



## Software License Agreement - US/CA/LA

Effective Date: 6 August 2021

Act! LLC End User License Agreement for

Act! Pro (v24.x), Act! (v24.x), Act! (access via Web) (v24.x)

**IMPORTANT - READ CAREFULLY!:** This End User License Agreement ("Agreement") is a legal agreement between you or the company you represent ("you") and Act!. The Agreement governs your Use of Act! Pro (v24.x), Act! (v24.x), or Act! (access via Web) (v24.x) and related Act! plug-ins or extensions (the "Software"). The term "Software" means the (i) machine readable object code version of the Software in any medium, (ii) any printed or electronic documentation included in or as part of the Software ("Documentation"), (iii) any disk on which the Software is delivered, (iv) any activation codes or other protection devices provided with the Software, (v) any hotfixes, patches, updates/service releases and security updates for the Software, and (vi) any printed material that accompanies the Software, all as delivered or made available to you by Act! or by a Reseller who is authorized by Act! to provide the Software to you ("Reseller"). "Use" means: installing a copy of the Software on a hard disk drive within a single computer, loading and executing or displaying the Software. While Act! or its licensors continue to own the Software, you will have certain rights to use the Software (as described below) upon your acceptance of the terms and conditions of this Agreement for so long as this Agreement remains in effect.

Registration and activation of your license for the Software with Act! is required. You have thirty (30) days after your first use of the Software to register and activate your product or the Software will stop functioning until you register and activate your product. Your rights and obligations with respect to the use of this Software are as follows:

### **1 DEFINITIONS**

This agreement describes how you are allowed to use the installable software that came with this agreement and any related plug-ins, applications or extension files (the software). There may be other documents in addition to this agreement which set out the legal terms relating to you receiving services provided with the software - we refer to these documents as 'relevant documents'. These may include Terms of Service, Payment Terms and Scope of Support, as well as other documents, depending on which services you receive and whether you receive them from Act! Software Limited directly, or one of its third party resellers.

- (a) "AHPP Hosted License" means a license to access the Software in a hosted environment through an Authorized Hosting Program Provider, a Act! reseller authorized to host the Software ("AHPP") under the terms of a third-party hosting agreement.

- (b) "Customer Technical Support" means Software assistance You receive from Act! under a Support Plan.
- (c) "On-Premise Perpetual License" means a license to Use the Software according to this Agreement until this Agreement terminates as described herein or You and Act! agree to modify the length of Your license.
- (d) "On-Premise Subscription License" means a license to Use the Software according to this Agreement until the specified term or subscription period ends or Your license or this Agreement is terminated or converts to a perpetual license as described herein.
- (e) "Support Plan" means a plan You purchase separately or acquire as part of the purchase of an On-Premise Subscription providing You Technical Support and/or maintenance Software for a specified period.

## 2 GRANT OF LICENSE

- (a) ON PREMISE PERPETUAL LICENSE: If you purchased an On Premise Perpetual License, Act! hereby grants to you a limited, nontransferable, non-exclusive license to Use the Software under the terms stated in this Agreement for use in your business or profession. Act! reserves all rights not expressly granted by this Agreement and you hereby acknowledge that all title and ownership of the Software and all associated intellectual property rights are and shall remain with Act!. Certain product features and capabilities require an active subscription be in force to access and/or use. As such, users on a perpetual license acknowledge and accept they are not entitled to these features and capabilities.
  - (i) Usage. This Agreement permits you to: (1) use the Software: (a) on a single primary computer; (b) on a secondary computer that may be either your home computer or a portable computer that you own or use in your business or profession; (2) permit a third party information technology outsourcing entity ("IT Outsourcer") to load the Software on your behalf and strictly for your use and the use of the other named users for which you have purchased licenses and provide you access to the Software in a secure environment that would prohibit use by non-licensed third parties; however, any such IT Outsourcer will have no rights under this Agreement to use, transfer or distribute the Software to any third party; (3) make one copy of the Software for archival purposes, or copy the software onto the hard disk of your computer and retain the original for archival purposes; (4) use the Software via a local area network, provided that you have purchased a licensed copy of the Software for each active named user who can access the Software over that network; and (5) after written notice to Act!, transfer the Software to the purchasing party after the close of a sale of either your entire business, or all, or substantially all, of the assets of your business, provided that the purchasing party reads and accepts (in writing to Act!) the terms and conditions of this Agreement

and you do not retain a copy of the Software. Additional restrictions may apply to any such transfer

- (b) **ON-PREMISE SUBSCRIPTION LICENSE:** If you have purchased an On-Premise Subscription License, Act! grants to you a limited, nontransferable, non-exclusive, non-sublicensable license to access and Use the Software for use in your business or profession until the specified term or subscription period ends or you are no longer current on your subscription fees. You may not transfer your license to any other person or entity.
- (c) **AHPP HOSTED LICENSE:** If you have purchased an AHPP Hosted License, Act! grants to you a limited, nontransferable, non-exclusive, non-sublicensable license to access and Use the Software for use in your business or profession. You may not (a) transfer your license to any other person or entity and (b) You may not access and/or use the Software outside of the hosted environment. Your access and/or usage is governed by this Agreement and, if applicable, your third party hosting agreement. This Agreement shall be effective as long as you are under a current AHPP hosting agreement.
- (d) If you have licensed Act! Pro (v24.x), the Software may be installed and activated by up to five (5) users sharing a database, provided that you have purchased a license for each user who accesses the Software. If you have licensed Act! (v24.x) or Act! (access via Web) (v24.x), the Software may be installed, networked or activated for up to the number of users for which you have purchased a license to access the Software.

### **3 LICENSE RESTRICTIONS**

This Agreement does not include the right to perform any of the following and you agree to refrain from performing any of the following:

- (a) copying the Documentation that accompanies the Software, except that you may make one copy of the Documentation for each license of the Software that you have purchased;
- (b) making any copies of all or part of the Software other than as expressly permitted in this Agreement;
- (c) sublicensing, renting, leasing, or loaning, any portion of the Software or hosting the Software on your computer for others to use;
- (d) re-selling or distributing any portion of the Software to another person or entity, except as permitted under Section 1(e) above;
- (e) reverse engineering, decompiling, disassembling, modifying, translating, making any attempt to discover the source code of the Software or create derivative works from the Software, except as permitted (i) in a license you have secured from Act! for a Software Developers' Kit for the Software.; or (ii) by applicable law;

- (f) attempting to write directly to the Microsoft SQL database using the system administrator password unless you have entered into a separate agreement with Act! for this purpose;
- (g) using the Act! trademarks as part of a product name, trademark or business name without prior written approval from Act!;
- (h) marketing or distributing add-ons or enhancements to the Software without the prior written consent of Act!;
- (i) copying any portion of the Act! product graphical user interface for incorporation into or use for any software or other product without the prior written consent of Act!;
- (j) invoking any part of the Software (including any copy thereof), through use of any program that Act! has not licensed to you, to enable access to the database that the Software manages by more users than the number of named users for which you have a license from Act!; or
- (k) enabling anyone other than an IT Outsourcer to use your registration code(s) or serial number(s).

#### **4 PRODUCT REGISTRATION AND ACTIVATION REQUIRED**

There are technological measures in this Software that are designed to prevent unlicensed or illegal use of the Software. You agree that Act! may use these measures to protect Act! against software piracy. This Software may contain enforcement technology that limits the ability to use the Software on multiple computers or reinstall the Software more than two times per user. This Agreement and the Software containing enforcement technology require registration and activation as further set forth during installation and in the Documentation. The Software will only operate for thirty (30) days prior to activation by you. During activation, you will provide your unique product serial number accompanying the Software and security code over the Internet or via the telephone to verify the authenticity of the Software, after which you will be given an activation code that will enable the Software. If you do not complete the activation within the finite period of time set forth in the Documentation, or as prompted by the Software, the Software will cease to function until activation is complete. Once activated, your Software functionality will be restored. In the event you are not able to activate the Software over the Internet, or through any other method specified during the activation process, you may contact Act! Technical Support using the information provided by Act! during activation, or as may be set forth in the Documentation.

During registration of the Software, you will be required to provide Act! certain business contact information. For details regarding how Act! uses customer business contact information [and other personal information that we may collect and process about you], please see our Privacy Statement at <https://www.act.com/legal/privacy-policy/>.

## 5 SUPPORT

- (a) Act! disclaims any responsibility to provide any Technical Support except as part of a Support Plan.
- (b) If you have purchased an AHPP Hosted License, your support is governed by your hosting agreement.
- (c) Support is not available for users who do not meet the minimum system requirements for the Software.
- (d) You must have a valid license for a supported version of the Software in order to be eligible to receive Technical Support under a Support Plan. If you are not on a supported version, as set forth in the Act! Software Obsolescence Policy located on the Act! Web site at <https://www.act.com/obsolescence-policy/>, you must license an upgrade to the latest version of the Software.

## 6 TERMINATION OF SUPPORT AND OTHER SERVICES

Software has a limited useful life for various reasons including changes in technology. You are free to decide and are responsible for deciding when to upgrade the Software. Act! reserves the right to terminate Technical Support and all other services, including but not limited to, any connectivity to any optional products and services (the "Add-On Products and Services") applicable to the Software in the event that the Software has become inoperable or incompatible with current operating systems, hardware, Add-On Products and Services or other technologies or as otherwise set forth in the Act! Software Obsolescence Policy located on the Act! Web site at <https://www.act.com/obsolescence-policy/>.

## 7 TERMINATION

This Agreement may be terminated by Act! without notice if you fail to comply with any term or condition of this Agreement, including failure to pay all license fees when due. Otherwise, if you have subscribed to an On-Premise Subscription License, this Agreement terminates at the conclusion of your subscription period. Upon termination, you must immediately stop Use of the Software. If you have subscribed to an On-Premise Subscription License with an option to convert to a perpetual license, the subscription portion of your license will conclude at the termination of your subscription but, upon your request to Act!, you will be provided with a perpetual use serial number, allowing you to continue Use of the Software unless or until terminated otherwise for reasons listed above. For details on the Act! billing policy, see <https://www.act.com/legal/billing-policy/>.

## 8 LIMITED WARRANTY

- (a) Act! warrants that, for a period of sixty (60) days from the date of delivery of the Software to you (the "Limited Warranty Period"), the Software will substantially conform in material respects to the specifications set forth in the Documentation, when installed, operated and used as recommended in the Documentation and in

accordance with this Agreement. Provided you notify Act! in writing during the Limited Warranty Period of a defect, and if Act! is able to replicate and verify that such defect exists, Act! will, at its option, replace the Software or refund the money you paid for the Software. THIS IS YOUR SOLE AND EXCLUSIVE REMEDY IN THE EVENT OF A BREACH OF THIS LIMITED WARRANTY. Act! does not warrant that the Software will meet your requirements or that operation of the Software will be uninterrupted or that the Software will be error-free.

- (b) If You are entitled to receive Technical Support as part of a Support Plan, Act! warrants that while Your Support Plan is in effect and if You have paid all required Support Plan fees, Act! will use qualified personnel to provide You Technical Support in a professional manner consistent with industry standards.
- (c) THE LIMITED WARRANTY SET FORTH IN THIS SECTION 8 IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES BY Act! SOFTWARE AND ITS LICENSORS, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. THIS WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS. YOU MAY HAVE OTHER RIGHTS, WHICH VARY FROM STATE TO STATE.

## **9 LIMITATION OF LIABILITY AND DAMAGES**

- (a) REGARDLESS OF WHETHER ANY PROVISION SET FORTH HEREIN FAILS OF ITS ESSENTIAL PURPOSE, IN NO EVENT WILL Act! OR ITS LICENSORS BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR SIMILAR DAMAGES, INCLUDING ANY LOST PROFITS OR LOST DATA ARISING OUT OF THE USE OR INABILITY TO USE THE SOFTWARE EVEN IF Act! OR ITS LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SOME STATES DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU. IN NO EVENT SHALL Act!'S LIABILITY TO YOU ARISING OUT OF OR IN CONNECTION WITH THE SOFTWARE, YOUR SUPPORT PLAN, OR THIS AGREEMENT, WHETHER IN CONTRACT, TORT, OR OTHERWISE, EXCEED (i) THE LICENSE FEE ACTUALLY PAID BY YOU TO PURCHASE AN ON-PREMISE LICENSE, (ii) THE ON-PREMISE SUBSCRIPTION FEES ACTUALLY PAID BY YOU IN THE TWELVE (12) MONTHS PRECEDING YOUR CLAIM, OR (iii) THE FEES ACTUALLY PAID BY YOU TO PURCHASE OR RENEW THE SUPPORT PLAN IN EFFECT WHEN THE CLAIM AROSE. You acknowledge and agree that this Agreement allocates risk between You and Act! as authorized by applicable law and that the pricing of Act! products reflect this allocation of risk and the exclusions and limitations of liability contained in this Agreement. If any remedy hereunder is determined to have failed of its essential purpose, all limitations of liability and exclusion of damages set forth in this Agreement shall remain in full force and effect.

- (b) You acknowledge that unless You and Act! agree in writing for Act! to provide software implementation or customization services to implement the Software at Your place of business, You are responsible for engaging a qualified party to provide such services for You on terms You negotiate. You also acknowledge that You are responsible for independently investigating the skills and qualifications of such party to ensure that they provide You with the level of skill and service Your business requires. You agree that Act! shall have no liability whatsoever for any failure associated with such implementation or customization services, even if the party You engage is an authorized or certified Reseller, consultant, or installer of Act! products. The disclaimers and limitations set forth above will apply regardless of whether you accept the Agreement.

## **10 DISCLAIMER REGARDING LINKS TO EXTERNAL SITES**

The Software includes links to other Web sites on the Internet that are owned and operated by third parties not under the control of Act!. Act! provides the links for your convenience only and does not provide a warranty of any type regarding the actions of such third parties, their privacy policies and practices, or the security of information sent to such third parties while you are using their Web sites. Under no circumstances shall Act!, or its subsidiaries or affiliates, be responsible or liable in any way for the availability of services or products offered, or the content located on or through, any such third party's Web site.

## **11 THIRD-PARTY SERVICES**

The Services may include services developed, provided or maintained by third-party service providers ("Third Party Services"). In addition to the terms of this Agreement, Your access to and use of any Third Party Services is also subject to any other agreement separate from this Agreement that You may enter into (or may have entered into) relating to those Third Party Services (each, a "Third Party Service Agreement"). The terms of any Third Party Service Agreement will apply to the applicable Third Party Services provided under that Third Party Service Agreement in addition to the terms of this Agreement. Except as set forth in this Agreement, the terms of any Third Party Service Agreement will control in the event of a conflict between the terms of this Agreement and that Third Party Service Agreement. All other Third Party Services will be subject to the terms of this Agreement. Third Party Services may be subject to additional Fees. Notwithstanding the terms of any Third Party Services Agreement, Act! may change, modify or discontinue any Third Party Service at any time and without notice to You. Except as expressly set forth in this Agreement or any Third Party Service Agreement, You are granted no licenses or rights, whether by implication, estoppel, or otherwise, in or to any Third Party Services.

## **12 EXPORT RESTRICTIONS**

You agree to comply to the extent applicable with the United States Export Administration regulations, the International Traffic in Arms regulations and any regulations or licenses administered by the Department of the Treasury's Office of Foreign Assets Control.

**13 GENERAL**

- (a) To the fullest extent permitted by law and consistent with valid entry into a binding agreement, the controlling language of this Agreement is English and any translation you have received has been provided solely for your convenience. In the event you have entered into this Agreement by means of the display of a translated version of this Agreement in a language other than U.S. English, you may request a U.S. English language version of this Agreement by notice to Act!. To the fullest extent permitted by law, all correspondence and communication between you and Act! under this Agreement must be in English language.
- (b) The exclusive judicial forum for any action brought to enforce this Agreement shall be an appropriate federal or state court located in Colorado. In either case, this Agreement shall be governed by the laws of Colorado without regard to the conflict of laws provisions thereof.
- (c) This Agreement allocates risk between you and Act! as authorized by applicable law, and pricing of Act! products reflects this allocation of risk and the limitation of liability contained in this Agreement. If any provision of this Agreement is found invalid or unenforceable pursuant to judicial decree, the remainder of this Agreement shall be valid and enforceable according to its terms.
- (d) Act! is a registered trademark of Act! LLC. For an up-to-date list of copyright and trademark statements, refer either to the copyright page of the Software User's Guide or the Help About window within the Software. Other product names mentioned may be service marks, trademarks, or registered trademarks of their respective companies and are hereby acknowledged.
- (e) No failure or delay of either party to exercise any rights or remedies under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of the same or other rights or remedies preclude any further or other exercise of the same or other rights or remedies, nor shall any waiver of any rights or remedies with respect to any circumstances be constructed as a waiver thereof with respect to any other circumstances.
- (f) Quebec. With regard to Quebec, the parties declare that they have required that this Agreement and all documents related hereto, either present or future, be drawn up in the English language only. Les parties déclarent par les présentes qu'elles exigent que cette entente et tous les documents y afférents, soit pour le présent ou l'avenir, soient rédigés en langue anglaise seulement.
- (g) Sections 9 (Limited Warranty), 10 (Limitation of Liability and Damages), 14(b) (Governing Law), and this Section 14(g) shall survive the expiration or termination of this Agreement.
- (h) This Agreement, and any attachments hereto, constitute the entire agreement between you and Act! with respect to the subject matter hereof, and supersedes all proposals, oral or written, and all other communications between the parties with respect to such subject matter. This Agreement shall not be modified, except

by written agreement signed by the parties hereto. Employees, officers, and agents of Act! are not authorized to modify this Agreement, or make any additional representations, commitments, or warranties binding on Act!, unless made in writing and signed by an authorized officer of Act!.

- (i) Act! shall not be liable for and shall be excused from any failure to deliver or perform or for delay in delivery or performance due to causes beyond its reasonable control, including but not limited to, work stoppages, shortages, civil disturbances, terrorist actions, transportation problems, interruptions or power or communications, failure or suppliers or subcontractors, natural disasters or other acts of God.
- (j) All notices given hereunder shall be in writing and sent by overnight courier or delivered in person: (i) if to Act!, to Act! LLC, Legal Department, 8800 N. Gainey Center Dr., Suite 200, Scottsdale, AZ 85258; and (ii) if to you, to the address you indicated upon your registration of the Software.