

ACTIVITY STANDARD TERMS AND CONDITIONS (AMERICAS / APAC)

1. INTRODUCTION

1.1 Terms and Conditions. These Standard Terms and Conditions, together with EULA (in the case of Software), and any invoice or other billing document issued by ActivIdentity to Customer (which documents are incorporated herein by reference), constitutes the entire agreement (“Agreement”) of ActivIdentity and the counterparty (“Customer”) with respect to the sale of products, services and software licenses by ActivIdentity, except in those cases where an officer of ActivIdentity has executed a written agreement otherwise covering such sale. Absent such signed, written agreement, Customer’s issuance of a purchase order or other ordering document to ActivIdentity shall constitute Customer’s acceptance of these Standard Terms and Conditions. ActivIdentity shall not be bound by any terms additional to or different from these Standard Terms and Conditions, including preprinted terms, that may appear or be referenced in any Customer’s purchase orders or any other communications, irrespective of whether ActivIdentity (a) accepts or acknowledges (or is deemed to accept or acknowledge by shipment or otherwise) such purchase order or communication, or (b) provides or delivers such products, services or licenses subsequent to receipt of such purchase order or communication. All ActivIdentity quotations shall be deemed to incorporate these Standard Terms and Conditions. Any additional or different terms and conditions provided by a Customer shall be deemed objected to by ActivIdentity without further notice of objection and shall be of no effect nor under any circumstances be binding upon ActivIdentity. These Standard Terms and Conditions may be modified or amended only in a written document signed by an authorized representative of ActivIdentity.

2. DEFINITIONS

2.1 “Delivery Date” means the date on which the Software and/or Hardware is delivered or made available to Customer by ActivIdentity, FCA Origin.

2.2 “Documentation” means ActivIdentity’s end-user manuals that describe the installation, use and/or operation of the Software and/or Hardware that are distributed by ActivIdentity for use with the Software and/or Hardware, whether published on-line or provided in hard copy. Documentation shall include any updated Documentation that ActivIdentity provides with Updates. Documentation does not include training materials.

2.3 “EULA” means ActivIdentity’s standard end user license agreement that is provided with or embedded in the Software. Absent an agreement in writing signed by ActivIdentity to the contrary, the EULA governs Customers’ use of the Software. In the case of a Third Party Product, the third party-issued license agreement shall govern use of such Third Party Product.

2.4 “Hardware” means the ActivIdentity hardware products that are sold or distributed by ActivIdentity under the ActivIdentity name or an ActivIdentity trademark. Hardware does not include Software or Third Party Products.

2.5 “Intellectual Property” or “Intellectual Property Rights” means any and all patents, business processes, copyrights, data rights, trademarks, trade secrets, mask works, moral rights, know-how or any other proprietary right arising or enforceable under the laws of the United States, any other jurisdiction, or any bi-lateral or multi-lateral treaty regime, including any registrations, applications or renewals for any and all of the foregoing.

2.6 “License” means the Customer’s rights and obligations with respect to the Software as provided in the EULA. Software licenses are non-transferable absent ActivIdentity’s written consent.

2.7 “License Fee” means the fee payable by Customer to ActivIdentity for the Software License as provided in an invoice or other billing document issued by ActivIdentity.

2.8 “Support” means the software support and maintenance services provided by ActivIdentity as described in ActivIdentity’s most recent Support Handbook (available at <http://www.actividentity.com/support/>). Support includes updates and upgrades (when and if available by ActivIdentity) as well as technical support.

2.9 “Support Fee” means the fee payable by Customer to ActivIdentity for Support of the Software as provided in an invoice or other billing document issued by ActivIdentity.

2.10 “Software” means the ActivIdentity-branded software products that are sold or distributed by ActivIdentity under the ActivIdentity name or an ActivIdentity trademark, any Updates provided to a Customer by ActivIdentity, and any microcode, applets and firmware embedded in Hardware, in each case in its machine-readable object code form only. Software does not include any source code or Third Party Products. Software is non-transferable absent ActivIdentity’s written consent.

2.11 “Third Party Product” means any product or service that is not sold under the ActivIdentity name or an ActivIdentity trademark.

2.12 “Update” means a revision of the Software that expands or improves the features or functions of such software product, or provides error corrections or bug fixes, and is made generally available on a “when and if available basis” at no additional cost to ActivIdentity’s customers who purchase Support. Updates include revisions providing additional or improved features or functionality of the Software that are commonly referred to as “upgrades.”

3. SOFTWARE TERMS AND CONDITIONS

3.1 Software Warranty. ActivIdentity warrants for a period of ninety (90) days from the Delivery Date that the Software will perform in material conformity with the functions described in the Documentation when operated in accordance with the Documentation. ActivIdentity does not warrant that the Software is free of errors or “bugs” or that it will perform without interruption. ActivIdentity’s sole obligation under the foregoing warranty shall be for ActivIdentity to use commercially reasonable efforts to correct any substantial nonconformity of the Software that is reported in writing to ActivIdentity during the ninety (90) day warranty period. In the event ActivIdentity is unable to remedy the non-conformity and such non-conformity materially affects the functionality of the Software, Customer may promptly terminate the License applicable to the non-conforming Software and return such Software to ActivIdentity. In such event, Customer will (i) receive a refund of the License Fee or Support Fee received by ActivIdentity with respect to such Software or, (ii) in the case of an Update, receive a refund of any amounts paid to ActivIdentity for Support that directly relates to the Update. If Customer elects to terminate its License with respect to any Update, it may continue its License to the prior version of the Software. The foregoing shall constitute the exclusive remedy of Customer, and ActivIdentity’s sole liability, with respect to any breach of the Software warranty provided herein.

3.2 Media Warranty. ActivIdentity warrants for a period of ninety (90) days from the Delivery Date that the tapes, diskettes or other media upon which ActivIdentity delivers Software to Customer will be free of defects in materials and workmanship under normal use. ActivIdentity will replace any defective media which is reported to ActivIdentity during the ninety (90) day

warranty period. The foregoing shall constitute the exclusive remedy of Customer, and ActivIdentity's sole liability, with respect to any breach of the media warranty provided herein.

3.3 Software Support. Subject to Customer's payment of the applicable Support Fee, ActivIdentity will make Support available to Customer as described in ActivIdentity's most recent Support Handbook (available at <http://www.actividentity.com/support/>).

4. HARDWARE TERMS AND CONDITIONS

4.1 Hardware Warranty. ActivIdentity warrants for a period of one (1) year from the Delivery Date that the Hardware will (i) be free from material defects in materials and workmanship and (ii) perform in material conformity with the functions described in the Documentation when operated in accordance with the Documentation. ActivIdentity further warrants that Customer shall receive good and clear title to the Hardware (excluding any Software embedded in the Hardware, which Software is licensed to Customer), free and clear of all liens and encumbrances. ActivIdentity's sole obligation and Customer's sole remedy under the foregoing warranty shall be for ActivIdentity to correct or replace the non-conforming Hardware that is reported in writing to ActivIdentity during the one (1) year warranty period.

5. WARRANTY EXCEPTIONS

5.1 Exceptions. The foregoing warranties shall not apply if the Software or Hardware or media (as the case may be) has (i) been subjected to abuse, misuse, neglect, negligence, accident, improper installation, storage, or handling, or use contrary to any instructions issued by ActivIdentity; (ii) been repaired or altered by persons other than ActivIdentity; (iii) not been installed, operated, repaired and maintained in accordance with the product documentation; (iv) failed due an Act of God, including, but not limited to, fire, flood, tornado, earthquake, hurricane or lightning; or (v) been used with any third party software or hardware which has not been previously approved in writing by ActivIdentity where such combination caused the failure or defect. In addition, the foregoing warranties shall not apply to Software or Hardware that is marked or identified as "sample," loaned by ActivIdentity for evaluation, provided at no cost, or sold "as is."

6. THIRD PARTY PRODUCTS

6.1 Disclaimer for Third Party Products. ACTIVIDENTITY IS NOT THE MANUFACTURER OR OWNER OF THE THIRD PARTY PRODUCTS, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ACTIVIDENTITY MAKES NO WARRANTIES WHATSOEVER WITH RESPECT TO THIRD PARTY PRODUCTS, WHICH PRODUCTS ARE PROVIDED TO CUSTOMER "AS IS". Notwithstanding the foregoing, to the extent permitted ActivIdentity will pass through to Customer any warranty or indemnity offered by the manufacturer or licensor of such Third Party Products. Customer's sole remedy for breach of any such warranty or indemnity, to the extent available to Customer, shall be against the manufacturer or licensor offering such rights and not against ActivIdentity.

7. IP INDEMNITY

7.1 ActivIdentity will defend, indemnify and hold harmless Customer and each person and entity to whom Customer provides access to the Software in accordance with the License (each an "Indemnitee" and collectively, "Indemnitees") against any claim brought by a third party to the extent such claim alleges that any Software, Hardware or Documentation (collectively, "ActivIdentity Products") directly infringes any Intellectual Property Rights of such third party

("Claim"), and will pay all costs, damages and expenses (including reasonable legal fees) finally awarded against any Indemnitee by a court of competent jurisdiction or agreed to in a written settlement agreement signed by ActivIdentity arising out of such Claim; provided that Customer: (i) gives ActivIdentity prompt written notice upon learning of a Claim or potential Claim; (ii) allows ActivIdentity to assume sole control of the defense of such Claim and all related settlement negotiations; and (iii) reasonably cooperates with ActivIdentity, at ActivIdentity's request and expense, in the defense or settlement of the Claim, including the provision of all assistance, information and authority reasonably requested by ActivIdentity. Notwithstanding the foregoing, ActivIdentity shall have no liability for any claim of infringement based on (a) the use of a superseded or altered release of an ActivIdentity Product to the extent that the infringement would have been avoided by the use of a current unaltered release of the ActivIdentity Product provided by ActivIdentity to the Indemnitee, (b) the modification of the ActivIdentity Product by anyone other than ActivIdentity or its authorized agents, (c) the use of the ActivIdentity Product other than in accordance with the Documentation or this Agreement, or (d) the combination of the ActivIdentity Product with other software or hardware not provided by ActivIdentity, where the combination causes the infringement and not the ActivIdentity Product standing alone.

7.2 Infringement Remedy. If any ActivIdentity Products, or any material portion thereof, are held by a court of competent jurisdiction to infringe, or if ActivIdentity believes that the ActivIdentity Products may be subject to a Claim or held to infringe, ActivIdentity shall, in its discretion and at its expense (i) replace or modify the ActivIdentity Products so as to be non-infringing, provided that the replacement ActivIdentity Products provide substantially similar functionality; (ii) obtain for Customer a license to continue using the ActivIdentity Products; or (iii) if non-infringing product or a license to use the ActivIdentity Products cannot be obtained upon commercially reasonable terms, as determined solely by ActivIdentity, ActivIdentity shall (a) terminate the License for the affected Software (as applicable) and (b) upon return of the ActivIdentity Products by Customer or certification of its destruction, refund a pro-rated portion of the License Fees or other charges received by ActivIdentity for such ActivIdentity Products, depreciated on a three-year straight-line basis, and, if applicable, the unused portion of any prepaid Support Fees that directly relate to such Software. The indemnity provided herein states ActivIdentity's entire liability and Customer's (and other Indemnitees') sole and exclusive remedy for any claim of Intellectual Property infringement by, or with respect to, the Software, Hardware and Documentation.

8. GENERAL

8.1 Damages. EXCEPT FOR ACTS OF INTENTIONAL MISCONDUCT, PERSONAL INJURY, OR BREACH ANY CONFIDENTIALITY OR INDEMNITY OBLIGATION, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ACTIVIDENTITY AND ITS LICENSORS SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOST PROFITS, DATA OR USE, OR PROCUREMENT OF REPLACEMENT SOFTWARE, INCURRED BY CUSTOMER OR ANY OTHER PARTY UNDER THIS AGREEMENT, OR ANY THIRD PARTY, WHETHER IN AN ACTION IN CONTRACT OR TORT, EVEN IF ACTIVIDENTITY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

8.2 Liability Limits. The aggregate and cumulative liability of ActivIdentity for damages under this Agreement shall not exceed the amount of fees received by ActivIdentity under this Agreement, and if such damages relate to particular Software, Hardware or services, such liability shall be limited to fees paid for the relevant Software, Hardware or services giving rise to the liability.

8.3 Invoices. Subject to ActivIdentity's approval of line of credit, all payments of any fees hereunder shall be payable within thirty (30) days of the date of ActivIdentity's invoice, unless other payment terms are provided by ActivIdentity in writing.

8.4 Delivery. All Products are delivered FCA Origin, unless other delivery terms are provided by ActivIdentity in writing.

8.5 Interest on Late Payments. Any amounts not paid when due shall be subject to interest of one and a half percent per month (1.5%), or if less, the maximum amount permitted under applicable law, from the date due until the date paid; provided that no interest shall be due on any amounts subject to a good-faith dispute pending the resolution of such dispute.

8.6 Taxes. The fees payable by Customer to ActivIdentity, including without limitation any License or Support Fees, do not include taxes, duties or fees. Customer shall pay all applicable import duties, customs, fees, sales, and use and value added taxes, tariffs, duties or assessments, and all penalties and interest related thereto, arising out of the transactions contemplated under this Agreement, except for taxes imposed on ActivIdentity's net income (collectively, "**Taxes**"). Customer shall pay directly, reimburse, or gross-up any payment to ActivIdentity for the amount of any such Taxes that ActivIdentity is at any time obligated to pay or collect. Upon the request of ActivIdentity, Customer shall promptly provide written documentation of all such Taxes.

8.7 Assignment. Customer may not assign, delegate or otherwise transfer, by operation of law or otherwise, any of its rights under this Agreement, any License or any EULA, without ActivIdentity's prior written consent. If Customer is permitted to assign any Licenses, Customer shall remain fully liable for each assignee's compliance with the terms and conditions of this Agreement and the applicable EULA, unless otherwise agreed in writing by ActivIdentity. Any attempted assignment or delegation of this Agreement, any License or EULA by Customer without ActivIdentity's consent shall terminate the applicable License and Customer shall not be entitled to any refund of any fees paid in connection therewith. ActivIdentity may freely assign or delegate this Agreement, License or any EULA.

8.8 Severability. In the event any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement will remain in full force.

8.9 Waiver. 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. Except for actions for nonpayment or breach of ActivIdentity's Intellectual Property Rights in the Software, Hardware or Documentation, no action, regardless of form, arising out of this Agreement may be brought by either party more than one year after the cause of action has accrued.

8.10 Force Majeure. Each party shall be excused from performance of any obligation hereunder (except any payment obligation) for any period during which, and to the extent that, it (or its subcontractors) is prevented from performing any obligation or service, in whole or in part, as a result of causes beyond its reasonable control, and without its fault or negligence including without limitation, acts of God, strikes, lockouts, riots, acts of war, epidemics, communication line failures, and power failures, etc.

8.11 Legal and Export Compliance. Customer shall comply fully with all international and national laws and regulations that apply to the Software, Hardware and Documentation and to Customer use thereof, including, but not limited to, the U.S. Export Administration Regulations, end-user, end-use and destination restrictions issued by U.S. and other governments. Without limiting the generality of the foregoing, Customer expressly agrees that it shall not, and shall not permit any person to, export, directly or indirectly, re-export, divert, or transfer the Software, Hardware and Documentation or any direct product thereof to any destination, company or person restricted or prohibited by U.S. laws or regulations or laws or regulations of any other applicable jurisdiction.

8.12 U.S. Government License Rights. The Software and accompanying and related documentation, including manuals and technical data, delivered pursuant to this Agreement are commercial within the meaning of applicable civilian and/or military Federal acquisition regulations and any supplement thereto. These products were developed fully at private expense. If the Customer or any user of these products, or any one of them, is an agency, department, employee, or other entity or quasi Government entity of the United States Government, the use, duplication, reproduction, release, modification, disclosure, or transfer of the product is controlled and restricted by the terms, conditions, and covenants contained in this Agreement and the EULA. All other use is prohibited. In accordance with Federal Acquisition Regulation 12.212 for civilian agencies, and Defense Federal Acquisition Regulation Supplement 227.7202 for military agencies, Software delivered pursuant to this Agreement is commercial computer software and the use of that Software is further controlled and restricted in accordance with the terms of this Agreement and the EULA.

8.13 Relationship Between the Parties. Nothing in this Agreement shall be construed to create a partnership, joint venture, employment or agency relationship between the parties.

8.14 Choice of Law and Jurisdiction. This Agreement will be governed by the laws of the State of California, USA, without regard to its choice of law provisions. All disputes arising out of this Agreement shall be subject to the exclusive jurisdiction of and venue in the federal and state courts located within Santa Clara County, California and no other place, and each party hereby irrevocably consents to the personal and exclusive jurisdiction and venue of these courts.

8.15 Entire Agreement. This Agreement, together with the EULA (in the case of Software), and any invoice or other billing document issued by ActivIdentity to Customer (which documents are incorporated herein by reference), constitutes the complete agreement between the parties and supersedes all prior or contemporaneous agreements or representations, written or oral, concerning the subject matter of this Agreement and such exhibits. This Agreement may not be modified or amended except in writing signed by a duly authorized representative of each party. No other act, document, usage or custom shall be deemed to amend or modify this Agreement. Notwithstanding the foregoing, this Agreement shall not apply in those circumstances where an officer of ActivIdentity has executed a written agreement otherwise covering a transaction contemplated by this Agreement.

Standard Terms and Conditions URL: <http://www.actividentity.com/resources/datasheets/>