**MEM-0132-2020-000025**

**A DPTO. DE LICITACIONES:**

Por el presente me dirijo a usted a fin de remitir copia del DICTAMEN U.O.C N°153/20. En el cual se detalla la metodología para la elaboración de los precios referenciales en el marco de la LPN N°68/20 "ADQUISICION DE CORES ADICIONALES PARA BASE DE DATOS INGRES".

000 57

Sin otro motivo, me despido atentamente.

INSTITUTO DE PREVISION SOCIAL
David A. Capdevila, Jefe
Unidad de Control y Verif. de Precios
Dirección Operativa de Contrataciones

**David A. Capdevila, Jefe**
**Unidad de Control y Verificación de Precios**
**Dirección Operativa de Contrataciones**

As.24/08/2020.-

| | |
|---|---|
| A Sección Compra Directa | |
| A Sección Gestión de Ofertas | ✓ |

INSTITUTO DE PREVISION SOCIAL
Blás Roberto Núñez
JEFE DEPARTAMENTO DE LICITACIONES
DIRECCION OPERATIVA DE CONTRATACIONES

24-08-2020

# DICTAMEN U.O.C. N°/53/20.-

**Para** : Presidencia y Consejo de Administración.

**De** : Abg. Rodney Alcaraz Benitez.
Dirección Operativa de Contrataciones.

0000 56

**Referencia** : INFORME DE PRECIOS REFERENCIALES –"LPN SBE N° 68/20 ADQUISICION DE CORES ADICIONALES PARA BASE DE DATOS INGRES".

**Lugar y fecha** : Asunción, 24 de agosto de 2020.-

Quien suscribe, se dirige a Ud., en carácter de titular de la Unidad Operativa de Contrataciones de la Institución a su digno cargo, con el objeto de remitir el presente dictamen por el cual se establece la metodología utilizada para la elaboración de los precios de referencia.

## MARCO LEGAL:

Que, se encuentra vigente la Resolución DNCP N° 1890/2020 POR LA CUAL SE REGULA LA ESTIMACIÓN DE PRECIOS Y SU PUBLICIDAD EN LOS PROCEDIMIENTOS EN EL MARCO DE LA LEY 2051/03.

Conforme a lo dispuesto por la Dirección Nacional de Contrataciones Públicas en la Guía para la elaboración de precios de referencia para los Organismos, Entidades y Municipalidades, en las Contrataciones reguladas por la Ley N° 2051/03; las Convocantes deberán seleccionar al menos tres precios obtenidos, de la combinación de dos o más de las siguientes opciones:

1. Precios ofrecidos por empresas al público en general, para el bien, obra o servicio requerido por la convocante, ya sea que tales ofertas hayan sido realizadas en un portal público de internet o a través de publicaciones periodísticas, etc.
2. Precios publicados por cámaras, organizaciones, instituciones, Organismos del sector Público o Privado, Nacional o Internacional, que puedan ser verificados en revistas, páginas web, catálogos u otros documentos, respecto de bienes, servicios u obras similares o idénticos a lo solicitado.
3. Precios adjudicados por la propia Convocante, o por otros Organismos, Entidades o Municipalidades, conforme a los datos publicados en el Sistema de Información de Contrataciones Públicas.
4. **Precios de potenciales oferentes,** requeridos a través de cualquier mecanismo que permita contar con la evidencia de la solicitud y su respuesta, tales como fax, correo electrónico, nota u otro medio comprobatorio idóneo; o

- Excepcionalmente, si por la **complejidad, especialidad o particularidad de la contratación**, no resulte posible alcanzar la cantidad de 3 (tres) fuentes requeridas para la obtención de los precios, la Convocante en cuyo caso tal situación deberá ser suficientemente fundada en el dictamen firmado por el encargado de la UOC.

## CONSIDERANDO:

Que, por Memorándum DOP/DLI2/N° 0410/2020 de fecha 18 de agosto de 2020, el Departamento de Licitaciones, remitió para la verificación de los precios, el llamado a **LICITACION PUBLICA NACIONAL SBE N° 68/20 "ADQUISICION DE CORES ADICIONALES PARA BASE DE DATOS INGRES"**, y presentó planilla de precios por un monto total de Gs. 849.315.552.- (Guaraníes ochocientos cuarenta y nueve millones trescientos quince mil quinientos cincuenta y dos).

La Unidad de Control y Verificación de Precios precedió a la verificación del precio referencial, remitido por la unidad solicitante constatando que el mismo ha sido elaborado en base al presupuesto remitido por un potencial oferente.

Que vía correo electrónico de fecha 19 de agosto de 2020, la Unidad de Control y Verificación de Precios remitió a la Unida Solicitante las siguientes consultas… ***1. Contar con al menos 3 (tres) presupuestos, de manera a dar cumplimiento a lo establecido en la Res. DNCP N°1890/2020, 2. De no ser posible contar con los mismos, especificar el motivo, en caso de tener dependencia tecnológica, adjuntar carta de representación exclusiva de la firma y3. Si existe algún contrato anterior, mencionar numero de licitación y/o contrato.***

Que, vía correo electrónico de fecha 19 de agosto de 2020, la Unidad solicitante remitió sus respuestas a las consultas de la siguiente manera: ***…en cuanto al punto 1. Considerando la particularidad de la contratación en cuanto a servicios específicos que requiere el IPS para cada producto, se aplicó la excepción prevista en la Guía de***

***Elaboración de Precios, y el precio referencial se obtuvo con el presupuesto proporcionado por empresa ONE S.A. representante autorizado del producto en Paraguay, punto 2. Éste documento no obra en el Dpto. de Tecnología y punto 3. LPN 77/2019 Suscripción y Soporte Técnico para Base de Datos Ingres CONTRATO 380/2019.***



Que, vía correo electrónico de fecha 20 de agosto de 2020, la Unidad solicitante remite los documentos solicitados en la grilla de correos precedente que avala su calidad de revendedor del proveedor por parte de la marca que oferta.

## CONCLUSIÓN

A fin de dar transparencia y seguridad sobre el manejo de las adquisiciones realizadas, como así también dando fiel cumplimento a lo establecido en la Resolución DNCP 1890/2020 POR LA CUAL SE REGULA LA ESTIMACION DE PRECIOS Y SU PUBLICIDAD EN LOS PROCEDIMIENTOS DE CONTRATACIONES PÚBLICAS EN EL MARCO DE LA LEY 2051/03, se eleva a consideración de la Máxima Autoridad el análisis de precios referenciales, realizado en atención a los principios de economía, eficiencia y al criterio de razonabilidad.

La Unidad de Control y Verificación de Precios de la Dirección Operativa de Contrataciones, con relación al mecanismo de fijación del precio referencial, informa que el área responsable del servicio requerido ha presentado las especificaciones técnicas, y utilizando como referencia el precio del presupuesto remitido por un potencial oferente.

Por tanto, considerando el análisis de precios realizado, como así también los montos ajustados y aprobados por la unidad solicitante, el monto total proyectado para la **LICITACION PUBLICA NACIONAL SBE N° 68/20 "ADQUISICION DE CORES ADICIONALES PARA BASE DE DATOS INGRES"** asciende a Gs. 849.315.552.- (Guaraníes ochocientos cuarenta y nueve millones trescientos quince mil quinientos cincuenta y dos).

Por lo expuesto se remite el presente dictamen, considerando haber cumplido con las instrucciones de la DNCP, anexando toda la documentación respaldatoria del proceso de elaboración de precios de referencia, como así también las planillas correspondientes.

Atentamente.

INSTITUTO DE PREVISION SOCIAL
David A. Capdevila, Jefe
Unidad de Control y Verif. de Precios
Dirección Operativa de Contrataciones

INSTITUTO DE PREVISION SOCIAL
Abg. Rodney V. Alcaraz
Director
Dirección Operativa de Contrataciones
I.P.S.

**Abg. Rodney Alcaraz**
**Director**
**Dirección Operativa de Contrataciones**

***PRECIOS REFERENCIALES - LICENCIA BASE DE DATOS INGRES***

En cumplimiento de la resolución emitida por la DNCP respecto a la "Guía de Elaboración de Precios de Referencia", se detalla seguidamente el modo de obtención del precio referencial para el llamado de referencia.

Considerando la particularidad de la contratación en cuanto a servicios específicos que requiere el IPS para cada producto, se aplicó la excepción prevista en la Guía de Elaboración de Precios, y el precio referencial se obtuvo con el presupuesto proporcionado por empresa **ONE S.A.** representante autorizado del producto en Paraguay, conforme al siguiente detalle:

| ÍTEM | DESCRIPCIÓN | CANTIDAD MÍNIMA CORES | CANTIDAD MÁXIMA CORES | PRECIO UNITARIO POR CORES GS. |
|---|---|---|---|---|
| 1 | Suscripcion para Base de Datos Ingres | 6 | 12 | 70.776.296 |
| | | | | **Total Guaraníes** |

Se adjunta presupuesto

INSTITUTO DE PREVISION SOCIAL
Francisco Santacruz
Jefe, Dpto. de Tecnología
Dirección de Tecnologías de la Información
y de las Comunicaciones

INSTITUTO DE PREVISION SOCIAL
Ana Maria MAE
Dirección de Tecnología de la Información y Comunicaciones

SOLUCIONES TECNOLÓGICAS

# PROPUESTA COMERCIAL

**Licencias (cores) adicionales**
**Ingres DataBase**

**Mayo 2.020**

domingo, 31 de mayo de 2020

Señores
**INSTITUTO DE PREVISIÓN SOCIAL**
**Att. Ana Rocio Ayala Peralta**
**Directora DTIC**

Presente

Ref.:ingres-cores_adicionales_2020_v03

De nuestra consideración:

Nos es grato dirigirnos a Uds. a fin de hacerles llegar nuestra propuesta de licencias adicionales (cores) de **Ingres database.**

Sin otro particular, quedamos a vuestra disposición para cualquier aclaración que considere oportuna.

Atentamente,

**Oscar Carlés Barriocanal**
Gerente de servicios profesionales

# Índice

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## Cláusula de Confidencialidad

La presente propuesta es un documento confidencial preparado por **ONE S.A.**, exclusivamente para el **INSTITUTO DE PREVISIÓN SOCIAL.**, en adelante **Cliente**, de acuerdo con lo solicitado.

# Propuesta Económica

## Licencias adicionales (Precio x core)

| Descripción | Cant. CPU | Cant. CORE | Total CORE | | Precios en Gs. |
|---|---|---|---|---|---|
| | | | | | |
| **Core/12 meses** | | | | | |
| Runtime (ingres-prod) Ingres 11.x | 1 | 1 | 1 | | |
| | | | | | |
| Sub-Total Licencias | | | | ₵ | 64.342.087 |
| IVA | | | | ₵ | 6.434.209 |
| Total general en Guaraníes (IVA incluido) - 12 meses | | | | ₵ | 70.776.296 |

**Observaciones**

- La vigencia de la licencia actual (3 años), va desde el 05 de septiembre 2019, hasta el 04 de septiembre 2022.
- Si bien el precio expresado es de un (1) core por el término de 12 meses, **la cantidad mínima que se puede adquirir es de 4 cores por 12 meses.**

## Condiciones Comerciales

### Impuestos y Retenciones

La presente propuesta incluye el IVA y las retenciones previstas para este tipo de producto. En el caso de que surjan modificaciones o creaciones de nuevos impuestos, que implique la variación a los valores expresados en esta propuesta, será notificado al Cliente indicando los nuevos precios.

### Suscripción

La suscripción es proveída en formato electrónico, el fabricante no provee medios magnéticos de los instaladores, los mismo son descargados del sitio web de **Actian Corp.**

*Extended Support*

Actualmente, el Cliente tiene vigente y en producción la versión de Ingres 10.2. Esta versión se encuentra actualmente en la modalidad de Extended Support.

La vigencia del **Extended Support** es una política definida por el fabricante, cuya referencia puede encontrarse en: http://supportservices.actian.com/support-services/support#lifecycle https://supportservices.actian.com/support-services/actian-ingres-and-actian-x-support-levels

El **Extended Support** es similar al **Standard Support**, con las siguientes excepciones:

- No habrá más certificaciones con ninguna versión nueva de algún producto y/o servicio
- No se dispondrá de soporta para migraciones a un nuevo hardware o sistema operativo
- No se desarrollarán nuevos fixes/patches

SOLUCIONES TECNOLOGICAS

## Servicios

**El alcance de la oferta del servicio incluye:**

- Instalación y configuración de las licencias ofertadas en las máquinas destinadas para el efecto.
- Soporte local incluido, de acuerdo al contrato actual vigente.

**El alcance no incluye:**

- Instalación y/o actualización de plataformas operativas.
- Instalación y/o actualización de algún software de base necesario para las instalaciones de productos ofertados.
- Ningún tipo de programación, si es requerida. Esto quedará a cargo del área de tecnología del Cliente.
- En ningún caso, nuestra oferta contempla la resolución de problemas de hardware o de software de terceros, que presenten inconvenientes en el proceso de instalación de la solución.
- Ningún otro servicio que no esté explícitamente especificado en el alcance.

**Pre-requisitos y recomendaciones**

- Todos los pre-requisitos necesarios, tanto de hardware como de software serán evaluados y verificados en detalle durante la ejecución del servicio, conforme a las homologaciones y recomendaciones del fabricante (**Actian Corp.**). Se llevará a cabo el servicio solamente si todos los pre-requisitos están conformes a las compatibilidades y recomendaciones del fabricante.
- Las licencias y los instaladores del producto deberán ser proveídos por el Cliente.
- El cumplimiento de los términos de licencias de los productos ya adquiridos será responsabilidad exclusiva del Cliente.
- La asignación permanente de por lo menos una persona, que acompañe todo el proceso de instalación de la solución, y a quién serán trasmitidos los conocimientos necesarios para la administración de la herramienta.

## Forma de Pago

En un solo pago, el 100%, contra la entrega de las licencias de uso; en dólares americanos o en guaraníes al tipo de cambio vendedor vigente en la fecha de pago.

ONE
SOLUCIONES TECNOLÓGICAS

**Mantenimiento de la Oferta**
15 días.

**Plazo de entrega de la licencia**
7 días calendario.

En conformidad a esta propuesta y a los términos y condiciones, sírvanse firmar más abajo.

**Oscar Carlés Barriocanal**
Gerente de servicios profesionales
**ONE S.A.**

Nombre: _____

Cargo: _____

Institución: **IPS**

Fecha: ____/____/____

DocuSign Envelope ID: 7FC4F633-597B-4C81-AA4F-462C14300BD8



# ADDENDUM NO. 7 TO RESELLER AGREEMENT

This Addendum No. 7 (this "**Addendum**") to the Actian Reseller Agreement dated as of March 14, 2013, as amended, by and between ONE S.A. ("**Reseller**") and Actian Corporation (the "**Agreement**") is entered between Reseller and Actian Corporation ("**Actian**") effective as of the date the last party signs below (the "**Addendum Effective Date**"). Unless otherwise defined in this Addendum, all capitalized terms used in this Addendum will have the meanings assigned to them in the Agreement.

1. **Amendment**. For valuable consideration, the receipt of which is hereby acknowledged, the parties hereby agree to reinstate the Agreement effective as of the Addendum Effective Date and extend the Term of the Agreement through September 30, 2021.

2. **Entire Agreement; Conflict.** Except as provided in this Addendum, the Agreement will remain in full force and effect. This Addendum, together with the Agreement, constitutes the complete and final agreement of the parties on the subject matter hereof and supersede the parties' prior agreements, understandings and discussions relating to such subject matter. No modification of this Agreement is binding unless it is in writing and signed by the parties hereto. If there is a conflict between the Agreement and this Addendum, the terms of this Addendum will control.

3. **Counterparts.** This Addendum may be executed by facsimile and in counterparts, each of which (including signature pages) will be deemed an original, but all of which together will constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Addendum as of the Addendum Effective Date.

**ONE S.A.**

By: _____

Name: Oscar Carles B.

Title: Gerente de Servicios ONE S.A.

Date signed: 08/19/2020

**ACTIAN CORPORATION**

DocuSigned by:

By: _____

9CB420545E554C2...

Name: Marc Monahan

Title: VP, Finance

Date signed: 8/19/2020

ACTIAN
LEGAL
APPROVED
Date 8/19/2020
Initials: LH

actian

# ACTIAN RESELLER AGREEMENT

This Actian Reseller Agreement is entered into as of March 14, 2013 ("Effective Date") by and between Actian Corporation, a Delaware corporation with its principal place of business located at 500 Arguello St., Suite 200, Redwood City, CA 94063, USA ("Actian"), and ONE S.A. (Sociedad Anónima) RUC: 80064041-1, with its principal place of business at Las Palmas 878 c/ Esmeralda, Lambaré, Paraguay, 2420 ("Reseller"). In consideration of the commitments and conditions contained in this Agreement, the sufficiency of which is hereby acknowledged, the parties agree as follows.

## 1. Definitions

1.1. **"Customer"** means a third party end user who is bound by a Reseller Customer Agreement and to whom Reseller provides the Software and/or Support Services solely for internal use.

1.2. **"Documentation"** means the documentation provided to Reseller related to the Software and Support Services, which Actian may change from time to time in its discretion, which documentation Actian may deliver electronically or in hard copy or post at a website address.

1.3. **"Order"** means any order form(s) executed by Reseller and Actian in the form provided by Actian. Once executed by the parties, each Order is hereby incorporated into this Agreement by reference. Actian shall have no obligation to accept Orders from Reseller, including without limitation Orders for renewals of Support Services.

1.4. **"Reseller Customer Agreement"** means Reseller's agreement with Customer that conforms to the requirements of this Agreement, whereby Reseller agrees to provide the Software and to provide the Support Services.

1.5. **"Software"** means all or any portion of the commercially and generally available proprietary object code software products of Actian specified in Schedule 1 and any Updates that may be made available to Reseller by Actian, in its discretion, during the Term. The term "Software" shall not include beta, pre-release or other special release products or any source code.

1.6. **"Support Services"** means the annual maintenance and technical support services related to the Software.

1.7. **"Term"** means the period set forth in Section 7 of this Agreement.

1.8. **"Territory"** means the country within which Reseller is located, as indicated in its address above.

1.9. **"Updates"** means any bug fixes, patches, and/or minor updates for the Software that may be provided by Actian, in its discretion, to Customer as part of the Support Services.

## 2. Certain Rights

**2.1. License to Resell.** Provided that Reseller complies with the terms and conditions of the Agreement, including, but not limited to those provided in Sections 2.1, 3.1, 3.2, 5.2, and 6.1, during the Term Actian hereby grants to Reseller, and Reseller hereby accepts, the non-exclusive, non-sub-licensable, non-transferable right, solely with respect to Customers located in the Territory and solely pursuant to an Order signed by Reseller and Actian and pursuant to a Reseller Customer Agreement: (a) to market, sell and distribute to Customers limited, non-exclusive, non-sub-licensable, non-transferable, internal use licenses to the Software, and (b) to market and sell Support Services solely with respect to Software properly licensed to Customer hereunder. For the avoidance of doubt, Reseller has no right or license under this Agreement to sell, distribute or authorize the license or use of any Software or Support Services unless the exact scope and term of such license or use is covered in a then-current Order. Reseller shall sell the Software and Support Services under Actian's trademarks, subject to the restrictions in this Agreement and solely in accordance with the definitions and rules set forth herein. For clarity, no rights whatsoever with respect to the source code of the Software are granted under this Agreement to Reseller or Customer. Except as specifically stated in this Section 2, Reseller has no rights to license, market, sell, distribute, or provide the Software or the Support Services.

**2.2. Actian Retained Rights.** Among other rights, Actian retains the right in its sole discretion, within and outside the Territory, to: (a) grant others the right to distribute the Software or the Support Services on such terms and conditions and in such territories, as it deems appropriate; (b) distribute the Software or the Support Services in any channel of distribution; (c) establish or appoint any number of other resellers, independent software vendors, private labelers, distributors, embedded resellers, dealers or third parties, in any area for any purpose, and otherwise grant licenses to use the Software or the Support Services, directly or indirectly, to customers; (d) sell directly to any customers despite any activity under this Agreement; and (e) change the design and/or specifications of the Software or the Support Services at any time and discontinue the sale or availability of any Software or Support Services at any time without liability to Reseller. If Actian discontinues or makes obsolete any Software or Support Services pursuant to Section 2.2(e) above, Actian shall give Reseller written notice specifying such discontinuation, and Reseller shall have thirty (30) days from the date of notification to discontinue sales of affected Software and Support Services.

## 3. Certain Obligations of Reseller

**3.1. Sales and Marketing Efforts.** Reseller shall use reasonable efforts to actively market, promote and sell Support Services and licenses to the Software in accordance with the terms herein, and shall maintain the formal name of the Software and Support Services (with its appropriate trademark designations) in all advertising and other printed materials relating specifically to the Software or Support Services, as applicable, subject to Section 6 below. Reseller agrees to act as a "Reference Account" for Actian. In such cases where Reseller has agreed to serve as a "Reference Account" Actian shall be allowed to refer other resellers, potential resellers, customers, potential customers, press, and industry/financial analysts to Reseller's executives familiar with the Actian relationship to act as a reference for Actian.

**3.2. Restrictions on Reseller.** Reseller shall not, and shall not allow any third party to, use the Software except as expressly authorized under this Agreement. Without limiting the foregoing or any other restrictions on Reseller herein, Reseller shall not, shall not allow any third party to, and shall ensure there are provisions in each Reseller Customer Agreement requiring Customer not to: (a) modify or create derivative works

**5.4. Taxes.** Reseller shall be responsible to pay all taxes, duties, withholding, levies, imposts, fines and other charges arising out of this Agreement, and all interest, penalties or similar liabilities with respect thereto (together, "**Taxes**"), except for taxes based on the net income of Actian. All payments or reimbursements under this Agreement and any Order or other instrument or agreement required hereunder shall be made free and clear and without deduction for any and all present and future Taxes. Payments due to Actian under this Agreement and any Order or other instrument or agreement required hereunder shall be increased so that amounts received by Actian, after provisions for Taxes and all Taxes on such increase, will be equal to the amounts required under this Agreement and any Order or other instrument or agreement required hereunder as if no Taxes were due on such payments. Any and all fees listed in an Order are exclusive of any Taxes or other such levies or charges. Reseller hereby agrees to indemnify Actian for Reseller's breach of this Section 5.4.

**5.5. Records and Reports.** During the Term and for a period of at least three (3) years following termination of this Agreement, Reseller shall keep full, true and accurate records and accounts in accordance with generally accepted accounting practices to show the amount of fees payable to Actian under this Agreement. These records and accounts shall include, at a minimum, for all Software and Support Services sold hereunder: (i) the Customer name and address; (ii) the number of users licensed or how the Software was licensed or what kind of Support Services, if any, would be obtained; and (iii) a copy of each Customer order and Reseller Customer Agreement entered into by and between Reseller and Customer. No more than once every twelve (12) months, Actian, itself or through a third party representative selected by Actian, shall have the right, on notice to Reseller, to examine such records, and such other records and information as reasonably required by Actian, to determine Reseller's compliance with the terms of this Agreement. In the case of any underpayment, Reseller shall pay such amount to Actian immediately, in addition to any other fees and Taxas due. Actian shall bear the expenses of the audit, provided, in the event any such audit reveals that Reseller has understated the amount of fees that it is obligated to pay under this Agreement by more than five percent (5%) of the amount reported during the period audited, Reseller shall pay, in addition to any other fees contractually due, all reasonable costs associated with the audit. Such audit right shall survive the termination of this Agreement for a period of two years. Reseller shall submit point of sale reports to Actian on a quarterly basis within fifteen (15) days after the end of each fiscal quarter, which reports shall include the following information for each copy of the Software and all Support Services sold by Reseller: (a) Customer name and address; (b) how the Software was licensed and the restrictions on the term, instances, licensed computers, cores, maximum number of users, processing units and other metrics, as applicable; (c), if applicable, what Support Services are to be provided related to such Software; (d) the date of distribution and the Software distributed; and (e) such other information as reasonably required by Actian. In any quarter for which no fees are owed, Reseller shall provide a report to Actian so indicating.

## 6. Trademarks and Copyrights

**6.1. Actian's Marks.** All trademarks, service marks, trade names, logos or other words or symbols identifying the Software, Support Services, Actian or Actian's business (the "**Actian Marks**") are and will remain the exclusive property of Actian. Reseller acknowledges and agrees that Actian is the owner and/or licensee of the Actian Marks and that all goodwill arising out of Reseller's use of the Actian Marks pursuant to this Agreement shall inure to Actian, and Reseller shall not acquire any right to, or interest in, any of the Actian Marks. Subject to the terms herein, Reseller may use the Actian Marks which relate to the Software on the Software and which relate to the Support Services on the materials related thereto, and on any promotional materials therefor when received by Reseller from Actian, solely in connection with Reseller's activities under this Agreement and subject to Actian's then current trademark use policies or guidelines. Reseller agrees to submit to Actian for Actian's prior written approval any and all advertising and sales literature of Reseller, which refer to Actian or include any of the Actian Marks, and, in addition, Actian reserves the right to require Reseller to discontinue use of any advertising or marketing materials that include the Actian Marks or are related to the Software or Support Services that Actian reasonably believes will have a detrimental effect on Actian's business. Reseller shall not at any time or in any way indicate ownership of or any right in the Actian Marks and shall not contest the right of Actian and its affiliates to the use of any of the Actian Marks. Reseller shall not: (i) register, or apply for registration, anywhere in the world, directly or indirectly, any trademark, service mark, trade name, copyright, company name or other proprietary or commercial right which is identical or confusingly similar to the Actian Marks or which are translations thereof in any other language(s); (ii) use or permit any subsidiary, affiliate, Customer or customer of Reseller to use the Actian Marks as part of its trade name or company name; or (iii) take any other action that jeopardizes Actian's proprietary rights in the Actian Marks. Upon Actian's request and at Actian's expense, Reseller will execute such instruments and take such actions that may be appropriate to protect Actian's interest in the Actian Marks. Reseller shall not (nor shall it permit any Customer to) knowingly make any false or misleading representations concerning Actian or the Software or the Support Services. Reseller will not take any action that jeopardizes Actian's proprietary rights or acquire any rights in the Actian Marks. Reseller shall not remove or disfigure any Actian Marks on the Software or on materials related to the Support Services and shall not attach any additional marks to the Software or on the materials related to the Support Services except as otherwise agreed by Actian. Reseller shall not attach the Actian Marks to any other products other than the Software or on materials related to the Support Services, as applicable. Reseller agrees not to alter or remove or obscure any copyright or other proprietary notices on or in the Software or on or in the materials related to the Support Services. Reseller's right to use the Actian Marks shall immediately cease upon termination or expiration of this Agreement, except as may be agreed upon by the parties regarding Reseller's disposal of inventory of the Software at the time of termination or expiration. Reseller shall at all times conduct business only under its own name and may not use the Actian Marks as part of its business name.

**6.2. Reseller's Marks.** Reseller hereby agrees to allow reference by Actian to Reseller and the relationship hereunder on Actian Reseller lists, marketing presentations, marketing materials and websites, as well as in discussion with Actian prospective resellers, customers, and industry/financial analysts. Actian may also use Reseller's logo in such context.

## 7. Term and Termination

**7.1. Term.** 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.

OPERATE WITHOUT INTERRUPTION OR THAT ANY SOFTWARE OR SERVICES WILL FULFILL RESELLER'S OR ITS CUSTOMERS' REQUIREMENTS. TO THE EXTENT THAT ACTIAN CANNOT DISCLAIM ANY SUCH WARRANTY AS A MATTER OF APPLICABLE LAW, THE SCOPE AND DURATION OF SUCH WARRANTY WILL BE THE MINIMUM REQUIRED UNDER SUCH LAW.

**11. Limitation of Liability.**

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL ACTIAN OR ITS SUPPLIERS BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT UNDER ANY LEGAL THEORY, INCLUDING BUT NOT LIMITED TO LOST PROFITS, LOST DATA OR BUSINESS INTERRUPTION, EVEN IF ACTIAN HAS BEEN ADVISED OF, KNOWS OF, OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES. ACTIAN'S AND ITS SUPPLIERS' TOTAL CUMULATIVE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT, STATUTORY OR OTHERWISE, WILL NOT EXCEED THE TOTAL FEES PAID BY RESELLER TO ACTIAN UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTHS PRECEDING THE DATE THAT THE CLAIM AROSE. THE PARTIES ACKNOWLEDGE THAT THIS SECTION 11 REFLECTS THE AGREED UPON ALLOCATION OF RISK BETWEEN THE PARTIES. THIS LIMITATION OF LIABILITY WILL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY AND NOTWITHSTANDING ANY LIABILITY OR OBLIGATION UNDER SECTION 12 BELOW.

**12. Indemnification**

12.1. **Actian's Indemnification Obligation.** Subject entirely to the limitations in Section 11 and provided Reseller is not then in default under this Agreement, Actian will defend and/or settle at its own expense any action brought against Reseller by a third party, to the extent that such action is based upon a claim that the Software distributed by Actian to Reseller under this Agreement infringes any U.S. patents or U.S. copyrights existing as of the Effective Date. Actian will pay those damages finally awarded against Reseller in any such action that are specifically attributable to such claim, or those monetary amounts agreed to in a monetary settlement of such claim. The foregoing obligations are conditioned on Reseller: (a) notifying Actian promptly in writing of such action; (b) giving Actian sole control of the defense thereof and any related settlement negotiations; and (c) cooperating and, at Actian's request and expense, assisting in such defense. Actian will not reimburse Reseller for any expenses incurred by Reseller without the prior written approval of Actian. Reseller may also participate in the defense at its own expense. If the Software becomes, or in Actian's opinion is likely to become, the subject of an infringement claim that Actian may be required to defend pursuant to this Section 12, then Actian may (at its option and expense) either: (a) procure for Reseller the right to continue using the affected Software or substantially similar software; or (b) replace or modify the affected Software so that it becomes non-infringing. If neither of the foregoing options is commercially reasonable, as determined in Actian's sole discretion, then Actian may terminate Reseller's rights to use the affected Software and return any fees that Reseller has pre-paid to Actian for future licenses to Customers of such Software. THIS SECTION 12 STATES ACTIAN'S ENTIRE LIABILITY AND RESELLER'S SOLE AND EXCLUSIVE REMEDY FOR CLAIMS AND ACTIONS RELATED TO INFRINGEMENT, MISAPPROPRIATION OR VIOLATION OF ANY INTELLECTUAL PROPERTY OR OTHER PROPRIETARY RIGHTS, AND ACTIAN SHALL NOT BE RESPONSIBLE FOR ANY THIRD PARTY CLAIMS AGAINST RESELLER EXCEPT AS SPECIFICALLY STATED IN THIS SECTION 12.

Notwithstanding the foregoing, Actian will have no obligation under this Section 12 or otherwise with respect to any infringement claim based upon: (a) any use of the Software or Support Services not in accordance with the Order, this Agreement or the Documentation; (b) the combination, operation or use of the Software with other product, equipment, business method, software or data not provided by Actian; (c) any use of any release of the Software other than the most current release made available to Reseller; (d) any modification of the Software by any person other than Actian or its authorized agents or subcontractors; (e) Actian's compliance with any designs, specifications, or instructions provided by Reseller or a third party on Reseller's behalf; or (f) any use of the Software after Actian has either provided Reseller a new software release that would have overcome the infringement or has terminated Reseller's right to use the Software pursuant to Section 7 or otherwise. In the event that a claim is filed against Actian based on one of the above exclusions, Reseller will defend, indemnify and hold harmless Actian against all liability, damages and costs (including reasonable attorneys' fees) resulting from or related to such a claim.

12.2. **Reseller's Indemnification Obligations.** Reseller shall defend, indemnify and hold Actian harmless from and against any and all claims, judgments, awards, costs, expenses, damages, losses and liabilities (including reasonable attorneys' fees) of whatsoever kind and nature that may be asserted, granted or imposed against Actian directly or indirectly arising from or in connection with: (i) any claims that any software or products supplied by Reseller (other than any unmodified Software or Documentation provided by Actian to Reseller to provide to the Customer, if any) infringes any third party intellectual property rights; (ii) any misrepresentation made by Reseller regarding Actian or the Software or Support Services; (iii) any warranty, condition, representation, indemnity or guarantee made by Reseller with respect to the Software or the Support Services; (iv) any omission or inaccuracy in Reseller's advertisements or marketing or promotional materials that relate to Actian or the Software or Support Services; (v) any alteration, customization or other modification of the Software or the Documentation made by Reseller, or any of Reseller's employees or agents; or (vi) Reseller's failure to comply with any of its obligations in this Agreement. This Section will not be construed to limit or exclude any other claims or remedies which Actian may assert under this Agreement or by law.

**13. General**

**13.1. Notices.** All notices under this Agreement must be delivered in writing in person, by courier, or by certified or registered mail (postage prepaid and return receipt requested) to the other party at the address set forth in this Agreement and will be effective upon receipt or five (5) business days after being deposited in the mail as required above, whichever occurs sooner. Either party may change its address by giving written notice of its new address to the other party. The address for Actian shall be 500 Arguello St., Suite 200, Redwood City, CA 94063, USA, and the address for the Reseller is set forth at the beginning of this Agreement. To be effective, any notice sent to Actian must be delivered to both (a) the Legal Department and (b) the Chief Executive Officer.

**13.2. Relationship of Parties; Beneficiaries.** The parties hereto are independent contractors. Nothing in this Agreement

13.10. **Entire Agreement.** This Agreement (including the items specifically and expressly incorporated by reference herein) constitutes the entire agreement between the parties regarding the subject matter hereof and supersedes all prior or contemporaneous agreements, representations, understandings and communications, whether written or oral. The terms of this Agreement will control over any additional, different, or conflicting provisions in any documents, such as a purchase order, an Order or terms or documents on a website, which are hereby rejected and shall not apply. This Agreement may be amended only by a written document signed by both parties. No waiver of any breach of any provision of this Agreement shall constitute a waiver of any prior, concurrent, or subsequent breach of the same or any other provision hereof.

13.11. **Counterparts.** This Agreement may be executed in counterparts, each of which will be considered an original, but all of which together will constitute the same instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date:

**Actian Corporation**

By:_____

Name:_____

Title:_____

**Reseller**

By:_____

Name:_____

Title:_____

ONE S.A. Tecnología y Servicios