

Excel in Business Limited – End User License Agreement (EULA) for

A La Carte AppSuite, A La Carte AppStudio, A La Carte ReportStudio (formerly A La Carte Reporting Suite), A La Carte Data Warehouse Manager, A La Carte ReportStudio (Individual Modules) and A La Carte Financial Intelligence (all versions)

You signify you accept this agreement by doing any of the following:

1. Signing and returning a paper copy of it to us; or
2. Agreeing to it electronically, either in reference by email or by indicating your acceptance when prompted during the installation process; or
3. Installing the product. This includes where the installation is conducted by you, a 3rd party or by us on computer equipment owned or licensed for use by you.

You should read all of this agreement carefully before you do or permit any of these things.

This license agreement ("Agreement") permits you to use the software, in computer executable/object code only, which accompanies this Agreement ("Software") and any associated documentation, packaging and other related materials supplied by us (together "Documentation"), so long as you have paid the applicable license fee. Ownership of the Software remains with Excel in Business Limited at all times. Your right to use the Software and Documentation is subject to the terms set out in this license agreement.

Some components of the Software are based on open source software and the terms and conditions of these components are covered by the GNU general public license <http://www.gnu.org/licenses/gpl.html>

In particular please note that:

- this Agreement permits you to use the Software, and any updates to it that you receive from us in accordance with this Agreement, for a period of 12 months (One Year) from the date of purchase of the Software.
- you may continue to use the Software for successive One Year periods thereafter providing you pay our annual renewal fee ("Annual Fee") by each anniversary of the original purchase date. The Annual Fee should be clearly documented either on our eShop for online purchases or in the sales proposal submitted by us or an authorized business partner of ours. In certain agreements with approved 3rd Parties and Business Partners, the Annual Fee may be replaced by a quarterly or annual support & maintenance fee ("Support Fee"). In such cases Support Fee shall have the same meaning as Annual Fee within this section.
- in some parts of the Software, we may provide specifically designed A La Carte spreadsheets that we have developed in Microsoft's Excel spreadsheet program. These form an integral part of the Software and all usage and restrictions apply to these components. In particular, when we provide Dashboard or Charting functionality, these workbooks contain significant intellectual property which is an integral part of the Software.
- if you decide not to renew usage after any annual period has expired, you agree to uninstall the Software and discontinue usage of the Software as soon as the annual period expires. If usage is continued in any way after an annual period has expired (including any spreadsheets containing our Dashboard and Charting functionality specifically highlighted above) and no payment has been made by you to renew such usage, a full year's Annual Fee or Support Fee will be charged as a minimum payment upon discovery of such occurrence. If the Software has been used for multiple years after a non renewal period, then the Annual Fee or Support Fee multiplied by the number of years of non payment of the Annual Fee or Support Fee will be applied. Furthermore, we reserve the right although not the obligation to seek further damages through the courts, should non payment be based on willful neglect of contractual obligations.

Providing the Annual Fee or Support Fee has been paid, you are entitled to receive without additional cost :

- new versions of the Software;
- web fault logging and e-mail support relating to your Use of the Software in accordance with this Agreement; and
- access to our periodic downloadable updates and on-line information about the Software;

The Annual Fee or Support Fee does not include services required for upgrading the Software (where applicable) which will be charged at our standard rates or rates charged by an approved 3rd party and are optional.

clause 2.8 contains information about how we will charge you if after One Year you decide to continue to use the Software, clauses 4 and 5 contain our commitment regarding Software quality and details about how we restrict our liability and clause 6.1 informs you of how we will use any personal information which you provide us with. You should ensure that you read and understand these clauses especially.

If you do not agree to be bound by the terms of this Agreement, you should promptly uninstall the Software and delete all supporting files provided with the Software including any documentation, support or reference files. Refunds will only be considered where the Software does not perform in accordance with the presentations given by us to you or does not perform as stated in our public collateral including any brochures, whitepapers, technical documentation or website content hosted on www.excelinbusiness.com or any microsites owned by us from which your decision to buy has been based on.

1. IN THIS AGREEMENT:

1.1 "Use" means to load, execute, store, transmit, display, (for the purposes of loading, execution, storage, transmission or display) or otherwise access or utilise the Software for your legitimate business purposes; and

1.2 "us", "we" and "our" means Excel in Business Limited and "you" and "your" mean the person, business or company which paid the license fee to use the Software.

1.3 (a) the headings are for convenience only and shall not affect its construction or interpretation; (b) "including" and "includes" shall be understood to mean "including without limitation" and "includes without limitation" respectively and (c) words of a technical nature shall be construed in accordance with the relevant meaning commonly attributed to them in the computer software industry in the UK.

2. OUR LICENCE TO YOU AND OUR PROVISION OF SUPPORT AND UPDATES

2.1 In consideration of your acceptance of the terms of this Agreement and subject to you paying the Annual Fee or Support Fee in accordance with the agreed payment terms, we grant you a non-exclusive, non-assignable right ("Licence") to Use the Software and any updates and upgrades to it which we provide you with in accordance with clause 2.8, for One Year at a time, annually renewable by payment of the Annual Fee or Support Fee. At all times you must Use the Software in accordance with this clause 2.

2.3 You may install and Use the Software as follows:

2.3.1 if we have granted you a "Single User License" or multiples thereof, you may Use it on a single computer or up to the number of licensed computers (where single usage meaning includes a PC, laptop, tablet, slate or any other supported client device) within a specified geographic Territory;

2.3.2 if we have granted you an "Unlimited User License", you may Use it on any and all computers belonging to your organization within a specified geographic Territory providing the Software is used solely in conjunction with your business or business activities, by employees of your organization.

2.3.3 if the nature of the User License or geographic Territory is undefined or unspecified in any other proposal documentation from us to you or from an approved business partner to you, then it can be assumed we have granted you an "Unlimited User License" for worldwide Use of the Software.

2.4 You may transfer each licensed copy of the Software from one computer to another owned by you, provided it is not Used on more computers at any one time than your license permits. For the avoidance of doubt, you may not continue to Use the Software on the computer from which you have transferred the Software unless the Software has been supplied under the provision of 2.3.2 or 2.3.3.

2.5 If you wish to Use the Software otherwise than as permitted by this Agreement, you should obtain our prior written consent and pay any appropriate license fee prior to commencing any such Use, when we will provide you the relevant activation key.

2.6 Except as permitted under this Agreement you shall not and shall not allow anyone else to:

2.6.1 Use, copy, transfer, sell, sub-license, lease, mortgage, rent, loan, publish, distribute or otherwise use or make the Software (or any part of it) or the Documentation available to any other person, whether or not for commercial gain;

2.6.2 Use the Software (or any part of it) or use it in any other way for the provision of any computer bureau, remote hosting or application service provision/ASP services or in any other configuration that permits you or a third party to use the Software other than in accordance with the provisions of a valid license agreement with us.

2.6.3 other than to the extent permitted by law, alter, adapt, merge, modify, translate, reverse engineer or de-compile, disassemble, create derivative works of the Software (or any part of it), except with our prior written consent;

2.6.4 remove, change or obscure any of our or any third party proprietary notices, labels or marks incorporated in the Software or the Documentation; nor

2.6.5 use or copy (irrespective of the extent of copying) the whole or any part of the Software's graphic user interface, operating logic or underlying database structure and database fields for incorporation into or the development of any software or other product or technology.

2.7 You acknowledge that we retain ownership of all intellectual property rights in and to the Software and the Documentation and any copies and amendments made to them, regardless of who made them or their form. As the Software is supplied via electronic download, you are permitted to copy the installation files to CD, DVD, BluRay, NAS, USB, Pen drive or any other physical media to ease the installation process, providing you accept that the media on which the files are copied is your sole responsibility and that we are not responsible for any issues, disruptions, errors in operation or disabling programs or viruses caused by you copying the Software on to such media.

2.8 For one year from the date of purchase, we shall provide you with technical advice, assistance and support in the Use of the Software by web support and e-mail during our normal business hours (9.00am to 5.30pm Monday – Friday GMT – excluding UK public holidays) and give you access to any downloadable on-line updates of the Software and on-line information about it.

2.9 If you do not wish to continue use of the Software for any subsequent year following the anniversary and each subsequent anniversary of the original purchase date, you must terminate the license in accordance with clause 3. Otherwise we will continue to invoice you the Annual Fee or Support Fee at the agreed contractual rate. If such rate is unspecified elsewhere in any contractual documentation then we agree to maintain the Annual Fee or Support Fee perpetually at the original cost at time of purchase.

3. HOW TO TERMINATE THIS LICENCE

3.1 We may terminate the License without refund:

3.1.1 if you fail to make any payment due under this Agreement or any other contract with us when due, and we have given you a written reminder of at least ten working days which has expired; or

3.1.2 immediately if you have not complied with the terms of any finance arrangement you have made with us or a third party for the payment of the license fee for the Software, or if such arrangement has for any reason ended before you made all the necessary payments.

3.2 Your License to Use the Software will terminate automatically if you fail to comply with any term of this Agreement, you cease to exist, become bankrupt, go into liquidation, suffer or make any winding up petition, make an arrangement with your creditors, have an administrator, administrative receiver or other receiver appointed, or if any similar circumstances happen to you, in any location.

3.3 You may terminate the license for any subsequent year without charge, by providing us with 90 days written notice of cancellation prior to any anniversary of the original purchase date. We will then acknowledge receipt of such notice and cancel all further Annual Fees or Support Fees. You will then deinstall and discontinue usage of the Software on every machine where it has been installed before the next anniversary renewal date. Failure to cancel within 90 days of any anniversary will require you to pay the next Annual Fee or Support Fee regardless of usage.

4. OUR PROMISES TO YOU

4.1 We warrant that the Software, will substantially provide the functions and facilities and will perform substantially as described in any presentations, marketing collateral or proof of concepts (POCs) given by us to you for one year from the date of purchase. If you notify us in writing during that time that the Software does not conform to this warranty, and we are able to replicate and verify such non-conformance, we may issue a fix, patch or update to correct that non-conformance. If we do not issue one and you subsequently deinstall the software from all machines where it had been installed, we will refund you a single year's Annual Fee or Support Fee that you paid to use the Software under this Agreement.

4.2 We warrant that we shall use our reasonable skill and care to provide you with the support and on-line access as described in clause 2.8. If we did not provide such support or on-line materials in conformance with this warranty, we will provide you with the relevant support again or re-publish the relevant on-line material, as appropriate.

4.3 We warrant that any electronic download package from which the Software is supplied from us to you, will be free from defects under normal conditions of use, for one year from the date of purchase. This warranty will not apply if any defect is caused by you or any person controlled by you through: accident, abuse, poor storage or handling. If the Software is downloaded and does not conform to this warranty, we will issue you with a further download to rectify any issues.

4.4 The warranties set out in this clause 4: (a) will not apply if any non-conformance is caused by or relates to any act prohibited by clause 2.6 and (b) are instead of all other warranties, representations or conditions, express or implied, statutory or otherwise, including any implied warranties of satisfactory quality and fitness for a particular purpose.

4.5 Subject to clause 5.1, but otherwise irrespective of any other term of this Agreement, we do not warrant: (a) that the Software will meet your requirements; (b) that its Use or other operation will be uninterrupted or error free or (c) make any representation regarding the Use or other operation of the Software or the results of such operation in terms of correctness, accuracy, reliability or otherwise.

4.6 Subject to clause 5.1, no oral or written communications by or on our behalf shall create a warranty or in any way increase the scope of the warranties we have given.

4.7 Our entire liability and your exclusive remedy under the warranties given in this clause 4 will be as set out in this clause 4.

5. DISCLAIMER AND LIMITATION OF LIABILITY

5.1 Nothing in this Agreement shall exclude or limit our liability for (a) fraud; (b) death or personal injury arising out of our negligence or (c) any warranty about title or uninterrupted possession implied by statute.

5.2 Subject to clause 5.1, in no event will we (or any company which controls us, is under our control or is controlled by the same company which controls us) be liable for:

5.2.1 lost income, lost profits or lost business, wasted time, anticipated savings, lost goodwill, third party costs and charges, any business interruption or loss of or corruption of data, in each case whether caused directly or indirectly; or

5.2.2 any indirect, consequential, incidental or special damage, in the case of each of clauses 5.2.1 and 5.2.2 however caused and whether arising under contract, tort including negligence, statute or otherwise, even if we knew of such potential liability.

5.3 Subject to clauses 5.1 and 5.2, our (or any company which controls us, is under our control or is controlled by the same company which controls us) maximum aggregate liability shall not exceed the amount of license fees actually paid by you to use the Software under this Agreement.

5.4 Our limitation of liability has been calculated to reflect the license fee you paid to use the Software and also that it is not within our control how and for what purposes you install, Use and/or operate the Software.

6. GENERAL

6.1 If you provide us with any personal data (i.e. which identifies living individuals) we will use it to perform our obligations in this Agreement and as required by law. We may also use it to: contact you via your nominated personnel about other relevant products and services which we offer, conduct customer satisfaction research and contact you via your personnel about relevant products and services offered by carefully selected third parties. If at any time you do not want us to use it as described in the second sentence, please contact us. We may contact you by post, telephone, SMS, e-mail or via our website. Please contact us if at any time you do not want us to use any personal data, or contact you, in this way

6.2 Any business partner, reseller, distributor or dealer (including any of our authorized business partners) from which you have purchased a license of the Software is expressly not appointed or authorized by us as our servant or agent. No such person has any authority, either express or implied, to enter into any contract or provide any representation, warranty or guarantee with or to you on our behalf, or otherwise to bind us in any way whatsoever. We will not be responsible for any non-Excel in Business products or any services provided to you by such persons.

6.3 We shall not be liable to you for any circumstances arising outside our reasonable control.

6.4 Our failure to enforce any particular term of this Agreement shall not be construed as a waiver of any of our rights under it.

6.5 If any part of this Agreement is held by a court of competent jurisdiction to be unreasonable for any reason whatsoever, the validity of the remainder of the terms will not be affected.

6.6 This Agreement constitutes the entire agreement between you and us in relation to the Software, the Documentation and the License and supersedes any other oral or written communications or representations with respect to the Software and the Documentation.

6.7 Except as described in clause 5, nothing in this Agreement confers on any third party any right or benefit under the Contracts (Rights of Third Parties) Act 1999. This Agreement may be varied without the consent of the third party beneficiaries described in clause 5.

6.8 This Agreement shall be governed by and construed in accordance with the law of England and Wales. The parties submit to the exclusive jurisdiction of the courts of England and Wales.

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