



## Agreement for Act! Business Care

### 1. What this agreement is about

This agreement describes how we will provide a support and maintenance service ('Service'), which we call "Business Care", for the Act! software ('Act!') you have obtained from us, or your Act! supplier or business partner. This agreement, together with any relevant documents ('Documents') we have provided with this agreement or our invoice, covers the Service, and any part of it. Certain parts of the Service may be subject to additional terms and conditions.

### Summary of this agreement

If you accept this agreement and pay the appropriate subscription fees, we will provide you with the Service as described in this agreement and any relevant documents you receive from us about the service after the date of your order.

- Paragraph 4 describes the types of Service we will give to you and how you can renew your annual subscription.
- Paragraph 5 sets out how you or we may end this agreement.
- Paragraph 6 describes how our responsibility to you is limited in certain circumstances.

If there is any conflict between this summary and one of the following terms in this agreement, the following term will take priority.

### 2. How you indicate that you accept this agreement, and when the agreement starts

2.1 If you do any of the following, you indicate that you accept every term of this agreement:

- 2.1.1 if you pay our invoice for the Service;
- 2.1.2 if you use the Service; or
- 2.1.3 if you renew your Service subscription in accordance with this agreement.

2.2 This agreement starts from the date you accept this agreement.

2.3 If you are not satisfied with the Service we supply to you, or have any other problem with it, please email our team at the email address or telephone number that we have told you about in the Documents.

### 3. Who this agreement is between and what certain words mean

3.1 This agreement is between:

- 3.1.1 us, Swiftpage International Limited (UK company registration number 08397789, registered office: Q15 Quorum Business Park, Benton Lane, Newcastle upon Tyne, NE12 8BU, UK, VAT number GB 156868755); and
- 3.1.2 you, the person or organisation which pays for and agrees to receive the Service.

3.2 By entering into this agreement you and we agree to be bound by it and any Documents and to keep to their terms, and we agree to provide the Service to you as described in this agreement and the Documents.

### 4. Our commitment to you

4.1 For the time period specified in our invoice or the Documents, we will supply the Service to you as described in this agreement and any Documents.

4.1.1 You agree to make available to us without charge any information or facilities we may reasonably need to supply the Service to you, including, but not limited to, remote access to your computer system on which Act! is installed. We agree to keep confidential any information you provide to us in this way.

4.1.2 When you contact us by telephone we may use caller recognition technology to deal with your call in the most effective way. Please ensure you do not withhold your telephone number if you would like us to prioritise your call in this way. We also use call recording software and may record your call for security and training purposes and for other purposes. We will keep a record of the Service provided to you. This helps us to provide a high quality service.

4.2 The initial period of this agreement is for the time period specified in our invoice or the Documents.

4.2.1 On each anniversary of the start of this agreement you can renew your Service subscription for a period of one year. Before the end of your current Service subscription period, we will send you our invoice setting out the applicable renewal fees. Unless you tell us that you do not wish to renew your Service subscription before the end of your current subscription period, we will renew your Service subscription for a further period of one year and you must pay the renewal fees to us in full, as described in our invoice. If you fail to tell us before your renewal date that you do not wish to renew your Service subscription, or if you use any part of the Service after the renewal date, you indicate that you accept our invoice and you agree to the renewal of your annual Service subscription.

4.2.2 You may upgrade your Service subscription at any time subject to you paying to us any additional fees. You may only downgrade your Service subscription at the end of your current subscription period (i.e. the downgrade will only apply to the new subscription period).

4.3 We will use our reasonable skill and care to provide the Service and any other service for which you have paid our fees and which you are entitled to under this agreement. You understand that we cannot guarantee that the provision by us of the Service services will be constant and without interruption.

4.4 Scope and nature of the technical support part of the Service

We will provide technical support with problems you may have using Act! as described in the Documents. We may provide it by any of the following communication methods: telephone, email, web chat, remote assistance

and via self-help by giving you access to an online knowledge base. We may decide which of these communication methods to use in our reasonable discretion. The Service is available during the hours set out in the Documents. Unless we agree otherwise, we will not provide the Service or other assistance for any hardware, third-party software or other equipment used with Act!, and if we do so this other assistance is provided as a free of charge separate service.

4.5 To enable us to provide a more efficient service to you, you agree to tell us about any defect in Act! within five days of you first becoming aware of it.

4.6 If we provide you with remote assistance, you agree to install software onto your computer system(s) (where necessary) to allow us to provide that assistance and understand that by doing so we will be temporarily able to control your computer. You will be able to see everything that we can see and you will be able to see what we do. You need to make sure that you close down any confidential information or programs which are running on your computer which do not relate to the Service we are providing if you do not want us to see it. You can stop our control of your computer at any time by asking us to give control back to you. If you do this we may not be able to provide the Service until you give us control of your computer again. You agree to ensure that our employees are not exposed to any illegal or inappropriate content (given our business relationship) by accessing your computer.

4.7 Act! updates and upgrades

You agree to promptly install and use any 'updates' we may issue to you (an update is a permanent fix to a known problem or due to change to legislation released by us from time to time). Depending on the level of Service you have subscribed for, we may choose to supply you at no extra charge with any upgrades we make to Act! during the period of your subscription. An upgrade is a revision to Act! which adds new or different features, functions or capabilities to Act!, which we sometimes refer to as a feature pack or new version of Act!. The terms of your licence for Act! and any other terms we supply with an update and/or an upgrade will apply to an update and/or upgrade.

## **5. How you or we may end this agreement or suspend the Service services**

5.1 We may end this agreement at any time by giving you at least thirty days' notice and if we do, we will refund to you the pro rata value of our charge relating to the unexpired subscription period.

5.2 You may end this agreement at any time by giving to us at least seven days' notice during your subscription period by calling us on the phone number in the Documentation. If you do, you will not be entitled to any refund of your subscription fees and if you have not paid all of your subscription fees for that subscription period, you must pay the full amount of them to us immediately. If you owe us any other charges in relation to this agreement at the time you end this agreement, you must also pay those charges to us immediately.

5.3 This agreement will automatically and immediately end if you become bankrupt (or something similar happens) or your business cannot pay its debts or stops trading, or if any finance arrangement relating to the Service has ended for any reason without you paying the full amount of that finance. In those circumstances, we will not give you a refund, and all outstanding amounts you owe us become due and payable.

5.4 If you or we discover that the other has done something which is not allowed by this agreement, or have not done something that must be done, the one who discovered the situation can give the other notice that the matter must be put right within 30 days. If the matter is put right in that time, no further action will be taken. If it is not put right in that time, the person who discovered the situation can then end this agreement by giving the other written notice that this agreement will immediately end. If this agreement is terminated because of something we have done or not done, we will refund to you such proportion of the subscription fee you have paid for the year in question as is appropriate to the unexpired period of the duration of this agreement. In all other circumstances, we will not give you a refund.

5.5 We may also end this agreement if you fail to pay any amount you owe to us within seven days of the due date, or, alternatively (in our sole discretion) we may stop providing the Service services to you until you have paid us those outstanding amounts.

## **6. Our liability and responsibility to you if something goes wrong – it is very important you read and understand this section 6. You should take legal advice if you do not understand it.**

6.1 Our liability (including for negligence) in any year under this agreement will be limited to paying you an amount equal to 125% of all fees you paid for the Service in that year.

6.2 You are better placed to understand the risks to your business that may occur as a result of your use of the Service. Accordingly, we will not be responsible for any of the following, even if we knew or should have known there was a possibility you could experience the problem:

6.2.1 financial or similar loss of any kind, including, for example, loss of profits, business, estimated savings or goodwill, however the loss is caused;

6.2.2 any interruption to your business or damage to information, however that interruption or damage is caused (particularly because you should maintain regular back-ups of your own information);

6.2.3 loss or damage which we could not have reasonably known about at the time you entered into this agreement;

6.2.4 losses you suffer as a result of using the Service other than as described in this agreement and the Documents.

6.3 We recommend that you consider obtaining insurance cover if you believe that you could experience anything that we have told you that we will not be responsible for.

6.4 Nothing in this agreement will prevent or limit your or our liability for:

6.4.1 fraud;

6.4.2 death of or personal injury to any person as a result of our negligence; or

6.4.3 any legally binding promise, automatically given by law, that you can have the licence or that you can use Act! without someone else claiming that you cannot.

6.5 Your and our responsibilities under this agreement are reasonable because they reflect that:

6.5.1 we cannot control how, and for what purposes, you use the Service, the business information, the business advice or the business advice helpline (where appropriate);

6.5.2 we have not developed the Service, the business information, the business advice or the business advice helpline (where appropriate) specifically for you; and

6.5.3 although we follow good industry practice, it is not economically possible for us to carry out all the tests necessary to make sure there are absolutely no problems with the Service.

## **7. How we use information about you**

We will use any information you give us under this agreement to:

7.1 meet our obligations under this agreement or any other agreement we have with anyone who licenses us (our licensors), or our subcontractors;

7.2 contact you to see if you would like to take part in our customer research;

7.3 contact you about our other products and services and those of third parties which you may be interested in. (If we do contact you in this way, we will try to speak to the relevant person in your organisation, and we may contact you directly, or use other organisations which we have hired to contact you for us.)

7.4 We may give information to other companies in our group of companies, our licensors and contractors, and other organisations described in relevant documents. For example, we may give information to the following:

- your Act! business partner or other supplier (if you have one)
- any person or company providing you with finance
- our training providers
- companies which we use to help us send you post and other communications
- research companies
- event organisers
- the owner of any third-party software
- a member of the Swiftpage group of companies. These companies are based outside Europe, in the USA. If we transfer your personal information outside Europe we will ensure that these companies take adequate measures to protect your personal information.

7.5 If you give us information which could give away the identity of an individual, you indicate your agreement that we can use it as described above. If at any time you do not want us to use such information in that way, please call us on our usual contact number. For more information on how we use information about you, please see the privacy policy on our website at <http://www.swiftpage.com/en-us/about/legal.shtml>.

## **8. General terms**

8.1 Any supplier or business partner from which you buy your Service (or your licence to Act!) does not have any authority or right to enter into any contract or provide any guarantee on our behalf. We are not responsible for any changes these organisations have made to Act! or for anything they do or fail to do.

8.2 If we quote you a price on our website or by phone, for the Services or for any of our products or services, that price will be confirmed when we issue our invoice.

8.3 If a court or similar body decides that any wording in this agreement cannot be enforced, that decision will not affect the rest of this agreement, which will remain binding on both of us. However, if the wording that cannot be enforced could be enforced if part of it is deleted, we will both treat the relevant part of the wording as if it is deleted.

8.4 If you or we fail to, or delay in, exercising any rights under this agreement, that will not mean that those rights cannot be exercised in the future.

8.5 This agreement and the Documents is the entire agreement between you and us for the Service and replaces all documents, information and other communications (whether spoken or written) between us relating to the Service.

8.6 You may not transfer this agreement to anyone else. We may transfer this agreement to another organisation which is part of our group of companies. We may subcontract our obligations in this agreement to a third party.

8.7 From time to time we may change this agreement by writing to you to tell you that we have changed it. If you do not agree with those changes, please contact us as soon as possible. If after we have told you that we have changed this agreement you buy any other product or service relating to Act! from us or your Act! supplier, we will consider you to have accepted those changes.

8.8 If circumstances beyond our reasonable control arise, we will not be liable for failing to meet our responsibilities in this agreement because of those circumstances, for as long as those circumstances continue.

8.9 This agreement is between us and you. Nothing in this agreement gives anyone any right or benefit under this agreement (or any benefit under the Contracts (Rights of Third Parties) Act 1999). This means that only you and we can benefit from the rights set out in this agreement.

8.10 This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) is governed by the laws of England and Wales and you and we both agree that the courts of England and Wales will be the only courts that can decide on legal disputes or claims about this agreement.