End User License Agreement (EULA) for ABACUS Software

I. Subject of the License

1. ABACUS Research Inc., hereinafter referred to as "ABACUS", grants to the Customer a personal, non-transferable, non-assignable and non-exclusive licensing right for his own use for the ABACUS programs and modules, hereinafter referred to as the "ABACUS Software", duly purchased, registered and activated under his License number.

2. Besides the ABACUS Software the right of use also extends to all the corresponding documentation and installation instructions. The right of use does not include the documentation for industry solutions and also not the pre-defined parameterisations (e.g. demo clients) insofar as these are not delivered as standard.

II. Scope of the License

1. The Customer acquires a single, spatially and temporally unrestricted, and non-exclusive right of use for the ABACUS Software which he has licensed. The scope of the right of use – specifically with regard to number of users, the multi-client capability and the options – is determined by the License model.

2. If the Customer installs a newer version of the ABACUS Software ("Update"), at the latest three months after installation, he loses the right to continue using the old version. Should the Customer desire to continue using the old version, an additional license will have to be obtained for it.

3. The License entitles the Customer to use a single installation on a single machine at the same time. Here "Machine" is to be understood as signifying any physical machine fitted with one or more processors (CPU), as well as any virtual machine or other type of emulated hardware environment.

4. If the Customer wishes to have the Software installed on more than one machine at the same time, then each installation requires its own license. This also applies to test systems which are installed for a period longer than three months, except if the Customer has purchased a license that allows for two test installations in addition to the productive installation.

5. The Customer acquires the License exclusively for his own use. This means that only the Customer, his employees or persons commissioned by him are allowed to have access to the licensed ABACUS Software.

6. Unless given written consent by ABACUS, the Customer is forbidden to pass on ABACUS Software in any form to third parties or to make it accessible to third parties. A third party may, however, access ABACUS Software, if and to the extent provided for by the License model, and if a separate license in the form of a subscription ("Subscription License") is purchased for the third parties for this purpose.

7. Should the Customer wish to make the ABACUS Software available online or remote to other natural or juristic persons or any other third parties for their own use, he will require for this an additional license in each case.

8. Any exploitation of the person's own License that are not specifically outlined in this License Agreement but fall outside the License model, in particular the leasing, renting and dissemination in tangible or intangible form, the use of the ABACUS Software by or for third parties (e.g. outsourcing, data-processing centre activities, application service providing, offering the ABACUS Software as a service) and the granting of sub-licenses are not permitted without prior written consent from ABACUS.

9. The components from other suppliers which ABACUS includes with the Software, such as databases, viewers and the like, are only licensed for use with the ABACUS Software and may not be used by the Customer outside this context.

10. ABACUS retains all rights other than those expressly granted to the Customer in this Agreement. This includes ownership rights, copyrights, designer rights, patent rights, trademark rights and all other protective rights in the ABACUS Software, distribution rights, rental rights, the right to issue sub-licenses and the like.

III. Terms of Use

1. The Customer installs and configures the ABACUS Software himself at his own risk and cost or arranges to have it installed and configured by third parties at his own risk.

2. The Customer is not permitted to alter the ABACUS Software, and in particular not to decompile it, or to convert the source code into a readable or modifiable form by any other means.

3. The Customer may not circumvent the limitation of the scope of the License by integrating proprietary program components in the ABACUS Software. He is in particular not entitled to extend the number of licensed users by programming its own user interface ("Interface"). If users enter or display data using a third party interface that has been processed via online interfaces (SOAP, etc.), these users must be licensed.

4. ABACUS licenses interfaces and report generators in order to export data from the ABACUS Software to external systems, where it is then further processed and whose primary purpose is to view and evaluate the data there. The use of interfaces and report generators with the primary purpose to visualise or print data by means of an external system is only allowed if the user of the external system is also registered and entitled to view this data.

5. Contractual objects, documents, proposals, test programs etc. from ABACUS which are made available to the Customer before or after the conclusion of the Agreement, are deemed to be the intellectual property of ABACUS and its business and trade secrets, and as such are to be kept strictly confidential.

6. If the Customer purchases a License for an industry solution that does not scale according to the number of users, but according to another unit (inhabitants, counter, beds, etc.) customary to this particular industry that cannot be controlled by the Software, then the Customer shall report changes to the distribution partner without further demand by the end of September.

7. The Customer shall ensure by suitable measures that all persons who have access to the ABACUS Software do also similarly adhere to the duties imposed on him by this Agreement.

8. The Customer is allowed to make such backup copies of the program as are required for a secure operation. Where technically feasible, the backup copies must be marked with the copyright notice of the original data carrier and stored securely. Copyright notices may not be deleted, altered or suppressed. Copies which are no longer needed are to be deleted or destroyed. The user manual and other documents provided by ABACUS may only be copied for use internally within the company.

9. ABACUS undertakes to make available to every customer the interface information for its business objects, insofar as this is technically feasible and practicable.

10. Should the licensed ABACUS Software which the Customer has be fully or partly damaged or mistakenly deleted, ABACUS will replace it for free while charging their own expenses for data carriers, hours of work and shipping costs.

11. ABACUS can make the installation of ABACUS Software as well as the installation of updates, Service Packs, Hot Fixes dependent on activation. Within the scope of the activation process, the License number of the Customer, information about the system environment such as IP address, MAC address, server name and suchlike, and the optional data provided by the Customer for the contact person will be transferred to the server of ABACUS automatically. ABACUS and the distribution partner of the Customer will treat this information as confidential.

12. Furthermore, ABACUS is entitled to confirm the compliance to the License Agreement by a recognised auditing company. ABACUS requires the auditing company to safeguard the legitimate interests of the Customer and its trade secrets and ensure business continuity.

IV. Rights in the Event of Defects

1. ABACUS guarantees that the contractual use of the Software by the Customer is not opposed by any rights of third parties ("Defects of Title"). Hence ABACUS guarantees that in the case of defects of title, it will ensure for the end Customer a legally sound use of the Software, or of an equivalent software, at its own discretion.

2. The Customer is to inform ABACUS in writing immediately should a third party make a claim regarding protective rights (e.g. copyright or patent rights) in the Software. The Customer authorises ABACUS to deal with the dispute and future disputes with the third party on its own. As long as ABACUS makes use of this authorisation, the Customer is not himself entitled to recognise the claims of the third party without first receiving the consent of ABACUS. ABACUS then at its own expense defends against the claims of the third party, and releases the Customer from all costs connected with the defence against these claims, unless they are based on behaviour by the Customer in breach of duty (e.g. the use of the program in breach of the Agreement).

3. ABACUS Software is of the usual quality expected for ERP systems. It is not, however, error-free. Minor impairments of function or impairments of function which are due wholly or in part to hardware defects, environmental conditions, improper use or the like do not constitute a defect.

4. The limited rights to use apply to ABACUS software as it was delivered. The guarantee from ABACUS for defects ("Material Defects") is entirely excluded. The Customer can assert a claim for material defects exclusively against the distributor or, if a separate maintenance contract exists with ABACUS, against ABACUS within the scope of the contract. ABACUS has regulated the guarantee as a software manufacturer towards the distributor.

5. ABACUS or the distribution partner is to be notified of the defect immediately in writing.

V. Liability and Limitation of Liability

1. ABACUS is liable to the Customer for direct damages from the use of the Software, as far as this is due to gross negligence or intent. The liability of ABACUS for auxiliary persons is excluded.

2. ABACUS is not liable to the Customer or third parties in any way for any kind of indirect damages, losses, claims or costs and the like, in particular not for expenses incurred by the Customer, damages resulting from interruptions to operation, indirect or concomitant damages and consequential damages such as lost profit, failure to realise savings, and claims raised by third parties.

3. The Customer is liable to ABACUS for damages caused by any installation, use or passing onto others of the ABACUS Software in a manner which is in breach of contract or unlawful.

VI. Duration and Termination

1. Ownership of the goods delivered, and the limited rights to use of the ABACUS Software, only pass to the Customer when the signed License Agreement has been received. If the License Agreement is not signed and delivered within an appropriate extension of the deadline, ABACUS is entitled to have the Customer return the delivered goods and/or provide a written confirmation that these and all copies thereof have been destroyed.

2. The Customer may terminate the License Agreement at any time by giving written notice to ABACUS. Such a termination will always include all the programs and modules and all rights of use.

3. ABACUS is not entitled to terminate this License Agreement if the ABACUS Software is being used in compliance with the Agreement. However, should the Customer infringe the License Agreement in a serious manner, specifically if he fails to observe the scope of the License rights granted to him or infringes the copyrights of ABACUS, ABACUS may then terminate this License Agreement with immediate effect and without giving prior warning. In addition, ABACUS may terminate this License Agreement after one single warning with immediate effect if the customer does not pay the License fees contractually agreed upon with ABACUS or a distributor.

4. In the event of the License Agreement being cancelled, the Customer has no claim to reimbursement of License fees. He is, however, obliged to erase the installation and to destroy all the data carriers received from ABACUS. On demand of ABACUS, the customer must confirm the destruction or deletion of programs in writing.

5. Notice of termination must always be given in written form.

VII. General Provisions

1. This License Agreement supersedes any previous License Agreements between ABACUS and the Customer. It is the latest version of the End User License Agreement (EULA) for ABACUS Software which has been accepted by the Customer. Accepted applied also to new versions, which are confirmed by the customer upon installation on new program versions ("Updates"), Service Packs or Hot Fixes.

2. If changes or additions to this License Agreement which have been agreed upon in writing exist between the Customer and ABACUS, those continue to be valid at the time of the change or addition of valid provisions, to which the changes or additions refer. Otherwise the latest version of the End User License Agreement (EULA) for ABACUS Software which has been accepted by the Customer applies.

3. The rights of the Customer in relation to ABACUS and ABACUS Software are declared exhaustively in this License Agreement. Any divergent general business or license conditions of the Customer are excluded.

4. Additional or differing license stipulations are only valid if made in writing and signed with legal effect by both contractual parties.

5. Should one or more provisions of this License Agreement prove to be invalid, the remaining provisions and the Agreement as a whole will still remain valid.

6. An invalid provision or gap in this License Agreement will be replaced by that effective provision which comes closest to the economic purpose of the contract.

7. The exclusive place of jurisdiction for all legal disputes arising out of or in connection with this License Agreement is the registered office of ABACUS. However, ABACUS is also entitled to assert a lawsuit at the court having jurisdiction in the district of the registered office of the customer.

8. This License Agreement is subject to the laws of Switzerland, excluding international treaties, in particular the UN Convention on Contracts for the International Sale of Goods (CISG) ("Vienna Sales Convention").

9. This License Agreement is available in German, English and French versions. In case of any discrepancies or contradictions, the German version shall prevail.

Acceptance

of End User License Agreement (EULA) for ABACUS Software

Company
_____

Department
_____

Contact person
_____

Street
_____

Post Code/Town   Telephone
_____

Country   License number
_____

By affixing a legally valid signature, the Customer agrees to the provisions of the License for the ABACUS Software.

Place, date:

Name: Signature:

Name: Signature: