHORITY TO ENTER INTO THIS AGREEMENT AND LEGALLY BIND SUCH ENTITY, IN WHICH CASE THE TERMS “**YOU**” OR “**YOUR**” WILL REFER TO SUCH ENTITY.

WHEREAS, You desire to sign up as Actian Referral Partner and receive the benefits associated therewith; and Actian desires to authorize and appoint You as a Referral Partner, as applicable, subject to the terms and conditions of this Agreement.

In consideration of the mutual promises set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the parties to this Agreement (each a “**Party**” and together the “**Parties**”) agree as follows:

### 1. GENERAL DEFINITIONS

**1.1. “Products”** means, as applicable, the Software and related Services.

**1.2. “Services”** means Actian’s cloud services offerings (i.e., DataCloud Services and Actian Avalanche), professional services or support and maintenance services provided by Actian or its agent related to the Software.

**1.3. “Software”** shall mean, collectively, Actian’s proprietary software, in object code format, accepted by Actian, in its sole discretion to be eligible for referral by You under this Agreement, and any update, upgrade or later release associated therewith made generally available by Actian in Actian’s sole discretion.

### 2. REFERRAL PARTNER BENEFITS

**2.1. Referral Rights and Limitations.** By submitting the information on potential customer prospects on the Site to Actian, you are agreeing to provide a referral of such prospects to Actian to facilitate sales for Products in accordance with this Agreement (“**Lead Referral**”). You represent and warrant that You are authorized to disclose and submit the name and contact information of the individual

provided in the Lead Referral form on the Site. Each Lead Referral must be submitted through the Lead Referral form on the Site. Your Lead Referral will be reviewed, and an Actian sales representative will notify you of Actian’s decision to accept or reject the lead by writing to you at Your email address that you provide to Actian in Your Lead Referral. You acknowledge and agree that Actian will make reasonable efforts to notify you of Actian’s decision to accept or reject the lead within 48 hours of Your submission of Your Lead Referral. You are eligible to receive a Referral fee on each approved and accepted Lead Referral that results in a sale of licenses to Software or Services by Actian. If You are an existing Partner, then your eligibility for a Referral fee under this Agreement is subject to Actian’s sole discretion, and may superseded by any separate existing agreement(s) You have with Actian where You are already eligible to receive Referral fees, other fees or discounts. Your Lead Referral must be for new business only (e.g., a Lead Referral may not be for any renewal of Software licenses previously granted by Actian or for Services or for any renewal of licenses for Software or Services that was included in a prior Lead Referral or for an expansion of Software or Services for

an existing account). You acknowledge and agree that Actian or a third party may already be involved in a given opportunity that is the subject of Your Lead Referral. You acknowledge and agree that (i) Actian has the right to accept or refuse any Lead Referral or customer order, in whole or in part, and (ii) that an accepted Lead Referral does not constitute an exclusive arrangement or guarantee that an order will not be filled by another Actian channel partner or contract party, in which case You shall not have the opportunity to receive compensation. The parties hereby waive any claims arising from the fact of termination or expiration of the Agreement according to their terms or expiration of a Lead Referral (including without limitation claims for expected commission or profit or for any investments, expenditures, or commitments made in connection with the Referral program, and, to the extent permitted by law, any rights to indemnity or termination payments under any applicable law). Subject to this Agreement, You shall be responsible for paying any applicable taxes on referral fees. You may contact Actian at [partners@actian.com](mailto:partners@actian.com) with any questions or concerns regarding the Lead Referral.

**2.2. Restrictions; No Transfer of Ownership.** Actian reserves all rights and grants You no licenses of any kind hereunder, whether by implication, estoppel, or otherwise. You acquire no ownership rights in or title to the Products. The Software is licensed and not sold. No use of the terms “sell” or “resell” in or in connection with this Agreement shall be deemed to imply otherwise. Actian and its licensors retain all ownership rights in and title to the Products and Actian’s trademarks, all copies thereof, and all intellectual property rights in or relating thereto (including but not limited to patents, copyrights trademarks, trade names, trade secrets). You shall not at any time, during or after the Parties’ relationship, assert or claim any interest in, or assert or do anything that may adversely affect Actian’s ownership of, or the validity of, the intellectual property and proprietary rights of Actian in or relating to the Products or any portion thereof, or any of the Actian logo, trademark, trade name, service mark, and other proprietary designations of Actian as listed in Actian’s Trademark Guidelines at <http://www.actian.com/website/trademark-guidelines/>.

**2.3. Referral Fees.** The Referral fee is ten percent (10%) of the Net License Fees received by Actian for each applicable order associated with an approved Lead Referral and is payable within forty-five (45) days of Actian’s receipt of the payment from the customer for the transaction. “**Net License Fees**” means the license fees actually received by Actian for the Products within ninety (90) days from the date the Lead Referral is approved by Actian for the eligible Actian Products, and excludes support and maintenance fees,

professional services fees, taxes, shipment charges, and all other charges, as well as any amounts that are refunded, credited, or not otherwise retained by Actian for any reason. For the avoidance of doubt, Net License Fees include subscription fees for DataCloud Services and Actian Avalanche. In the event Actian returns, refunds, or otherwise fails to retain fees on which You have already been paid, You must return to Actian such fees it has been paid (and/or Actian may offset such amounts against any other fees owed to You). Actian may agree to extend the ninety (90) days Lead Referral protection term in its sole discretion.

Should You fail to complete all the required procedures outlined above, as determined by Actian in its sole judgment, You may not receive the full standard referral fee, or any referral fee, even if the Lead Referral was properly registered in Actian’s sole judgment.

**2.4. License to use Your Logo.** You grant Actian the right to use Your name and logo as a Referral Partner on the Actian website, in corporate presentations, in e-mail communications with Actian prospects and customers, and during discussions with financial and industry analysts. Actian shall seek Your consent for use of Your name and logo for purposes other than those outlined above.

**2.5. Promotion and Marketing.** You shall, at your own expense, use all reasonable efforts to promote and market the Products.

### **3. ADDITIONAL RIGHTS & RESPONSIBILITIES OF REFERRAL PARTNERS**

**3.1. Business Practices.** You shall establish and maintain, and shall cause Your employees, consultants and agents to establish and maintain, a high standard of ethical business practices in connection with its performance as a Referral Partner, including, without limitation, full compliance with the obligations and provisions of this Agreement. In the promotion and marketing of the Products, You will not make any statements or representations about the Products that are inconsistent with those made or authorized by Actian or that are capable of being misleading and deceptive. You shall at all times represent Actian in a manner intended to preserve and enhance the reputation and goodwill of Actian and the Products.

**3.2. Compliance with Laws.** You shall comply fully with all applicable statutes, rules, or regulations of any national, federal, state, or local jurisdiction including, without limitation, anti-mafia, anti-bribery and anti-corruption statutes, rules and regulations. You agree to comply with the U.S. Foreign Corrupt Practices Act and will not use any payment or other benefit to offer, promise or pay any money, gift or any other thing of value to any person for the purpose

of influencing official actions or decisions affecting this Agreement, while knowing or having reason to know that any portion of this money, gift or thing will, directly or indirectly, be given, offered or promised to an employee, officer or other person acting in an official capacity for any government or agency or any political party, party official or candidate for political office.

**4. CONFIDENTIAL AND PROPRIETARY INFORMATION.** The term “Confidential Information” shall mean any information disclosed by either Party (“**Discloser**”) to the other Party (“**Recipient**”) in connection with this Agreement that, if disclosed in writing, is marked as “Confidential” or “Proprietary,” or, if not so marked, if it should reasonably be regarded as confidential due to the nature of the information being disclosed. Notwithstanding the foregoing, the Products and any information related thereto shall be considered Confidential Information of Actian. Recipient shall treat as confidential all Confidential Information of Discloser and shall not use such Confidential Information except in furtherance of the services and other obligations expressly stated in this Agreement. Recipient shall not disclose Confidential Information to any third party without Discloser's prior written consent; provided, however, that Recipient may disclose Discloser's Confidential Information to its and its affiliates' employees and contractors who have entered into a written agreement with Recipient that is no less protective of Discloser's Confidential Information than this Agreement and who have a need to know such information. Recipient shall use the same measures to protect Discloser's Confidential Information that it uses to protect its own confidential information, but in no event less than reasonable measures. Notwithstanding the above, the restrictions of this Section 4 shall not apply to information that: (a) is independently developed by Recipient without any access to the Confidential Information of Discloser; (b) becomes known to Recipient, without restriction, from a third party who had the right to disclose it; or (c) is or becomes in the public domain through no act or omission of Recipient. In addition, either Party may disclose information in compliance with a court or governmental order, provided the Discloser is given prompt written notice thereof and the Recipient provides cooperation and assistance in any attempt to prevent or limit such disclosure. All information provided by Actian as part of this Agreement shall be considered Confidential Information, including but not limited to information provided at Actian's partner web portal and in this Agreement.

**5. LIMITATION OF WARRANTY.** PRODUCTS PROVIDED BY ACTIAN OR ANY OF ITS AFFILIATES ARE PROVIDED “AS IS,” WITH ALL FAULTS. TO THE

MAXIMUM EXTENT PERMITTED BY LAW, ACTIAN AND ALL ITS AFFILIATES AND SUPPLIERS DISCLAIM ALL WARRANTIES, AND CONDITIONS, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO ALL PRODUCTS, INCLUDING ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, SYSTEMS INTEGRATION, TITLE, AND NON-INFRINGEMENT. ACTIAN AND ITS AFFILIATES AND SUPPLIERS DO NOT WARRANT THAT USE OF THE PRODUCTS OR ANY PORTION THEREOF SHALL BE UNINTERRUPTED OR ERROR-FREE, OR THAT THE PRODUCTS OR ANY PORTION THEREOF SHALL MEET ANY OF YOUR NEEDS OR REQUIREMENTS.

**6. LIMITATION OF LIABILITY.** EXCEPT FOR DAMAGES FOR BREACH OF SECTIONS 2.2 AND 4, AND INFRINGEMENT OR MISAPPROPRIATION OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS: (A) IN NO EVENT SHALL EITHER PARTY'S OR ACTIAN'S SUPPLIERS' TOTAL LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE PRODUCTS, WHETHER IN CONTRACT, TORT, STATUTE, OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE LESSER OF \$10,000 (IN THE AGGREGATE) OR THE AMOUNTS PAID TO ACTIAN UNDER THE AGREEMENT IN THE TWELVE MONTHS PRECEDING THE DATE OF THE FIRST CLAIM; AND (B) NEITHER PARTY NOR ACTIAN'S SUPPLIERS SHALL BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES OF ANY KIND (INCLUDING ANY DAMAGES FOR LOSS OF DATA, LOSS OF PROFITS, LOSS OF USE, OR INTERRUPTION OF BUSINESS), AND WHETHER IN CONTRACT, TORT, OR OTHERWISE, EVEN IF THE PARTY OR AFFILIATE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF AN AGREED REMEDY FAILS OF ITS ESSENTIAL PURPOSE OR IS HELD UNENFORCEABLE FOR ANY OTHER REASON. THIS EXCLUSION OF DAMAGES IS INDEPENDENT OF ANY AGREED REMEDY.

## **7. TERM AND TERMINATION**

**7.1.** You shall become a Referral Partner on the date You agreed to be bound by the terms and conditions of this Agreement by ticking the box next to “I AGREE TO THE LEAD REFERRAL TERMS AND CONDITIONS” and submitting the Lead Referral to Actian on the Site (the “**Effective Date**”). The Term of this Agreement shall

commence on the Effective Date and shall continue for a period of one (1) year thereafter, unless sooner terminated as hereinafter provided. After the initial Term, this Agreement may be renewed on an annual basis for a new one (1) year Term, by written agreement between the Parties to renew the Term.

**7.2.** This Agreement will terminate thirty (30) days after written notice to a Party of material breach by such Party if such breach remains uncured at the expiration of the thirty-day period. Notwithstanding the foregoing, Actian may immediately terminate Your rights and/or any license granted to You by providing You written notice of any breach by You of Sections 2.2 or 4. In addition, either Party may terminate this Agreement at any time upon ninety (90) days' notice for any reason.

**7.3.** In the event of expiration or termination of the Parties' relationship for any reason: (a) all rights granted to You related to the Products shall immediately terminate and You shall immediately cease any further marketing, promotion, or other use of the Products and any further use of any other Actian Confidential Information or other intellectual property or proprietary materials; (b) all of Your rights and privileges under this Agreement shall immediately terminate; (c) You shall return to Actian, or destroy and certify in writing to Actian the irretrievable deletion and destruction of, all Confidential Information of which Actian is the Discloser and all Actian marketing or other materials in Your possession, custody, or control; (d) the Parties' obligations to pay to each other any fees and any other amounts due prior to such termination or expiration hereunder shall survive; and (e) the following Sections shall survive: 4, 5, 6, 7.3 and 8.

## **8. GENERAL TERMS**

**8.1.** Each Party shall pay all costs and expenses incurred in the performance of its obligations under this Agreement.

**8.2.** The Parties are acting as independent contractors. Nothing in this Agreement shall be construed to create a partnership, joint venture, franchise, fiduciary or agency relationship between or among the Parties. For the sake of clarification, the term "Partner" used in the Agreement is only for the purposes of convenience and it is not to be interpreted as having legal consequences.

**8.3.** You shall not assign or transfer this Agreement or any rights or obligations hereunder, including by operation of law or a merger, division of an LLC, acquisition or change of control, without the prior written consent of Actian. Any attempted assignment or transfer in violation of the foregoing will be void. Subject to the above, this Agreement will bind and inure to the benefit of each Party's permitted successors and assigns.

**8.4.** All notices required to be sent shall be in writing to the addresses provided, in Your case, in the Lead Referral, and in Actian's case at 2300 Geng Road, Suite 150, Palo Alto, CA 94303: (a) if delivered by hand, when received or refused; (b) if delivered by an internationally-recognized courier service, when received or refused; (c) if given by e-mail or facsimile, when received by the recipient; or (d) when mailed by certified mail, return receipt requested, when the document is placed in the control of the postal authorities.

**8.5.** No waiver shall be effective unless in writing signed by the Party against which such waiver is asserted. The waiver by either Party of any default or breach of this Agreement shall not constitute a waiver of any other or subsequent default or breach.

**8.6.** If any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement shall remain in full force. Captions and headings are for convenience only and shall not affect the construction of this Agreement.

**8.7.** You will provide to Actian comments, criticism, suggested improvements, test results, answers to questions, and other feedback regarding the function, features, and other characteristics of the Products in written or oral form ("**Feedback**"). You agree that all Feedback shall be considered the property of Actian and may be used, reproduced, adapted, modified, distributed, and otherwise exploited by Actian in any manner and for any purpose.

**8.8.** The Software is "commercial items" as that term is defined at 48 C.F.R. 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, all U.S. Government end users acquire the products with only those rights set forth under this Agreement. Any technical data provided that is not covered by the above provisions shall be deemed "technical data-commercial items" pursuant to 48 C.F.R. 252.227.7015(a). Any use, modification, reproduction, release, performance, display or disclosure of such technical data shall be governed by the terms of 48 C.F.R. 252.227.7015(b). Any Products provided to the US Government (or any of its agencies) shall be provided with "Restricted Rights"

**8.9.** This Agreement will be governed and construed in accordance with the controlling U.S. federal law and the laws of the State of California, without regard to its conflict of law principles, and all claims relating to or arising out of this Agreement, or the breach thereof, whether sounding in contract, tort, or otherwise, shall likewise be governed and construed in accordance with the controlling U.S. federal law and the laws of the State of California, without regard to its conflict of law principles. The United Nations Convention on

Contracts for the International Sale of Goods does not apply to this Agreement. All disputes arising out of or relating to this Agreement shall be brought exclusively in the federal courts located in the Northern District of California or the state courts located in Santa Clara County, California, and the parties agree to submit to the exclusive jurisdiction and venue of such courts. Notwithstanding the foregoing, Actian may enforce any judgment rendered by such court in any court of competent jurisdiction, and Actian may seek injunctive or other equitable relief in any jurisdiction in order to protect its intellectual property rights.

**8.10.** In the event of a Party's breach of this Agreement, the non-breaching Party may avail itself of all other rights, remedies and causes of action available at law, in equity or otherwise. You acknowledge that the Products contain valuable trade secrets and proprietary information of Actian and that any actual or threatened disclosure or unauthorized use of Products or Confidential Information will constitute immediate and irreparable harm to Actian for which monetary damages would be an inadequate remedy and entitle Actian to immediate injunctive relief without posting of a bond.

**8.11.** The Products are not fault-tolerant and are not designed, manufactured or intended for use or resale as on-line control equipment in hazardous environments requiring fail-safe performance, in which the failure thereof could lead directly to death, personal injury or severe physical or environmental damage ("**High Risk Activities**"). Actian and its suppliers specifically disclaim any express or implied warranty of fitness for High Risk Activities.

**8.12.** This Agreement including the schedules and exhibits attached hereto constitute the complete agreement between the Parties and supersedes all prior agreements and representations, written or oral, and any contemporaneous oral agreements or representations, concerning the subject matter of this Agreement. This Agreement will control over any additional, different, or conflicting provisions in any documents, such as a purchase order or an Order, which are hereby rejected and shall not apply. This Agreement may not be modified or amended except as specifically authorized in this Agreement, or in a writing signed by an authorized representative of each Party.