



## END-USER'S SOFTWARE LICENSE AGREEMENT (LICENSE OF USE, TRIAL LICENSE)

**WARNING: PLEASE READ THIS DOCUMENT CAREFULLY BEFORE INSTALLATION OR FIRST USE OF ACETIAM'S OR ANY OF ITS LICENSORS' SOFTWARE ("ACETIAM"). BY SELECTING THE "I ACCEPT THE TERMS OF THE LICENSE AGREEMENT" OPTION, INSTALLING OR USING THE SOFTWARE, YOU AS LICENSEE ("END-USER") AGREE TO BE BOUND BY THE TERMS OF THIS CLICK-WRAP LICENSE AGREEMENT. IF YOU DO NOT AGREE TO THESE TERMS, DO NOT INSTALL OR USE THIS SOFTWARE.**

The Software and the accompanying documentation are provided to the End-User by ACETIAM, a company incorporated under French law with offices at La Palmeraie, ZA de la Hallerais, 11 rue du Bois de Soeuvres, 35770 Vern-sur-Seiche, France, and registered at the trade register of Rennes under n°535 191 571, for use only under the terms and conditions defined in this End-User Software license agreement (the "Agreement").

### 1. Definitions

**Agreement:** This End-User License Agreement and any potential amendment.

**Delivery Date:** The date of provision of the Key to End-User, by any means and notably by e-mail.

**Documentation:** The English version of electronic written materials made available to the End-User, which include the main process and guidelines to facilitate the installation and use of the Software.

**Environment:** The technical pre-requisites that the End-User has been informed of before entering into the Agreement and which is defined in the Documentation, that corresponds to the computer equipment (hardware, operating system, third-party software) and any evolutions or changes thereof required for the use of the Software.

**Key:** The protection key allowing the activation of the Software.

**License of Use:** The right to use the Software throughout the term of the proprietary rights pertaining thereto, according to the terms of the Agreement.

**License:** The right to use the Software granted to End-User under the License of Use or the Trial License.

**Media:** Any media selected by ACETIAM to make the Software available to the End-User, including any electronic means of communications.

**Software:** The English version(s) of the object code computer program(s), for which a License is granted under the Agreement, including the Documentation, and any modified version of the Software and/or the Documentation provided under the Agreement; any and all copies thereof in whole or in part.

**Trial License:** The right to use the Software for evaluation and testing purposes according to the terms of the Agreement.



## 2. License

End-User is granted - subject to End-User paying the total fee for the License of Use and compliance with the Agreement, a limited, personal, non-exclusive and non-transferable License, to use the Software.

End-User may:

- Install and use the Software in the Environment for End-User's internal purposes only; it being agreed that under the Trial License, End-User may use the Software only for evaluation and testing purposes;
- Install and use the Software in the Environment - on one (1) computer at any time or subject to any other applicable metrics for the particular Software (all as licensed and paid for by End-User) as expressly agreed upon between the parties;
- Make one copy in machine-readable form for back-up purposes only, provided that End-User reproduces on the copy ACETIAM's copyright notice, trademark and any other proprietary legends which may appear on or in the original copy of the Software supplied by ACETIAM, it being agreed that such copy remains subject to the terms and conditions of the Agreement;
- Generally, install and use the Software in strict compliance with the instructions in the Documentation and with the Agreement.

## 3. Restrictions

End-User may NOT:

- Use the Software for any other purpose than that expressly defined in the Agreement, beyond the limitations defined in the Agreement. In particular, End-User shall not use the back-up copy for any other purpose than to replace the original copy of the Software in the event such copy has been destroyed or becomes unusable and End-User shall not use the Software under Trial License for any production purposes; any use of the Software for production purposes being subject to the prior purchase of a License of Use by End-User;
- Enable any third party to use the Software, unless with ACETIAM's prior written consent and subject to such third party's specific acceptance, without any reservation, of the terms and conditions of use of the Software, it being agreed that in such a case, End-User is responsible for such third party's compliance with the terms and conditions of the Software;
- Sublicense, assign, distribute, make available or otherwise transfer and/or share the rights pertaining to the Software, whether in part or entirely and by any means whatsoever, without ACETIAM's prior written consent;
- Modify, decompile, reverse engineer, disassemble, translate, recreate the Software, even partially or attempt to or enable third parties to perform such acts, except as otherwise permitted by French Law. Whenever, End-User wishes to access information in order to achieve the interoperability of the Software with other software, End-User shall firstly ask ACETIAM - before performing any decompilation task - whether such information is promptly and/or easily accessible, in which case End-User shall only reproduce or translate those parts of the Software's code which are strictly necessary to achieve the above-mentioned interoperability;
- Generally, use the Software in violation of any statutory or regulatory provision whatsoever, in particular any provision relating to the protection of personal data.



## 4. Protection and Security

End-User agrees to use its best efforts and to take all reasonable steps to safeguard the Software in order to ensure that no unauthorized person shall have access thereto and that no unauthorized copy, publication, disclosure or distribution in whole or in part, in any form, shall be made. End-User acknowledges that the Software contains valuable confidential information and trade secrets and that unauthorized use and/or copying are harmful to ACETIAM.

## 5. Intellectual Property Rights

ACETIAM reserves any right not expressly granted to End-User. In no event, shall the Agreement be construed as a sales contract. ACETIAM retains the exclusive ownership of the Software and all prerogatives thereto.

ACETIAM declares that, to its knowledge, nothing conflicts with entering into the Agreement, and that the Software does not constitute an infringement to any pre-existing creation within the European Union.

End-User shall promptly notify ACETIAM of any use of the Software that may be illicit or non-compliant with the terms of the Agreement, of which End-User has knowledge. If, further to such notice, ACETIAM elects to take legal action against any third party, End-User will provide all the assistance necessary that ACETIAM may reasonably require.

ACETIAM will defend End-User, at its own expense, against any claim relating to the infringement of any intellectual property right by the Software supplied under the Agreement, provided that End-User:

- Notifies ACETIAM in writing as soon as he becomes aware of such claim;
- Enables ACETIAM to have sole control over the defense and any negotiation of a settlement; and
- Collaborates with ACETIAM to such ends.

In the event of any claim, threat of action or action filed against End-User in connection with the use of the Software, or if ACETIAM deems it likely to happen, ACETIAM will at its sole option and own expense (i) either replace the infringing component of the Software by a substitute component with similar functionalities, or (ii) refund End-User with all the fees paid under the relevant license, such license being therefore terminated if the replacement proves impossible.

ACETIAM will indemnify End-User from any damages which End-User may be ordered to pay in connection with any infringement of the Software, as soon as such decision has become final and executory, as well as from any costs and expenses paid by End-User for his defense, including attorneys' fees, it being agreed that End-User's entire liability and exclusive remedy as concerns the infringement of a proprietary right pertaining to the Software shall in no event exceed the amount paid by End-User with respect to the relevant License.

ACETIAM expressly disclaims all liability with respect to any such allegation relating to:

- The use of other than the then-current release of the Software, when such infringement could have been avoided with the use of the most recent release of the Software;
- Any modification of the Software by End-User or any third party acting on his behalf;
- Any use of the Software not in compliance with the Documentation and/or the Agreement;
- Any use of the Software with other hardware, operating systems and/or software than those which constitute the Environment.



This section 5 states ACETIAM's entire liability and End-User's sole indemnification as to the infringement of intellectual property rights or any other proprietary rights, and ACETIAM shall in no event be held liable beyond what is provided in this section 5.

## 6. Confidentiality

For the purpose of the Agreement, each party may have access to information regarded as confidential by the other party (referred to as the "Confidential Information" for the purpose of the Agreement) shall be considered as strictly confidential, all the contractual information related to the financial conditions of the Agreement, as well as, all the information related to the Software, notably regarding its structure and organization; which are considered as trade secrets, property of ACETIAM. Therefore, End-User shall consider as strictly confidential the results of tests performed on the Software which he obtained the License for.

Each party shall respect the confidentiality of all the information and documents presented as such by the other party and undertake that its subcontractors, employees and/or any other third party the parties are dealing with will respect the same requirement of confidentiality.

Confidential Information under the Agreement does not include (i) the information which is or becomes publicly available and which has been obtained through no fault of the receiving party, or (ii) which such receiving party proves came to its knowledge lawfully, independently and prior to its disclosure by the other party, or (iii) independently developed by such party without it having any access to the Confidential Information.

The confidentiality obligation provided for in this section 6 shall survive for each Confidential Information ten (10) years after the disclosure of such Confidential Information.

## 7. Warranty and Liability

**7.1** End-User assumes sole responsibility for the installation, use and results obtained from use of the Software under the License.

**7.2** The Software is provided "as is" under the Trial License, without any express or implied warranty.

**7.3** Under the License of Use, ACETIAM warrants exclusively that, for ninety (90) days from the Delivery Date to End-User, (i) the Media will be free from manufacturing defect and (ii) the unmodified Software - when used in strict compliance with the Documentation and the Agreement - shall operate substantially in accordance with the functional specifications current at the Delivery Date. If, during the warranty period, a defect appears, End-User shall return the Software to ACETIAM and ACETIAM's only obligation shall be, at ACETIAM's election, to replace the defective Software - it being agreed that the replacing Software will be warranted for the remainder of the initial warranty period or refund the fee received by ACETIAM for the relevant License; such refund leading to the termination of the License. End-User agrees that the foregoing constitutes End-User's sole and exclusive remedy for breach by ACETIAM under any warranties made under this Agreement. This warranty does not cover any Software that has been altered or changed in any way by anyone other than ACETIAM. ACETIAM is not responsible for problems associated with or caused by another environment than the Environment, in particular for problems in the interaction of the Software with software not furnished by ACETIAM.



THE WARRANTY AND REMEDY PROVIDED ABOVE ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE SOFTWARE IS NOT INTENDED TO SUBSTITUTE FOR OR OVERRIDE THE TRAINING, EXPERIENCE AND KNOWLEDGE OF ITS USERS.

**7.4** ACETIAM is only bound by a general best effort undertaking (“obligation de moyens”).

ACETIAM assumes no obligation to save and/or archive End User's data, such regular savings being under End User's sole responsibility.

IN NO EVENT SHALL ACETIAM, OR ITS DIRECTORS, OFFICERS, EMPLOYEES, DISTRIBUTORS, DEALERS, OR AFFILIATES, BE LIABLE TO THE END-USER FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL OR EXEMPLARY DAMAGES SUFFERED BY END USER, ITS USERS AND/OR A THIRD PARTY (INCLUDING DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF DATA OR BUSINESS INFORMATION, AND THE LIKE) ARISING OUT OF THE USE OF OR INABILITY TO USE THE SOFTWARE OR ACCOMPANYING WRITTEN MATERIALS, EVEN IF ACETIAM HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

ACETIAM'S LIABILITY TO THE END-USER (IF ANY) FOR ACTUAL DAMAGES FOR ANY CAUSE WHATSOEVER, AND REGARDLESS OF THE FORM OF THE ACTION, WILL BE LIMITED TO, AND IN NO EVENT SHALL EXCEED, THE AMOUNT ORIGINALLY RECEIVED BY ACETIAM FOR THE LICENSE OF THE SOFTWARE.

## 8. High-Risk Use in the Medical Field

end-user has a particular obligation of prudence for a use in the medical field given the relative reliability of any computer tool, especially in his interpretation of digital data received, produced, displayed by the software.

The SOFTWARE IS not intended for use in any application in which its accuracy or continued performance is the primary defense against death or injury during surgical, medical, life support, or other applications of a similar degree of potential hazard. ACETIAM disclaims any implied warranty of fitness for High Risk Use.

## 9. Audit Rights

**9.1** The parties agree that, upon a three (3) business days (in France) written notice given to End-User, ACETIAM - or a third party appointed by ACETIAM at ACETIAM's expense - may inspect and audit End-User's books and records and/or premises, to ensure that End-User's use of the Software complies with the terms and conditions of the License granted under the Agreement. End-User shall cooperate with ACETIAM or the third party appointed by ACETIAM so that such audit can be carried out in the best conditions, it being agreed that ACETIAM shall not interfere unreasonably with End-User's business activities.

**9.2** If this audit reveals that one (1) or more additional licenses are necessary for End-User to use the Software in compliance with the terms of the Agreement, End-User shall immediately pay the amount for such license(s) at the then current price, without prejudice to the provisions of section 10.3 and any other right that ACETIAM could be entitled to exercise.

**9.3** This section 9 shall remain in force during three (3) years after the termination of the Agreement for any reason whatsoever.

## 10. Term and Termination

**10.1** The Trial License granted under the Agreement is effective from the Delivery Date for the term defined at the Delivery Date, unless earlier termination in accordance with the terms of section 10.3 below.

**10.2** The License of Use granted under the Agreement is effective from the Delivery Date for the term of legal protection of the Software, unless earlier termination in accordance with the terms of section 10.3 below.

**10.3** In the event of a breach by either party of its contractual obligations under the Agreement, provided such breach is not cured within thirty (30) business days as from the receipt or failing which, the first presentation of a registered letter with confirmation of receipt notifying such breach, the other party may terminate the Agreement, by registered letter with confirmation of receipt, without prejudice to any damages that such party could be entitled to.

**10.4** Upon termination of the Agreement for any reason whatsoever:

- End-User shall immediately cease any use of the Software, promptly withdraw all copies of the Software from the computers' memory and destroy or return those copies to ACETIAM;
- Upon written request of ACETIAM, End-User shall certify in writing - duly signed by its legal representative - that it has fulfilled its obligations as stated in the above paragraph, within five (5) business days as from such request.

In addition:

- Upon written request of a party, the other party shall return or destroy all Confidential Information of the requesting party.
- The following shall survive after termination of the Agreement: all confidentiality restrictions, infringement indemnity limitations, limitation of liability, audit rights, general provisions and all other provisions which, by their nature should survive to the termination of the Agreement.

## 11. Compliance with Law

End-User shall make sure that the use of the Software does not conflict with French, European and international regulations applicable to exportation. End-User shall not participate, whether directly or indirectly, to the exportation of the Software in a country where such operation is forbidden or submitted to the acquisition of a license or any kind of government license if such license has not been obtained. Furthermore, End-User warrants that it is not under specific measures related to the export and/or import of products in its own country and that no regulation prevents End-User from importing the Software.

The parties undertake that their respective activities comply with any and all statutory and regulatory requirements in force, particularly those relating to the protection of personal data.



## 12. Assignment and Transfer

End-User shall not assign or transfer - whether in whole or in part, and free of charge or against payment - any of its rights and obligations under the Agreement, without ACETIAM's prior written consent. Any change of majority in End-User's shareholding, amalgamation, merger, asset contribution to a third party, and more generally any operation of law or otherwise which aims or results in passing the License over to a third party, shall be deemed to result in an assignment of the Agreement.

ACETIAM may assign or transfer by any operation of law or otherwise, its rights and obligations under the Agreement to any third party, provided End-User is informed of such assignment or transfer.

## 13. Governing Law and Jurisdiction

The License is governed by and construed in accordance with the laws of France, and shall inure to the benefit of ACETIAM and End-User and their successors, assigns and legal representatives. The parties agree that they will try to reach an out-of-court settlement for any dispute arising out of or in connection with the performance or the construction of the Agreement. In case of litigation, the parties shall submit to the exclusive jurisdiction of the Commercial Court of Paris, France, notwithstanding any plurality of defendants, claim against guarantor, summary or conservatory proceedings.

## 14. General Provisions

The parties are independent entities contracting in their own name and under their own responsibility. Therefore, neither party shall make any representations on behalf of the other party, whom it shall in no event substitute for, except to the extent strictly necessary for the performance of the Agreement.

If any provision of the Agreement is held to be illegal, invalid or unenforceable in whole or in part, as a result of any statutory or regulatory provision or after the decision of a competent court which has become final, such term shall be modified so as to be legal, valid and enforceable, and all the other provisions of the Agreement shall continue in full force and effect, unless the purpose of the Agreement is consequently affected.

A waiver of a breach or default under the Agreement shall not be a waiver of any other breach or default. Failure of either party to enforce compliance with any terms of the Agreement, shall not constitute a waiver of such term or condition. Any waiver shall only be effective subject to an amendment pursuant to the terms of section 14 hereunder.

This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof, and all prior proposals, agreements, representations, statements and undertakings are hereby expressly cancelled and superseded. This Agreement may not be changed or amended except by a written instrument executed by a duly authorized officer of ACETIAM.





Unless otherwise provided in the Agreement, the files, data, messages and digitized records stored in ACETIAM's data processing systems shall be admitted as proof of the facts and communications between the parties. Unless otherwise demonstrated, records shall be presumed to have been stored under reasonably secure conditions if such messages, data and other documents are systematically recorded on durable and inalterable media.

Any notice required or permitted under the Agreement shall be given in writing to the other party, by registered letter with confirmation of receipt.

## 15. Language

The Agreement is in the English language only, which language shall be controlling in all respects. Should the Agreement be translated in any other language, its English version only shall be binding on the parties. Furthermore, all communications and notices made or given pursuant to the Agreement shall be in the English language.

## 16. Acknowledgment

BY CHOOSING TO INSTALL THIS SOFTWARE, END-USER ACKNOWLEDGES THAT IT HAS READ THIS LICENSE AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

For any information relating to the Agreement, please contact ACETIAM at the following address: La Palmeraie, ZA de la Hallerais, 11 rue du Bois de Soeuvres, 35770 Vern-sur-Seiche, France.

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