

Maintenance Conditions for RPLAN Software

Section 1 Subject of the Agreement

- (1) As a supplement to the provisions of the conditions of use for RPLAN software licences ACTANO also maintains the computer programs named above which it provides (hereinafter referred to as **Software**) according to the following conditions.
- (2) Maintenance also covers the documentation accompanying the software.

Section 2 Term of the Agreement and termination

- (1) This Software Maintenance Agreement shall take effect when the software maintenance is ordered.
- (2) It shall be for an unlimited time and may be terminated by either party with three months' notice to the end of the contractual year; however, not before a period of twelve months has expired from the date on which the Agreement is signed.
- (3) Either party to the Agreement may also terminate the software maintenance without notice for good cause. Good cause for termination without notice exists especially if the other party to the Agreement breaches the terms of the Agreement repeatedly or in a serious manner and this breach - assuming it can be remedied - is not rectified within 30 days of receipt of a written warning. ACTANO may also terminate the Agreement without notice for good cause if the Customer is three months in default with its payments, regardless of whether these payments relate to licence, software, maintenance or other fees or remuneration. In such case the Customer shall have no claim to reimbursement of payments it has made and ACTANO retains the right to assert further claims.
- (4) The Agreement may only be terminated in writing.

Section 3 Provision of services

- (1) ACTANO shall employ qualified personnel who are familiar with the software for maintenance work.
- (2) Within the scope of maintenance ACTANO shall rectify errors in the provisions of this Agreement that occur during use of the software or which become obvious in the associated application documentation. Maintenance also includes rectifying defects or other faults that ACTANO gets to know of in the software regardless of its use by the Customer. This shall not affect the Customer's warranty rights.
- (3) Rectifying defects in terms of this Agreement includes troubleshooting, diagnosis, and services that are aimed at remedying the defect, without any guarantee of success being given. ACTANO may, at its discretion, maintain the program with a work-around or an update. Rectifying a defect also includes correcting the associated program documentation.
- (4) Services which belong to this Agreement also include the provision of new software releases, error rectification and/or new functions (hereinafter referred to as **updates**). Within the scope of software maintenance ACTANO will provide an update hotline. To implement the release change for the Customer effectively and in a timely manner, by prior arrangement, the update shall be implemented together with the ACTANO hotline.
- (5) ACTANO shall provide technical support by phone or e-mail.

Section 4 Maintenance limits

- (1) Not included in software maintenance are:
 - (a) Services outside the maintenance periods defined in Section 5, Paragraph (1);
 - (b) Services for software that is not used under the conditions specified by ACTANO, especially in a system environment other than the one contained in the product description;
 - (c) Services for software that was changed by the Customer carrying out programming work;
 - (d) Services for computer programs or parts that are not software;
 - (e) Services for computer programs created, extended and/or adapted by ACTANO within the scope of a work contract.
 - (f) Services for program parts whose function depends on other programs, unless a corresponding software maintenance agreement for these other computer programs also exists between the Customer and ACTANO;
 - (g) Services for software that is two or more generations older than the currently released version. A version in this sense means versions that either have a new number in front of the decimal point or a new number behind the decimal point;
 - (h) Services that are needed or practical to implement programming of independent program modules;
 - (i) The creation or provision of programs or consulting work for this or for the use of data processing units; and
 - (j) Services for software that is installed in a location other than that named in the licence certificate. ACTANO must be informed of all changes in installation locations in writing. ACTANO may only refuse software maintenance at the new installation location for good reason. Additional costs for software maintenance resulting from the change of installation location shall be charged to the Customer.
 - (k) Services and reworking caused by updates, if the work was not performed properly by the Customer (non-compliance with Section 3 Provision of services, Paragraph 4).
 - (l) Inquiries concerning the operation and use of RPLAN software. These inquiries are not covered by software maintenance and they should not be addressed to technical service staff. Only in exceptions and by arrangement will such services be provided; they will be invoiced separately. In such cases, ACTANO's applicable service rates shall apply.

Section 5 Provision of maintenance

- (1) Software maintenance is provided from Monday to Friday between 9 am and 5 pm (hereinafter referred to as maintenance provision). The time zone at ACTANO's registered office applies to the times for maintenance provision.
- (2) Faults are to be distinguished according to the following fault categories:
Fault category 1:
The fault causes a situation where the entire system cannot be used.

Fault category 2

The fault causes a situation where important functions cannot be used properly and this cannot be circumvented with suitable measures for a period of time which could be considered reasonable for the Customer.

Fault category 3

Other faults.

- (3) After receiving an adequately specified description of the fault, ACTANO shall be bound by the following response times within maintenance provision.

Fault category 1: 2 hours after being notified

Fault category 2: Within 24 hours of being notified

Fault category 3: Within 48 hours of being notified

- (4) Response time means the period within which ACTANO starts its maintenance work. If the work is not performed at ACTANO's premises, the response time begins when an ACTANO employee arrives at the Customer's premises and when ACTANO can actually access the Customer's system. ACTANO shall invoice these services and all other services in excess of the services defined in Section 3 to the Customer separately.
- (5) Software maintenance work will not be performed at the weekend (Saturday, Sunday) or on public holidays which apply at ACTANO's registered office. If the response time falls on a weekend, a public holiday or at a time outside the normal maintenance provision times, the response time shall be suspended.
- (6) Services provided by ACTANO that are not in any of the fault categories shall not be subject to a response time.

Section 6 Duties on the part of the Customer

- (1) The Customer shall nominate for ACTANO a maximum of two administrators for its employees at the installation location who shall act as contacts. These employees may report faults. These administrators must have taken part in an ACTANO product training session at the Customer's expense. The Customer must inform ACTANO of any changes to the administrators in writing without delay. If a person other than these named employees reports a fault, this fault report does not initiate the response time.
- (2) Before reporting a fault, the Customer shall analyse the system environment to the best of its abilities to ensure that the fault is not due to system components that are not subject to this Agreement.
- (3) The Customer shall ensure that during the term of this Agreement a suitable back-up copy is made at least once per day to restore its entire system, applications and data and that this is kept in a safe place and that it is protected against damage. If data is destroyed or lost, at ACTANO's discretion the Customer shall immediately restore its system with the help of this copy or provide ACTANO with the copy to restore the data at the Customer's expense.
- (4) The Customer shall immediately install updates or new versions provided by ACTANO within the scope of this Software Maintenance Agreement, unless the Customer cannot be reasonably expected to bear the costs associated with the installation for upgrading the system environment. Section 4 Paragraph (1) (g) shall apply.

Section 7 Remuneration

- (1) For the described maintenance services ACTANO shall receive an annual remuneration of 20% of the respective applicable list price for the software - assuming no other customer-specific price arrangements have been made. If, within the contractual year, the Customer purchases more licences, the remuneration for the maintenance services shall increase on a pro rata basis for the newly licensed software from the time when the respective licence agreement is signed at the agreed terms and conditions.
- (2) All prices are net plus statutory valued added tax.
- (3) The remuneration shall be due when the software has been installed in the customer's premises. The services shall be invoiced for a year in advance. Invoices shall be paid within 30 days of the date of invoice.
- (4) ACTANO may change the remuneration according to Paragraph (1) after announcing this in writing with six weeks' notice to the end of the contractual year. However, a change such as this may only be made at the earliest twelve months after the Software Maintenance Agreement has been concluded and may not exceed the previous twelve month period by more than ten per cent. If fees or surcharges are increased by more than five per cent compared to the previous twelve-month period, the Customer may terminate the Agreement in writing with three weeks' notice from the date of the increase without consideration of Section 2.

Section 8 Co-liability of the Customer and limits of liability

- (1) If a claim is made against ACTANO based on warranty or liability, the contributory negligence of the Customer shall also be considered to an appropriate degree. This shall apply especially in case of inadequate fault reports or insufficient data backup.
- (2) The Customer's warranty claims shall be statute barred one year after the respective maintenance has been performed. The date of completion is the date on which the respective maintenance is provided.
- (3) In case of serious defects the Customer shall have a claim against ACTANO for supplementary performance. The Customer shall request in writing that ACTANO provide supplementary performance and give ACTANO suitable opportunities to provide this performance. Within the scope of supplementary performance ACTANO may replace or repair software components. If supplementary performance should be unsuccessful, the Customer may terminate the Agreement for extraordinary reasons and/or may demand compensation, may rectify the defect itself and/or may demand replacement for wasted expenditure.
- (4) ACTANO shall be liable to the Customer only for personal injury and for damage that ACTANO, its legal representative, other employees or agents cause with intent or gross negligence in the course of fulfilling their contractual duties. ACTANO's liability for material damage or financial loss based on slight negligence by the persons named in Sentence 1 or which ACTANO is responsible for in any other way shall be limited to the annual maintenance fee.

Section 9 Other provisions

- (1) In all other respects the conditions of use for RPLAN software licences shall apply.