

**TERMS & CONDITIONS  
for  
ACT, Inc. tradenames EXPOCAD®, 3e, ELI™**

**General Terms**

These Terms apply to your account with ACT, Inc. and to our Products, subscriptions, and constitute a binding contract between us. See Appendix A for the Products and subscriptions bound by this Agreement.

**1. Acceptance**

By accepting these General Terms during your account registration, on-premise or subscription process, or by accessing or using our Products, you confirm your acceptance of these General Terms and other applicable Terms and your Agreement to be a party to this binding contract. If you do not agree to these Terms, you must not access or use our Products.

You agree to these Terms on behalf of the company or other legal entity for which you are acting (for example, as an employee or contractor) or, if there is no company or legal entity, on behalf of yourself as an individual (in either case, "You"). You represent and warrant that you have the right and authority to act on behalf of and bind such entity ("Your User(s)") and yourself.

**2. Special Terms**

Some Products may be subject to special terms set forth in the Special Terms or in the Documentation for the Products ("Special Terms").

You agree to the Special Terms, if any, for a Product that You subscribe to, access, or use.

**3. Return for Refund**

For a limited period, if You (a) object to any of these Terms, (b) object to any ACT, Inc. terms of purchase or auto-renewal applicable to the purchase or renewal, or (c) are dissatisfied (for any reason) with the Product to which You subscribed, You may return the Product and may qualify for a refund under the ACT, Inc. Return Policy.

**4. Your Account**

You are responsible for anyone who obtains, accesses, or uses Products through You or Your account and their compliance with these Terms as though each of them is You. In certain cases, Your Users may be required to set up individual accounts or agree to applicable terms in order to obtain, access, or use Products, but You remain responsible. You also agree to secure and not share user IDs or passwords (except with authorized account administrators).

**5. You Own Your Work**

You will retain Your ownership rights to files, data sets, images, reports, or similar material created by You (or Your Users) and submitted or uploaded to a Product by You (or Your Users).

**Data Privacy**

ACT, Inc. takes data protection seriously. See ACT, Inc. separate document "Privacy and Data Collection".

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**7. Product Term**

Each subscription to a Product is for a fixed, limited time (the "Product Term"). The length of the Product Term is described on pricing supplied and invoicing.

No subscriptions renew automatically. If you would like renewal, please pay the invoice by the anniversary date of the subscription.

**8. Products**

**8.1 Rights to Products**

For any Product consisting of On premise Software or a Cloud Service that ACT, Inc. makes available or provides to You, and subject to compliance with these Terms and all payment obligations, including any taxes and other fees, ACT, Inc. grants to You a non-exclusive right to use the Product (and permit Your Users to use the Product) during the Product Term and within the scope of Your subscription, including the permitted number of subscriptions, Product Type, Territory and other attributes specified for the type and level that You selected when subscribing for the Product(s).

Except as expressly authorized by these Terms, or as otherwise expressly permitted in writing by ACT, Inc., You will not: (i) reproduce, modify, adapt, disassemble, translate, port, or create derivative works of all or any portion of any Product, except as expressly permitted by applicable law or (ii) sublicense, transfer, distribute, transmit, sell, lease, rent, loan, or otherwise make available all or any portion or functionality of any Product to third parties.

Any Software (including any Update or Upgrade) that ACT, Inc. makes available or delivers to You for use on-premise and/or cloud service for a subscription, for a limited period, not sold.

**8.2 Access to Software and Cloud Services**

Subject to compliance with these Terms, ACT, Inc. will, during the Product Term, make Products available to You through Your account or other electronic means. ACT, Inc. will not be liable for any losses or other liability incurred by You or others due to sending Your account information to an incorrect address. You may be required to log into Your account or provide ACT, Inc. additional information to activate, access, or use a Product. Some Products may cause Your computers or other devices to automatically connect to the internet (intermittently or on a regular basis)—for example, to validate the proper use of Your subscription, provide You with access to services (including third-party services), or download and install Updates or Upgrades, all without further notice to You. You and Your Users agree to such connection and to validation of Your subscription and to the automatic downloading and installation of Updates and Upgrades. You may not be able to adjust Your Update or Upgrade settings for certain Products, including those for which automatic Updates or Upgrades are required for operation or security of the Product.

During the Product Term, ACT, Inc. may make available or deliver Updates or Upgrades to On Premise Software as long as the account is in good standing see Section 16 Term, Termination, Suspension.

**8.3 ACT, Inc. APIs**

In connection with a Product, you may have access to an application programming interface, sample source code, and similar developer material (collectively, "API"). You may use the API only for the Product for which you have an API subscription/authorization code (additional fees may apply) and for which the API is provided, during the Product Term, and to develop applications, services, modules, or components solely for Your internal business use.

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#### 8.5 Use of Your Content

In order for You to access or use certain Products, or for ACT, Inc. to provide You with certain services, You may wish to upload or otherwise share Your Content. ACT, Inc. personnel will not use Your Content except (a) at Your request, or with Your consent; (b) in connection with providing and improving Products (including maintaining, securing, updating, or otherwise modifying Products); or (c) in connection with legal obligations, enforcement, investigations, or proceedings.

You are responsible for ensuring that (i) Your Content and its use with any Product comply with all applicable laws and regulations and these Terms, (ii) Your Content will not infringe or misappropriate any intellectual property or proprietary rights of any person, and (iii) You secure backup copies of Your Content at all times. You acknowledge that online services may suffer disruptions or outages, and You may not be able to retrieve Your Content as a result.

You will indemnify and hold harmless (and, at ACT, Inc.'s request, defend) ACT, Inc. against any and all losses, liabilities, expenses (including reasonable attorneys' fees) suffered or incurred by ACT, Inc. by reason of any claim, suit or proceeding arising out of or relating to Your Content; Your (including Your Users') use of Products, including any Output or other results produced by such use; and Your (including Your Users') breach of these Terms .

#### 8.6 Collaboration and Sharing of Your Content

Some Products permit You to collaborate with others, including sharing or publishing Your Content and location data such as wayfinding. If You choose to share or publish Your Content, others may be able to use, sell, reproduce, modify, distribute, make available, display, transmit and communicate Your Content, and suspending or terminating access may not delete or inhibit access to any of Your Content that was earlier shared or published. If You do not want others to have any such access or any of those rights, do not use the sharing, publishing, or other collaboration features of the Products. Keep in mind that most data published on the web, unless password protected, can be viewed by the public.

A Product may feature links to Third-Party Material/Services. Such links are provided as a convenience to You. ACT, Inc. does not monitor or control what such third parties will do with Your Content. You are responsible for ensuring the appropriate level of access to Your Content by any third party. If You authorize any of Your Content to be shared with any third party, ACT, Inc. may make Your Content available to such third party; ACT, Inc. will, however, have no responsibility or liability for the actions of such third party.

#### 9. Feedback

If You provide ACT, Inc. with ideas for improvement, suggestions, or other feedback (collectively, "Feedback"), You hereby grant to ACT, Inc. a non-exclusive, transferable, irrevocable, worldwide, royalty-free license (with rights to sublicense) to make, use, sell, offer to sell, reproduce, modify, distribute, make available, publicly display and perform, disclose and otherwise exploit the Feedback and any Products using the Feedback.

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**9. Custom Development**

You can provide ACT, Inc. with the task to create specific commands or changes (Custom Development) which may or may not be remunerated by You. You hereby grant to ACT, Inc. a non-exclusive, transferable, irrevocable, worldwide, royalty-free license (with rights to sublicense) to make, use, sell, offer to sell, reproduce, modify, distribute, make available, publicly display, perform, disclose, and otherwise exploit Custom Development in any Products.

**11. Limitations on Use**

**11.1 Products are Tools**

The Products are tools and are intended only to assist You with Your day-to-day procedures, processes, and other activities. The Products are not a substitute for Your professional judgment or Your own independent judgment or other activities, including, for example, those with respect to safety and utility. You acknowledge that the Products may not have been designed or tested for Your specific use, and the Products and Output may not achieve the results You desire within Your constraints. It is Your responsibility to (a) determine whether the use of a Product is appropriate for Your purposes, (b) determine the appropriate use for the Products, and (c) select the Products and other computer programs and materials, in each case to help achieve Your intended results or Output. You acknowledge that as between You and ACT, Inc., You are solely responsible for (i) Your (including Your Users') use of the Products and any results produced by the Products, including any Output, and (ii) establishing the adequacy of independent procedures for testing the reliability, safety, accuracy, completeness, compliance with applicable legal requirements and industry standards, and other characteristics of any Output, including insights, recommendations, and all items designed with the assistance of the Products. ACT, Inc. will not be responsible or liable in any manner whatsoever for the results obtained through use of the Products, including any Output.

**12. Confidentiality**

You or ACT, Inc. (as the "Disclosing Party") may disclose or make available Confidential Information to the other party (as the "Receiving Party") in connection with these Terms. The Receiving Party will use the same degree of care as to the Disclosing Party's Confidential Information that it uses to protect its own confidential information of like kind (but in no event less than reasonable care) and will (a) use the Confidential Information of the Disclosing Party only in connection with Products, and (b) except as otherwise authorized by the Disclosing Party in writing, limit access to the Confidential Information of the Disclosing Party to those of its employees, consultants, contractors, service providers, professional advisors and other individuals who need such access for purposes related to Products and who are subject to confidentiality obligations with the Receiving Party no less stringent than those in these Terms. The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law to do so. The Receiving Party will give the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted) and take reasonable steps to limit such disclosure. ACT, Inc. may also disclose Your Confidential Information to comply with any governmental or regulatory body request (including subpoenas or court orders), as part of a legal proceeding involving ACT, Inc., or at Your request. If disclosure is made at Your request, You may be responsible for the costs of compiling and providing access to Your Confidential Information.

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**13. ACT, Inc. Proprietary Rights**

You acknowledge and agree that ACT, Inc. and its licensors and suppliers will have ownership of and all rights with respect to (a) the Products, Documentation, APIs, and other information or material made available to You by ACT, Inc., including any copies of the foregoing, (b) any materials or other information based on, derived from, or otherwise using any of the foregoing (including Metrics), and (c) all rights under trade secrets, copyrights, trademarks, patents, and any other intellectual property or proprietary rights relating to any of the foregoing. The structure and organization, the underlying algorithms and other internals, the protocols, data structures and other externals, and the source code of the Products and the APIs constitute proprietary and confidential information of ACT, Inc., and You will not disclose such information to third parties, or use such information for any purpose other than as required for ordinary-course access to and use of the Products as set forth in these Terms, without ACT, Inc.'s prior written consent. You will not access or attempt to access the Products by any means other than the interface ACT, Inc. provides or authorizes. You will not engage in any decompiling, disassembling, or other reverse engineering, or otherwise attempt to discover, learn, or study the structure or organization, underlying algorithms or other internals, protocols, data structures or other externals, or the source code of the Products or APIs, except as expressly permitted under applicable law notwithstanding a contractual prohibition to the contrary. ACT, Inc. may make available or provide access to other confidential and proprietary information (either marked as such or understood to be such under the circumstances) to enable Your access or use of the Products, and any such information will be deemed to be ACT, Inc. Confidential Information.

You have only the rights expressly granted to You under these Terms (including the Special Terms). All rights not expressly granted are reserved by ACT, Inc. and its licensors and suppliers; ACT, Inc. and its licensors and suppliers expressly disclaim (and You agree not to assert) any other rights.

You will not take any action, or authorize, encourage, or assist any third party to take any action inconsistent with this Section 13.

**14. Limited Warranty, Disclaimers, Limitations on Liability**

**14.1 Limited Warranty**

ACT, Inc. warrants that, for any paid subscription, as of the date on which the subscribed-for Product is made available to You and for 90 days thereafter or, if the Product Term is shorter, such shorter period ("Warranty Period"), the Product will provide the general features and functions described in the end-user Documentation for the Product. ACT, Inc.'s entire obligation and liability, and Your sole and exclusive remedy, for ACT, Inc.'s breach of this warranty will be for ACT, Inc., at its option, (a) to attempt reasonably to remedy the breach or (b) to refund the remaining amounts received for the affected subscription and terminate such subscription. You will bring any warranty claim for any Product within its applicable Warranty Period, and any warranty claims You bring after such Warranty Period will be excluded. Cloud Services, SaaS, and other web-delivered Products are covered and remedied by a separate Service Level Agreement (SLA). See SLA Agreement.

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#### 14.2 Disclaimers

EXCEPT FOR THE EXPRESS LIMITED WARRANTY SET FORTH IN SECTION 14.1 (LIMITED WARRANTY) ABOVE, AND ANY EXPRESS WARRANTIES SET FORTH AS SUCH IN ANY ADDITIONAL AGREEMENT OR SPECIAL TERMS, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, (a) THE PRODUCTS (INCLUDING ANY RELATED SOFTWARE, CLOUD SERVICE, DOCUMENTATION, APIs, OR OTHER MATERIALS) ARE PROVIDED "AS IS," "WITH ALL FAULTS," AND WITHOUT WARRANTY OR CONDITION OF ANY KIND AND (b) ACT, INC. AND ITS LICENSORS AND SUPPLIERS MAKE, AND YOU RECEIVE, NO WARRANTIES, REPRESENTATIONS, CONDITIONS, OR COMMITMENTS OF ANY KIND, EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO ANY OF THE PRODUCTS OR ANY OUTPUT, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, OR QUIET ENJOYMENT, ANY WARRANTIES OR CONDITIONS IMPLIED BY STATUTE, OR ANY WARRANTIES OR CONDITIONS BASED ON A COURSE OF DEALING, USAGE OF TRADE OR INDUSTRY STANDARDS. Any statements by ACT, Inc. or its third-party agents, representatives, or service providers about the Products (including any statements about their functionality or performance) or Output, or other communications with You (including any insights, recommendations, guidance, assessments, projections, estimates or opinions), that are not contained in these Terms (including any Additional Agreement or Special Terms) are for information purposes only and do not constitute a warranty, representation, condition, or other commitment. Without limiting the generality of the foregoing, ACT, Inc. and its licensors and suppliers do not warrant or otherwise commit that (i) the Products or Output, or Your access thereto or use thereof, will be available, uninterrupted, timely, error-free, secure, accurate, reliable, or complete, (ii) the Products will meet any particular performance, availability or service-level criteria, (iii) Your Content will not be lost or damaged, or (iv) errors or defects will be corrected or any particular support requests will be resolved to meet Your needs or expectations. Also, for clarity, (1) any reference to "unlimited" access, use, storage, or otherwise with respect to a Product is subject to the technical limitations of the Product, and (2) some Products or functionality may not be available in all locations (including the Territory) or languages.

#### 14.3 Limitations on Liability

NEITHER ACT, INC. NOR ANY OF ITS LICENSORS OR SUPPLIERS WILL HAVE ANY LIABILITY (DIRECTLY OR INDIRECTLY) FOR ANY INCIDENTAL, SPECIAL, INDIRECT, CONSEQUENTIAL, OR PUNITIVE DAMAGES; LOSS OF PROFITS OR REVENUE; BUSINESS INTERRUPTION OR LOSS OF USE; COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES OR OTHER COVER; FAILURE OF, OR DEFECTS IN, THE OUTPUT; LOSS, CORRUPTION, OR DELETION OF (OR FAILURE TO DELETE) DATA OR YOUR CONTENT; OR DAMAGES RESULTING FROM FORCE MAJEURE. THE AGGREGATE LIABILITY OF ACT, INC. AND ITS LICENSORS AND SUPPLIERS WITH RESPECT TO ANY PRODUCT OR OUTPUT THEREOF WILL IN NO EVENT EXCEED THE GREATER OF (a) THE AMOUNT PAID OR PAYABLE BY YOU FOR THE PRODUCT IN THE ONE-YEAR PERIOD BEFORE THE EVENTS OR CIRCUMSTANCES GIVING RISE TO THE LIABILITY FIRST OCCURRED, OR (b) US\$1000. YOU ACKNOWLEDGE AND AGREE THAT THE DISCLAIMERS AND LIMITATIONS OF LIABILITY IN THESE TERMS CONSTITUTE AN ESSENTIAL ELEMENT OF THE AGREEMENT BETWEEN YOU AND ACT, INC.,

AND THAT ACT, INC. WOULD NOT HAVE PROVIDED THE PRODUCTS TO YOU WITHOUT YOUR AGREEMENT TO EACH OF THESE TERMS. THE LIMITATIONS ON LIABILITY IN THESE TERMS WILL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW TO ANY DAMAGES OR OTHER LIABILITY, HOWEVER CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY, WHETHER BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), INDEMNIFICATION, RE COURSE, STATUTE, OR OTHERWISE, AND EVEN IF ACT, INC. HAS BEEN ADVISED OF THE POSSIBILITY OF THE LIABILITY OR THE LIABILITY IS OTHERWISE FORESEEABLE, AND REGARDLESS OF WHETHER THE LIMITED REMEDIES IN THESE TERMS FAIL OF THEIR ESSENTIAL PURPOSE.

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NOTHING IN THESE TERMS RESTRICTS OR EXCLUDES ACT, INC.'S LIABILITY FOR (i) DEATH OR PERSONAL INJURY CAUSED BY ACT, INC.'S WILLFUL MISCONDUCT OR GROSS NEGLIGENCE, OR (ii) YOUR DAMAGES OR LOSSES CAUSED BY ACT, INC.'S FRAUD. ALSO, ACT, INC. DOES NOT SEEK TO LIMIT YOUR WARRANTIES, YOUR OTHER RIGHTS AND REMEDIES, OR THE LIABILITY OF ACT, INC. FOR DAMAGES OR LOSSES TO THE EXTENT THE LIMITS ARE NOT PERMITTED BY APPLICABLE LAW (SUCH AS STATUTORY WARRANTIES, CONDITIONS, REMEDIES, OR LIABILITIES THAT CANNOT BE EXCLUDED BY APPLICABLE LAW). THESE TERMS GIVE YOU SPECIFIC LEGAL RIGHTS, AND YOU MAY ALSO HAVE OTHER LEGAL RIGHTS, WHICH VARY FROM JURISDICTION TO JURISDICTION.

#### **15. Indemnity**

Subject to these Terms, ACT, Inc. will defend You against any claim brought against You by a third party alleging that any Covered Product infringes such third party's patent, copyright, trademark, or trade secret rights ("IP Claim"), and ACT, Inc. will pay damages finally awarded against You (or any settlement amount agreed to in writing by ACT, Inc.) as a result of the IP Claim, provided You (a) promptly notify ACT, Inc. of the IP Claim, (b) give ACT, Inc. sole control of the defense and settlement of the IP Claim, and (c) promptly provide ACT, Inc. with any assistance and cooperation requested by ACT, Inc. in connection with the defense and settlement. These defense and payment obligations do not apply if (i) the IP Claim arises from, or is based on, the use or combination of the Covered Product with any software, hardware, data, material, or service not provided by ACT, Inc., (ii) the IP Claim covers any method or process not fully embodied in the Covered Product, (iii) there is available an Update or Upgrade that avoids the infringement alleged in the IP Claim, or (iv) You have been in breach of these Terms. If ACT, Inc. receives information about an infringement claim related to any Product, ACT, Inc. may, in its discretion, (1) modify or replace the Product, (2) obtain a license for Your continued use of the Product, and/or (3) terminate Your subscription for the Product and refund any prepaid fees covering the remainder of the Product Term of the terminated subscription. This Section 15 states ACT, Inc.'s sole obligations and Your exclusive remedy for any infringement of any third-party intellectual property rights.

#### **16. Term, Termination, Suspension**

These Terms become effective on the first date accepted in accordance with Section 1 (Acceptance) above and continue in effect indefinitely unless terminated in accordance with the provisions of these Terms, including this Section 16.

##### **16.1 Your Right to Terminate**

You may terminate Your subscriptions and these Terms if ACT, Inc. is in material breach of these Terms and fails to cure such breach within 30 days after written notice of the breach.

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**16.2 ACT, Inc.'s Right to Terminate or Suspend a Subscription or Account**

ACT, Inc. may terminate (or disable or suspend Your access to and use of) any or all of Your subscriptions or other Products, or terminate these Terms and Your account, if (a) You have no current paid subscriptions; (b) You have failed to timely pay any amounts (including fees and taxes) owing to ACT, Inc.; (c) You (including any of Your Users) are otherwise in material breach of these Terms and fail to cure such breach within 30 days after written notice of the breach; or (d) You become subject to bankruptcy or insolvency proceedings, become insolvent, make an arrangement with or affecting Your creditors (including an assignment for the benefit of creditor) or commence a process of liquidation. These Terms will automatically terminate without further notice or action by ACT, Inc. if You go into liquidation. ACT, Inc. may also immediately disable or suspend Your access to and use of Products and Your Content if ACT, Inc. believes in good faith that Your (or Your Users') conduct or failure to act, or Your Content, may (i) pose a security risk, constitute illegal activity, or otherwise adversely impact Products, systems, or other users, (ii) constitute or enable tampering with, removing, disabling or otherwise limiting the effectiveness of any technical protections, or (iii) subject ACT, Inc., or its suppliers, resellers, distributors, users, or any similar third parties, to liability.

**16.3 Effect of Termination of Subscription**

Upon expiration or termination of a subscription for any reason, Your rights with respect to that subscription or service, including any related Software license, Cloud Service access, and Benefits, will end. At that time, You and Your Users (if any) will stop all access to subscription, services, and uninstall any and all copies of materials related to such (including any related Software, Documentation, APIs, or other material from ACT, Inc.). In connection with the expiration or termination of a subscription, (a) as a convenience to You for some Cloud Services, ACT, Inc. may provide You with a brief period (for example, 30 days) in which You may retrieve Your Content after expiration or termination of the Cloud Services, if You are in compliance with these Terms and pay the applicable fees, if any (for example, ACT, Inc.'s then-current professional services fees for any assistance ACT, Inc. provides), and (b) otherwise, ACT, Inc. may delete, without notice, any or all of Your Content, including backup and other copies thereof.

**16.4 Effect of Termination of Terms or Product Account**

Upon any termination of these Terms for any reason, (a) Your Product(s) account, including those of Your Users, will immediately terminate, and (b) the effects described above with respect to expiration, termination, and uninstallation of a Product will apply to all Products attached to Your account.

**16.5 Survivability**

Your payment obligations, Your responsibility for anyone who obtains, accesses, or uses Products through You or Your account (including Your Users) (including the responsibility described in Section 4 (Your Account)), and the following sections of these General Terms will survive termination for any reason: Section 5 (You Own Your Work); Section 8.3 (ACT, Inc. APIs); Section 8.4 (Use of Third-Party Material and Services); Section 8.5 (Use of Your Content); Section 8.6 (Collaboration and Sharing of Your Content); Section 10 (Feedback); Section 11 (Limitations on Use); Section 12 (Confidentiality); Section 13 (ACT, Inc. Proprietary Rights); Section 14.2 (Disclaimers); Section 14.3 (Limitations on Liability); Section 16.3 (Effect of Termination of Subscription); this Section 16.4; Section 17 (Miscellaneous), including Section 17.4 (ACT, Inc. Party, Governing Law, Dispute Resolution); Section 18 (Definitions).

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**17. Miscellaneous**

**17.1 Changes to the Products**

ACT, Inc. reserves the right from time to time to (a) modify, discontinue, or substitute a Product (including any Benefits, features, functionality, or supporting services related to the Product), or (b) add or modify license keys, authorizations, or other means of controlling or measuring access to or use of the Products. ACT, Inc. will endeavor to notify You of any major changes to a Product in the applicable release notes or other Documentation for the Product.

**17.2 Changes to Terms**

To the maximum extent permitted by applicable law, ACT, Inc. reserves the right from time to time to (and You acknowledge that ACT, Inc. may) modify these Terms. ACT, Inc. will endeavor to notify You of any changes to these Terms ("Terms Modification Notice"), including by posting to the appropriate website(s). It is your responsibility to regularly check this site for updates, including Terms Modification Notices. Except as otherwise expressly set forth in these Terms, if any modification to the Terms has a material adverse effect on You and You do not agree to the modification, You may reject the modification by notifying ACT, Inc. of the rejection within 30 days of the Terms Modification Notice. If You reject a modification under these circumstances, (a) Your access to and use of any Products affected by the modification will continue to be governed by the terms in effect immediately before the modification (except to the extent the modification was made for security, privacy, or legal compliance reasons, in which case the modification will be effective immediately) until the earlier of (i) the end of the applicable Product Term, or (ii) 180 days after the Terms Modification Notice; and (b) Your rights to such Products, including any related subscription Benefits, will then terminate. In the event of such a termination by You, ACT, Inc. will refund the prorated portion of any prepaid fees applicable to the remaining Product Term of Your subscription for the affected Products after the effective date of termination. In any event, if any subscription is renewed or extended, it will be under the then-current Terms. Notices by You or ACT, Inc. will be provided as set forth below, except that You may also provide Your notice of rejection via email (within the 30-day period described above).

Notwithstanding the forgoing, if the Special Terms, Product Types and Benefits, or other policies include different terms or procedures for modification thereof, modification may, at ACT, Inc.'s option, be handled as described therein.

You acknowledge that Your commitments with respect to the Products and subscription benefits are not contingent on delivery of future features or functionality (or oral or written statements about future features or functionality).

**17.3 Language of Terms, Interpretation**

The English language version of these Terms will be the version used when interpreting or construing these Terms, and any notices or other communications in connection with these Terms will be provided in the English language. Any reference in these Terms to "days" are to calendar days unless otherwise specified. The words "including" and "for example" or "e.g.," and words of similar import, are not limiting or exclusive and will be deemed followed by "without limitation," whether or not such language is included. Section and other headings are for ease of reference only and are not to be used to interpret the meaning of any provision. Any rights and remedies provided for in these Terms are cumulative and are in addition to, and not in lieu of, any other rights and remedies available under applicable law.

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**17.4 Governing Law, Dispute Resolution**

**Binding Arbitration and Dispute Resolution**

If Your principal place of business (or, if You are an individual, Your residence) is in the United States, Canada, Central and South America, the following dispute resolution and binding arbitration provisions apply to You:

**USA/Canada/Central and South America**

In the event of any dispute, claim, or disagreement (the "dispute") arising from or relating to this Agreement, the parties shall use their best efforts to settle the dispute by normal business discussions. Should such discussions fail to resolve the dispute, any party may give the other written notice of any remaining dispute. If the parties do not reach a solution to the dispute within a period of sixty (60) days, then, upon notice by either party to the other, all disputes, claims, or differences (including the validity of this arbitration clause) shall be finally settled by binding arbitration administered by the American Arbitration Association ("AAA") in accordance with its applicable provisions. The arbitration Panel shall consist of a single arbitrator, unless otherwise agreed to by the parties. The place of arbitration shall be Chicago, IL USA. If the parties are not able to decide upon a neutral third-party arbitrator within thirty (30) days of the request for arbitration, then the AAA shall select an arbitrator having at least ten (10) years of experience in intellectual property matters. All proceedings will be conducted in English. The parties agree to hold the entirety of the arbitration proceedings, including knowledge of the existence of any dispute or controversy, completely confidential except for such disclosures as might be required by law. The parties will be equally responsible for AAA arbitration fees regardless of the outcome.

**EMEAA**

If Your principal place of business (or, if You are an individual, Your residence) is in the Europe, UK, Mideast, Africa, or Asia the following dispute resolution and binding arbitration provisions apply to You:

In the event of any dispute, claim, or disagreement (the "dispute") arising from or relating to this mutual NDA, the parties shall use their best efforts to settle the dispute by normal business discussions. Should such discussions fail to resolve the dispute, any party may give the other written notice of any remaining dispute. If the parties do not reach a solution to the dispute within a period of sixty (60) days, then, upon notice by either party to the other, all disputes, claims, or differences (including the validity of this arbitration clause) shall be finally settled by binding arbitration administered by the London Court of International Arbitration ("LCIA") in accordance with its applicable provisions. The arbitration Panel shall consist of a single arbitrator, unless otherwise agreed to by the parties. The place of arbitration shall be London, England. If the parties are not able to decide upon a neutral third-party arbitrator within thirty (30) days of the request for arbitration, then the LCIA shall select an arbitrator having at least ten (10) years of experience in intellectual property matters. All proceedings will be conducted in English. The parties agree to hold the entirety of the arbitration proceedings, including knowledge of the existence of any dispute or controversy, completely confidential except for such disclosures as might be required by law. The parties will be equally responsible for arbitration fees regardless of the outcome.

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**17.5 Force Majeure**

Neither party will be responsible or have any liability for any delay or failure to perform to the extent due to unforeseen circumstances or causes beyond its reasonable control, including acts of God, earthquake, fire, pandemic, flood, sanctions, embargoes, strikes, lockouts or other labor disturbances, civil unrest, unavailability or delay of suppliers or licensors, riots, terrorist or other malicious or criminal acts, war, failure or interruption of the internet or third party internet connections or infrastructure, power failures, acts or orders of civil and government authorities and severe weather ("Force Majeure"). The affected party will give the other party prompt written notice (when possible) of the failure to perform and use its reasonable efforts to limit the resulting delay in its performance.

**17.6 Export**

When You obtain, access or use a Product, You will comply with the export control and international trade laws and regulations of the United States and of any other country whose laws apply to You, Your Users, or Your Content. You will not access or use any Product from within a U.S. sanctioned location or if You appear on any U.S. government restricted parties list. You will obtain U.S. government and any other required authorization before You obtain, access or use, or allow any person or entity to obtain, access or use, any Product for a U.S.-restricted end use. Restricted end uses include work on nuclear, chemical, or biological weapons or on missile systems capable of delivering them. You may not upload or otherwise provide ACT, Inc. with any content or materials (including Your Content) that constitute classified information or that are subject to the International Traffic in Arms Regulations ("ITAR") or its foreign counterparts. You may not upload or otherwise provide ACT, Inc. with any content or materials that cannot legally be transferred from Your location to the United States or from the United States to Your location. You are solely responsible for compliance with all export control requirements applicable to Your Content and You may not use any Product to make Your Content or any other content or materials available to any country, entity or other party that cannot legally receive them under U.S. and other applicable law. ACT, Inc. reserves the right to suspend or terminate Your Products for failure to comply with requests for additional export control related assurances or if ACT, Inc. determines in its sole discretion that sanctions and/or export control related laws and regulations restrict the provision of products, services and/or other financial benefit.

**17.7 Government**

This Section 17.7 applies if You are a United States federal or other Governmental Entity. The Products are "commercial computer software" as defined at 48 C.F.R. § 2.101 and 48 C.F.R. § 252.227-7014(a)(1) and as the term is used in 48 C.F.R. §§ 12.212 and 227.7202, and, where services, are "commercial services" as defined in 48 C.F.R. § 2.101. The Products and related Documentation are provided to You and Your Users, for use by You or on Your behalf, subject to these Terms and with only those rights as are granted to all other ACT, Inc. customers and their Authorized Users pursuant to these Terms. These Terms apply to Governmental Entity customers and Users except to the limited extent You are prohibited by the laws of Your jurisdiction from accepting any provisions of these Terms. If and to the extent any provision of these Terms is prohibited, such provision will be deemed modified only to the extent reasonably necessary to conform to applicable law but to give maximum effect to the provision as written.

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**17.8 Verification of Compliance**

ACT, Inc. reserves the right to verify Your compliance with these Terms and may, at its discretion, do so by providing you with a report regarding Your noncompliant use of Products (Verification).

If, through a Verification, ACT, Inc. determines You are in violation of these Terms, You must immediately purchase new Products at least equal to the total of the value of the identified noncompliance.

Failure to comply with this Section 17.8 is a material breach of these Terms. ACT, Inc. reserves the right to suspend and/or terminate Your access to Products as set forth in Section 16.2 (ACT, Inc.'s Right to Terminate or Suspend a Subscription or Product Account) above, as well as to seek any other remedies available as set forth in Section 17.4 (ACT, Inc. Party, Governing Law, Dispute Resolution) above.

**17.9 Assignment**

You may not assign or otherwise transfer these Terms or Your rights or obligations under these Terms (whether by operation of law or otherwise) without ACT, Inc.'s prior written consent, and ACT, Inc. may terminate these Terms (including Your rights under these Terms) if You are acquired by, or come to be controlled by, any other person or entity (whether by acquisition of shares, merger, or other transaction) without such written consent of ACT, Inc.. ACT, Inc. may assign or otherwise transfer these Terms (without Your consent or notice to You) as part of a reorganization, merger, sale of assets or other transaction that involves all or a portion of the Products or subscriptions.

**17.10 Severability**

If and to the extent any provision of these Terms is held unenforceable under applicable law, (a) such provision will be deemed modified to the extent reasonably necessary to conform to applicable law but to give maximum effect to the intent of the parties set forth in these Terms, and (b) such provision will be ineffective only as to the jurisdiction in which it is held unenforceable without affecting enforceability in any other jurisdiction.

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**17.11 Notices**

Any notices by You to ACT, Inc. will be sent by postal mail or delivery service to ACT, Inc., 69 South LaSalle St., Aurora, IL USA 60505

Except as otherwise expressly stated in these Terms (including any Additional Agreement or Special Terms), any notices by ACT, Inc. to You will be provided (a) by email to the registered email address associated with Your account, (b) by posting to Your account, (c) by posting within a Product (for example, through an in-Product notification function or sign-in notification), (d) by postal mail or delivery service to the address associated with Your account, or (e) in any other manner deemed reasonable by ACT, Inc. that involves specific notification to You. Notices from ACT, Inc. to You will, (i) in the case of notices by email, be effective one day after being sent and (ii) in the case of other notices, five days after being posted or sent. You hereby agree to service of process being affected on You by registered mail sent to the address set forth on Your Customer Information Form (or, if no Customer Information Form has been provided, Your last address known by ACT, Inc.) if so permitted by applicable law.

**17.12 Entire Agreement, No Waiver**

These Terms, including any Additional Agreement and any Special Terms (which are incorporated by reference in these Terms), constitute the entire Agreement between You and ACT, Inc. (and merge and supersede any prior or contemporaneous agreements, discussions, communications, representations, warranties, advertising, or understandings) with respect to the subject matter hereof. Any access to or use of a Product is expressly conditioned on the application of these Terms, and any other terms are expressly rejected.

If there is any conflict between these General Terms and any Special Terms, the Special Terms will control in relation to their subject matter. If there is any conflict between these General Terms or the Special Terms and the Additional Agreement, the Additional Agreement will control in relation to its subject matter to the extent set forth in the Additional Agreement.

Failure to enforce or exercise any provision of these Terms is not a waiver of such provision unless such waiver is specified in writing and signed by the party against which the waiver is asserted.

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**18. Definitions**

"Additional Agreement" means any agreement signed directly with an ACT, Inc. entity that expressly supplements or amends the Terms (for example, an enterprise business agreement).

"Your Users" means (a) You (if You are an individual) and (b) identified individuals (such as Your individual employees, consultants and contractors and other individuals accessing and using a Product, service, or subscription) for whom You have acquired a subscription or Product. If a Product allows You to designate Authorized Users for such Product, You will be responsible for providing notice to, and obtaining Agreement from, any such Authorized Users regarding the application of these Terms to their access to and use of such Product prior to their access and use.

"ACT, Inc." means ACT, Inc., Inc., an Illinois (United States) corporation, together with its subsidiaries and other affiliates.

"Benefits" means any benefits made available to You or Your Users by ACT, Inc. Benefits are typically based on the type, level of Product for which You subscribe, and on-premise Product licensed. Benefits may include access to Updates and Upgrades, rights to previous versions, additional Software or Cloud Services, pre-release versions, APIs, global use rights, technical support, training, webinars, forums, events, galleries, newsletters, and usage data. Benefits may also include account benefits such as single sign-on and management of Your profile, security settings, linked accounts, and preferences.

"Cloud Service" means a web- or cloud-based service made available by ACT, Inc., whether provided as part of a subscription and whether or not provided for a fee. Cloud Services may include software as a service (SaaS) and remote storage or processing of data.

"Confidential Information" means information not generally known to the public that is (a) made available or disclosed by a Disclosing Party to a Receiving Party in writing and (b) designated by the Disclosing Party in writing as Confidential. Nonetheless, Confidential Information does not include (i) any information that (1) becomes generally known to the public without breach of any obligation owed to the Disclosing Party; (2) was known to the Receiving Party before receipt from the Disclosing Party without breach of any obligation (and without a duty of confidentiality) owed to the Disclosing Party; (3) is received from a third party without breach of any obligation (and without a duty of confidentiality) owed to the Disclosing Party; or (4) was independently developed by the Receiving Party; ii) any of Your

Content that You send to, or allow to be accessed by, a third party through a Product; or (iii) any Feedback. ACT, Inc. Confidential Information in any event includes the non-public aspects of (A) any Products and any related product plans, technology and other technical information (including APIs and any elements of Your Development using, disclosing or based on use of the APIs) and (B) business negotiations.

"Covered Product" means any Product for which you have paid ACT, Inc. a subscription fee of more than US\$100 in the previous 12 months, excluding any Product that has been modified by You or at your direction, and excluding any Third-Party Material/Services.

"Customer Information Form" means a form completed by or on behalf of You and submitted to ACT, Inc. (or to a reseller, distributor, or other third party), directly or indirectly, in connection with Your account, a subscription or other Product.

"Documentation" means the then-current end-user documentation (including online, printed, or other documentation) and any technical or legal requirements for a Product.

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"Governmental Entity" means any nation or government, including the United States federal government, any state, municipality, or other political subdivision thereof, and any entity, body, agency, commission, department, board, bureau, or judicial body pertaining to government, and any employee or official thereof.

"Metrics" means data and other information regarding access to and use of any Products (including Your access and use). Metrics includes information regarding usage of features, functions, storage and indexes and information regarding usage, volume, type, storage, and processing of Your Content (but not Your Content itself). If Metrics includes any personal data, treatment of such personal data will be pursuant to the Privacy Statement.

"Products" means Software (on premise), Cloud Services, and Benefits provided by ACT, Inc., and any subscriptions for such items.

"Product Identification" means one or more designations by ACT, Inc. that set forth (as applicable) the name of a Product; the Product Type; and the permitted number, Territory, and length of Your subscription. The Product Identification may be (a) provided in a written confirmation or other notice issued to You by ACT, Inc., posted to Your account, transmitted via email, or otherwise made available to You; (b) located in the Product or on or with any ACT, Inc. packaging; or (c) obtained from ACT, Inc. on request. Product Identification does not include any designation, confirmation, packaging, or other document provided by a reseller, distributor, or other third party.

"Product Type" means the license type specified by ACT, Inc. for a subscription (for example, single-user, multi-user, or Flex). Product Types are set forth on Product Types and Benefits.

"Output" means all results, work product, designs, prototypes, or other items created or generated by or through any use of any Product, including any products, parts or services based on or using such results, work product, designs, prototypes, or other items.

"Software" means any software or similar materials, including any modules, components, features, and functions, made available by ACT, Inc., whether or not provided as part of a subscription other type of fee structure. Software includes Updates and Upgrades.

"Terms" (including "these Terms") means these General Terms and the other terms referenced in these General Terms, including the Special Terms and Additional Agreement (if any), together with any other applicable terms.

"Updates" means security fixes, hot fixes, patches, and other updates (including new features, new functions and other modifications released between Upgrades).

"Upgrades" means new versions of Products, or add-ons to or additional products associated with Products, as determined by ACT, Inc..

"Your Content" means (a) any files, designs, models, data sets, images, documents, or similar material submitted or uploaded to any Product by You (or Your Authorized Users) and (b) Your specific output generated from the use of any Product based on Your own raw data or information.

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**APPENDIX A**

**(Products And Subscriptions covered by these Terms & Conditions)**

Cloud Products

- 3e Executive
- 3e User
- 3e Sales
- 3e Contract
- 3e Online Floorplan (formerly FX)
- 3e Salesforce Link
- 3e / EDGE API
- ELI
- ELI Earth
- EXPOCAD® OnDemand
- EXPOCAD® Marketplace
- EXPOCAD® Mobile
- EXPOCAD®- Salesforce® Link
- Microsoft EXPOCAD® Power Automate Connector

On Premise Products

- EXPOCAD® Desktop
- EXPOCAD® Contractor
- EXPOCAD® Contractor Electrical – Phase 1, Phase 2, & Phase 3
- Contractor 3D