**Customer License Agreement**

**Terms and Conditions for ShareVisible**

**BY CLICKING ON THE “ACCEPT” BUTTON, YOU ARE CONSENTING TO BE BOUND BY THIS AGREEMENT. IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THIS AGREEMENT, CLICK THE “DO NOT ACCEPT” BUTTON AND THE INSTALLATION PROCESS WILL NOT CONTINUE.**

1. **General**
2. This License Agreement (“Agreement”) sets forth the terms and conditions of your use of the accompanying software, ShareVisible. By clicking on the “Accept” button, you are entering into a legally binding agreement between yourself and Applications Consulting Training Solutions, Inc. (“ACTS”). For purposes of this Agreement, “you” or “Customer” means you, the end user.
3. This Agreement shall take precedence over any terms and conditions sought to be relied upon by the Customer in respect of ShareVisible. Notwithstanding any language on any correspondence received from the Customer to the contrary, this Agreement shall take precedence over any such correspondence. Such correspondence shall be accepted by ACTS for administrative purposes only and shall not modify or amend this Agreement. All terms and conditions on any correspondence originating from the Customer shall be null, void and without legal effect.
4. The Customer agrees that the provisions of this Agreement create enforceable legal rights and obligations between the Customer and ACTS.
5. **License Grant**
6. **General**. ACTS hereby grants to you a non-exclusive and non-transferable license to use ShareVisible, according to the provisions contained herein and subject to the payment of applicable license fees (“Subscription Charges”). The ability to use ShareVisible may be affected by minimum system requirements or other factors. ACTS reserves all rights not expressly granted (and no other rights will arise by implication, estoppel, exhaustion, or otherwise). You are not permitted to lease, rent, distribute or sublicense the Software or any rights therein. You also may not use the Software in a time-sharing arrangement or in any other unauthorized manner. Further, no license is granted to you in the human readable code of the Software (source code). Except as provided below, this Agreement does not grant you any rights to patents, copyrights, trade secrets, trademarks, or any other rights in the Software and Documentation.
7. **Licensed software**. In consideration of the Subscription Charges ACTS grants the Customer licenses for the number of copies of each item of licensed software that the Customer ordered from ACTS and the right to use a prior (older) version in place of licensed software if specified in the product use terms.
8. **License confirmation**. All of the following, when taken together, are proof of the Customer’s license (or if the buy-out option is available and the Customer has exercised it, the Customer’s license): (a) this Agreement, (b) the order confirmation, if any, (c) for any transfers allowed by this Agreement, the documentation evidencing the license transfers, and (d) proof of payment.
9. **License rights are not related to software media**. The rights applicable to licensed software obtained under this Agreement are not related to any order of fulfilment of software media.
10. **Transferring licenses to Affiliates or third parties**.
	1. **Right to transfer**. The Customer may transfer licenses for licensed software under this Agreement only after the Customer exercises an available buy-out option. The Customer may transfer fully-paid perpetual licenses only to: (1) an Affiliate; or (2) to an unaffiliated third party in connection with a merger or transfer of ownership of the Customer’s enterprise. No license transfer will be valid unless the Customer provides this Agreement to the party who is receiving the licenses and that party accepts it in writing. Any attempted transfer not made in compliance with this section will be void. A transfer of licenses will not relieve the assigning party of its obligations under this Agreement. The resale of licenses, and any other transfer not expressly permitted by this section, is expressly prohibited.
	2. **Certain transfers not permitted**. The Customer may not transfer any of the following:
		1. licenses on a short-term basis (90 days or less);
		2. temporary rights to use licensed software;
		3. ShareVisible service packages, if any; or
		4. licenses for any version of any licensed software acquired through ACTS Software Assurance separately from the full version license.
11. **Limitations on use**. Licensed software is licensed to the Customer, not sold. The Customer has no right to:
	1. reverse engineer, decompile, or disassemble any licensed software, except where applicable law permits it despite this limitation;
	2. rent, lease, lend, resell, or host to or for third parties any licensed software, except as may be expressly permitted for a given licensed software in the product use terms;
	3. separate and use the components of licensed software upgrade or downgrade components at different times, or transfer components separately, except as may be expressly permitted in the product use terms; or
	4. modify or create derivative works of the licensed software.
12. **Universal Terms.**
13. **Customer Use Rights**. If the Customer complies with this Agreement the Customer may use the software only as expressly permitted by this Agreement.
14. **Third Party Programs**. If other terms come with a program licensed by a third party, those terms apply to the Customer’s use of it.
15. **Updates and Supplements**. ACTS may update or supplement the software which the Customer licenses. If so, the Customer may use that update or supplement with the software. If other terms come with an update or supplement, those terms apply to the Customer’s use of it.
16. **Technical Limitations**. The Customer must comply with any technical limitations in the products that only allow the Customer to use them in certain ways. The Customer may not work around them.
17. **Other Rights**. Rights to access the software on any device do not give the Customer any right to implement ACTS patents or other ACTS IPR in software or devices that access that device.
18. **Additional Functionality**. ACTS may provide additional functionality for the products. Other license terms and fees may apply.
19. Additional Terms.

**License Terms Updates**. ACTS may update these license terms from time to time. Changes to these license terms that ACTS either introduce with updates or supplements or are required by law to make will apply immediately.

ACTS will endeavor to notify the Customer of updates at least 30 days before they are generally effective. The Customer agrees to the new terms by when ACTS sends the Customer an email notice about the updates.

Any suspension of services shall apply to the minimum necessary portion of the software and only be in effect for as long as reasonably necessary to address the issues giving rise to the suspension.

1. **Responsibility for Customer Accounts**. The Customer is responsible for the Customer’s passwords, if any, and all activity with the Customer’s accounts including that of users the Customer provisions and dealings with third parties that take place through the Customer’s account or associated accounts. The Customer must keep Customer accounts and passwords confidential. The Customer must tell ACTS immediately about any possible misuse of Customer accounts or any security incident.
2. **Charges**
3. The Subscription Charges payable by the Customer to ACTS for the services described herein are as set out in Customers Price Plan and Price Plan Rules.
4. The Customer acknowledges that the Subscription Charges may be amended by ACTS by giving the Customer not less than thirty (30) days notice.
5. Professional Charges payable by the Customer (if any) shall be as agreed in writing by the Customer.

1. **Billing Arrangements**
2. **Recurring Payments.** When you purchase the Services on a subscription basis (monthly), you acknowledge and agree that you are authorizing recurring payment, and payments shall be made to ACTS until the subscription for that Service is terminated by you or by ACTS. By authorizing recurring payments, you are authorizing ACTS to process such payments as electronic drafts from your designated account. Subscription fees are generally billed or charged in advance of the applicable subscription period. If any payment is returned unpaid or if any credit card or similar transaction is rejected or denied, ACTS or its service providers reserve the right to collect any applicable return item, rejection or insufficient funds fee and to process any such payment as an Electronic Payment.
3. Without prejudice to any other rights of ACTS, in the event of the Customer failing to pay any sums due pursuant to this Agreement on time or at all notwithstanding notification by ACTS of the overdue debt to the Customer, ACTs shall be entitled to:
4. suspend the provision of the software until such time as all payments due, including all interest accrued has been paid and satisfied in full;
5. terminate this Agreement forthwith.

**V. Customer’s Obligations**

1. The Customer undertakes and agrees with ACTS that throughout the Subscription Period it will:
2. pay the Charges levied by ACTS in accordance with this Agreement;
3. comply with all Laws in relation to the use of the services; and
4. use the licensed software and services in accordance with the terms of this Agreement and any User Guide or other instructions of ACTS and not copy, reverse engineer or modify any software made available as part of any of the services in any way.
5. The Customer warrants and represents that it has the necessary rights to all data, software programs and services that it uses in connection with its access to or use of ShareVisible, and that such activities do not infringe the intellectual property or other proprietary rights of any third party. The Customer agrees to indemnify and hold ACTS harmless from and against any and all claims, costs, expenses, damages, liabilities and legal fees that ACTS suffer or incur as a result of any dispute that may arise, in any way whatsoever, in connection with any breach of this Clause.
6. The Customer warrants and represents that it shall access and use the services:
7. without violating the rights of any third party or purporting to subject ACTS to any obligations with any third party, and
8. solely in a manner that complies with all applicable laws and regulations.

**VI. ACTS Obligations**

1. ACTS will provide ShareVisible in accordance with the terms and conditions of this Agreement.
2. ACTS will provide the necessary log in details as are required to enable the Customer to access and use the ShareVisible.
3. ACTS will provide customer support services in relation to all technical support queries based on support package purchased.

**VII. Auto-Renewal**

The Customer acknowledges that its subscription to ShareVisible, subject to the rights of termination and suspension in this Agreement, will auto-renew at the end of each billing period. Such auto-renewal will take effect unless this Agreement is terminated in accordance with its terms and shall include all services to which the Customer has subscribed in the relevant billing period immediately prior to the auto renewal.

**VIII. Termination and Suspension**

1. The Customer may terminate this Agreement by non-payment of monthly fees. Such termination will take effect at the expiration of the billing period. The Customer shall not be entitled to any refund of Subscription Charges for the unexpired remainder of the Subscription Period in any circumstances.
2. ACTS may terminate this Agreement as follows:
3. with immediate effect in the event the Customer fails to pay the Subscription Charges by the due date;
4. with immediate effect where there are reasonable grounds to believe that the Customer is using the services described in this Agreement in a manner which is in breach of this Agreement or is illegal or that the Customer is misusing those services in any way;
5. without any reason by providing not less than 30 days prior written notice to the Customer; or
6. in accordance with any other termination provisions set out in this Agreement.
7. ACTS may suspend or restrict the provision of services under this Agreement in the event of:
8. the Customer failing to pay the Subscription Charges by the due date;
9. an emergency or if there are reasonable grounds to believe there is a threat or risk to the security or integrity of ShareVisible;
10. breach of this Agreement by the Customer; or
11. in accordance with any other suspension provisions of this Agreement.
12. During a period of suspension the Customer will have limited or no access to ShareVisible except for purposes of retrieving Customer Data. The Customer acknowledges that ACTS will not be liable in any manner whatsoever to the Customer where ACTS has suspended or terminated the Customer’s access to and use of ShareVisible in accordance with the terms of this Agreement.
13. The Customer shall not be relieved of the obligation to pay the Subscription Charges due notwithstanding the suspension or termination of the provision of the services described in this Agreement up to the date of termination.
14. ACTS may terminate or suspend ShareVisible if it believes in good faith that the Customer is misusing the Service, ACTS may, at ACTS’ sole discretion, terminate or suspend the Customers Subscription. The Customer acknowledges that ACTS will have no liability to the Customer in connection with terminating or suspending ShareVisible.
15. ACTS shall endeavor to provide advance notice to the Customer of any suspension or termination of the services described in this Agreement but shall not be required to do so.

**IX. Intellectual Property**

1. The Customer acknowledges that nothing in this Agreement, or elsewhere in this commercial arrangement, will be deemed to or require ACTS to transfer, assign or license any IPR to the Customer.
2. The Customer will not be entitled to use in the course of trade or otherwise in relation to any goods or services of the Customer any registered or unregistered trademark, logotype or abbreviation of the name of ACTS or any part of ACTS so that any person might reasonably import a connection between those goods or services and ACTS or any part of ACTS.
3. The provision of ShareVisible to the Customer does not grant the Customer any right, title, interest or license in or to any of ACTS’ IPR.

**X. Liability**

1. Subject to Clause V.B, neither party shall be liable to the other in respect of any matter arising out of or in connection with the provision of the services described in this Agreement in contract or tort or otherwise for any loss (whether direct or indirect) of profit, business, revenue, anticipated savings, goodwill or any loss or corruption of data, or for any indirect or consequential loss or damage whatsoever.
2. Subject to Clause V.A, ACTS’ aggregate liability of any sort resulting from ACTS’ negligence or otherwise arising in connection with the provision of ShareVisible shall be limited in respect of all claims arising to 100% of the Subscription Charges paid by the Customer in the previous thirty (30) days, whichever is the lesser.
3. Nothing in this Agreement shall exclude or restrict the liability of either party for:
4. death or personal injury resulting from that party’s negligence; or
5. claims in respect of the Customer’s obligations under Clause V.
6. Nothing in this Agreement shall exclude or restrict the liability of either party in respect of any liability which cannot be excluded or restricted by law.

**XI. Matters beyond the Parties’ Reasonable Control**

Neither party shall be deemed in default or liable to the other party for any matter whatsoever for any delays in performance or from failure to perform or comply with this Agreement due to any cause beyond that party’s reasonable control including, without limitation, acts of God, acts of Government or other competent regulatory authority, telecommunications network operators, war or national emergency, riots, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes and other industrial disputes (in each case, whether or not relating to that party’s workforce).

**XII. Assignment**

1. Subject to Clause II.B, the Customer shall not assign or transfer the benefit of this Agreement to any third party without the prior written consent of ACTS, such consent not to be unreasonably withheld or delayed.
2. ACTS may assign or transfer its obligations under this Agreement to any third party and may subcontract the performance of all or part of the same.

**XIII. Invalidity**

If any of the provisions of this Agreement is or becomes invalid, illegal or unenforceable, the validity or enforceability of the remaining provisions shall not in any way be affected or impaired. In any such circumstances the parties shall negotiate in good faith in order to agree the terms of a mutually satisfactory provision, achieving as nearly as possible the same commercial effect, to be substituted for the provision which is found to be invalid, illegal or unenforceable.

**XIV. Waiver**

The failure or delay by either party to exercise or enforce any right, power or remedy under this commercial arrangement shall not be deemed to operate as a waiver of any such right, power or remedy; nor shall any single or partial exercise by any party operate so as to bar the exercise or enforcement thereof or of any right, power or remedy on any later occasion.

**XV. Amendments**

ACTS reserves the right to amend this Agreement by notifying the Customer of the proposed amendment not less than one (1) month prior to the date of implementation of any such proposed amendment via direct notification.

**XVI. Governing Law**

The commercial arrangement, and any issues or disputes of whatever nature arising out of or in any way relating to them or this Agreement (whether such disputes are contractual or noncontractual in nature, such as claims in tort, for breach of statute or regulation, or otherwise) shall be governed by and construed in accordance with the Laws of the United States and the parties submit to the exclusive jurisdiction of the courts of the United States.

**XVII. Definitions**

In this Agreement the following definitions shall apply:

**Affiliate** means in relation to ACTS, at any time, any other person which directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, that first Party, where "control" has the meaning ascribed to it in section 10 of the Taxes Consolidation Act 1997;

**Agreement** means these terms and conditions, and any ACTS policies referred to in these terms and conditions and which shall be deemed to be included in this Agreement by reference;

**Customer** shall have the same meaning as set out in Clause I.A of this Agreement;

**Customer Documentation** means and manuals, instructions, guides or other analogous documents regardless of format provided or made available to the Customer by ACTS from time to time regarding the services described in this Agreement;

**Hardware** means any hardware, tools, equipment and other tangible property (including laptop and, desktop computers, mobile telephony, personal digital assistance devices and data network components) and physical IT infrastructure owned or leased by the Customer and used in connection with services described in this Agreement;

**IPR** means all (i) patents, designs, trade-marks and trade names (whether registered or unregistered), copyright and related rights, moral rights, database rights, know-how and confidential information; (ii) all other intellectual property rights and similar or equivalent rights anywhere in the world which currently exist or are recognized in the future; and (iii) applications, extensions and renewals in relation to any such rights;

**Service** means the provision of the Product and the ongoing customer service to the Customer per service package purchased.

**Subscription Charges** means the charges payable by and Customer for access to use ShareVisible;

**Subscription Period** means the period during which ACTS shall provide ShareVisible and the Customer is permitted to access and use ShareVisible.