

## **ABM SOFTWARE AND SERVICES END USER AGREEMENT**

**IMPORTANT-READ THIS ABM SOFTWARE AND SERVICES END USER AGREEMENT (THIS "AGREEMENT") CAREFULLY BEFORE CONTINUING REGISTRATION. BY CLICKING THE "I ACCEPT" BUTTON OR OTHERWISE ACCEPTING THIS AGREEMENT THROUGH AN ORDERING DOCUMENT THAT INCORPORATES THIS AGREEMENT (THE "ORDERING DOCUMENT"), YOU AGREE TO FOLLOW AND BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THE TERMS AND CONDITIONS OF THIS AGREEMENT AND, IN SUCH EVENT, "YOU" AND "YOUR" AS USED IN THIS AGREEMENT SHALL REFER TO SUCH ENTITY, IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE TO ALL THE TERMS AND CONDITIONS IN THIS AGREEMENT, YOU MUST SELECT THE "I DECLINE" BUTTON OR DO NOT SIGN AND MAY NOT USE THE SERVICES.**

### **A. Agreement Definitions**

"You" and "your" refers to the individual or entity that has ordered Products/ Services from ABM Knowledgeware Ltd. ("ABM") or an authorized distributor or partner by executing the ordering document that accompanies and incorporates this ABM Software and Services End User agreement (collectively, the "agreement"). Products means, collectively, all ABM SaaS, Software and all Support Programs, including all Upgrades and includes the right to use the ABM products as well as any other services provided by ABM, as defined in the ordering document (collectively, the "services"). The term "program documentation" refers to the program user manual as well as any other materials provided by ABM as part of the product stack. The term "users" shall mean those individuals authorized by you or on your behalf to use the services, as defined in the ordering document. The term "your data" refers to the data provided by you that resides in your services environment. The term "ordering document" refers to the ordering document signed by the parties that accompanies and incorporates this Products agreement, including the services policies and any other document referenced or incorporated into the ordering document.

### **B. Applicability of Agreement**

This "ABM SOFTWARE AND SERVICES END USER AGREEMENT" agreement is valid for the ordering document which this agreement accompanies.

### **C. Rights Granted**

Upon ABM's acceptance of your order and for the duration of the services term defined in the ordering document, you have the nonexclusive, non-assignable, royalty free, worldwide limited right to use the services solely for your internal business operations and subject to the terms of the agreement. You may allow your users to use the services for this purpose and you are responsible for your users' compliance with the agreement. The services are provided as described in, and subject to, the services policies referenced in the ordering document.

You acknowledge that ABM has no delivery obligation and will not ship copies of the ABM products to you as part of the services. You agree that you do not acquire under the agreement any authority to use the ABM programs/ services specified in the ordering document in excess of the scope and/or duration of the services. Upon the end of the agreement or the services thereunder, your right to use the ABM programs specified in the ordering document and the services shall terminate.

### **D. Ownership and Restrictions**

You retain all ownership and intellectual property rights in and to your data. ABM or its licensors retain all ownership and intellectual property rights to the services and ABM programs. ABM retains all ownership and intellectual property rights to anything developed and delivered under the agreement.

Third party technology that may be appropriate or necessary for use with some ABM programs is specified in the program documentation or ordering document as applicable. Your right to use such third party technology is governed by the terms of the third party technology license agreement specified by ABM and not under the

agreement.

You may not:

- remove or modify any program markings or any notice of ABM 's or its licensors' proprietary rights;
- make the programs or materials resulting from the services available in any manner to any third party for use in the third party's business operations (unless such access is expressly permitted for the specific program license or materials from the services you have acquired);
- modify, make derivative works of, disassemble, reverse compile, or reverse engineer any part of the services (the foregoing prohibition includes but is not limited to review of data structures or similar materials produced by programs), or access or use the services in order to build or support, and/or assist a third party in building or supporting, products or services competitive to ABM ;
- disclose results of any services or program benchmark tests without ABM 's prior written consent; and
- license, sell, rent, lease, transfer, assign, distribute, display, host, outsource, disclose, permit timesharing or service bureau use, or otherwise commercially exploit or make the services, ABM programs or materials available, to any third party other than, as expressly permitted under the terms of the agreement.

The rights granted to you under the agreement are also conditioned on the following:

- the rights of any user for usage of the services (e.g., on a "named user" basis) cannot be shared or used by more than one individual (unless such user is reassigned in its entirety to another authorized user, in which case the prior authorized user shall no longer have any right to use the product);
- except as expressly provided herein, no part of the services may be copied, reproduced, distributed, republished, downloaded, displayed, posted or transmitted in any form or by any means, including but not limited to electronic, mechanical, photocopying, recording, or other means; and
- you agree to make every reasonable effort to prevent unauthorized third parties from accessing the services.

#### **E. Warranties, Disclaimers and Exclusive Remedies**

ABM warrants that the services will perform in all material respects in accordance with the services policies referenced in the ordering document. If the services provided to you for any given month during the services term were not performed as warranted, you must provide written notice to ABM as specified in the ordering document no later than five business days after the last day of that particular month or within such other period stated in the ordering document.

ABM DOES NOT GUARANTEE THAT THE SERVICES WILL BE PERFORMED ERROR-FREE OR UNINTERRUPTED, OR THAT ABM WILL CORRECT ALL SERVICES ERRORS. YOU ACKNOWLEDGE THAT ABM DOES NOT CONTROL THE TRANSFER OF DATA OVER COMMUNICATIONS FACILITIES, INCLUDING THE INTERNET, AND THAT THE SERVICE MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF SUCH COMMUNICATIONS FACILITIES. ABM IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.

FOR ANY BREACH OF THE ABOVE WARRANTIES, ABM WILL REMIT A SERVICES FEE CREDIT TO YOU CALCULATED AT TEN PERCENT (10%) OF NET MONTHLY FEES FOR THE APPLICABLE SERVICES FOR THE MONTH IN WHICH THE BREACH OCCURRED. THE CREDIT WILL BE PROVIDED ONLY TOWARDS ANY OUTSTANDING BALANCE FOR SERVICES OWED TO ABM, AND THE REMITTANCE OF SUCH CREDIT WILL REPRESENT YOUR EXCLUSIVE REMEDY, AND ABM'S SOLE LIABILITY, FOR ALL BREACHES OF ANY WARRANTY SPECIFIED IN THE AGREEMENT.

TO THE EXTENT NOT PROHIBITED BY LAW, THESE WARRANTIES ARE EXCLUSIVE AND THERE ARE NO OTHER EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS INCLUDING FOR HARDWARE, SYSTEMS, NETWORKS OR ENVIRONMENTS OR FOR MERCHANTABILITY, SATISFACTORY QUALITY AND FITNESS FOR A PARTICULAR PURPOSE.

#### **F. Trial Use of the Services**

If specified in the ordering document, you may order certain services for trial, nonproduction purposes subject to the terms and conditions of the agreement. Services acquired for trial purposes are provided “as is” and ABM does not offer any warranties for such services. This would be granted upon discretion of ABM.

## **G. Indemnification**

If a third party makes a claim against either you or ABM (“Recipient” which may refer to you or ABM depending upon which party received the Material), that any information, design, specification, instruction, software, service, data, or material (“Material”) furnished by either you or ABM (“Provider” which may refer to you or ABM depending on which party provided the Material), and used by the Recipient infringes its intellectual property rights, the Provider, at its sole cost and expense, will defend the Recipient against the claim and indemnify the Recipient from the damages, liabilities, costs and expenses awarded by the court to the third party claiming infringement or the settlement agreed to by the Provider, if the Recipient does the following:

- notifies the Provider promptly in writing, not later than 30 days after the Recipient receives notice of the claim (or sooner if required by applicable law);
- gives the Provider sole control of the defense and any settlement negotiations; and
- gives the Provider the information, authority, and assistance the Provider needs to defend against or settle the claim.

If the Provider believes or it is determined that any of the Material may have violated a third party’s intellectual property rights, the Provider may choose to either modify the Material to be non-infringing (while substantially preserving its utility or functionality) or obtain a license to allow for continued use, or if these alternatives are not commercially reasonable, the Provider may end the license for, and require return of, the applicable Material and refund any unused, prepaid fees the Recipient may have paid to the other party for such Material. If such return materially affects ABM’s ability to meet its obligations under the relevant order, then ABM may, at its option and upon 30 days prior written notice, terminate the order. The Provider will not indemnify the Recipient if the Recipient alters the Material or uses it outside the scope of use identified in the Provider’s user documentation or services policies or if the Recipient uses a version of the Materials which has been superseded, if the infringement claim could have been avoided by using an unaltered current version of the Material which was provided to the Recipient. The Provider will not indemnify the Recipient to the extent that an infringement claim is based upon (i) any information, design, specification, instruction, software, data, or material not furnished by the Provider, or (ii) any Material from a third party portal or other external source that is accessible to you within or from the service (e.g., a third party Web page accessed via a hyperlink). ABM will not indemnify you to the extent that an infringement claim is based upon the combination of any Material with any products or services not provided by ABM. ABM will not indemnify you for infringement caused by your actions against any third party if the services as delivered to you and used in accordance with the terms of the agreement would not otherwise infringe any third party intellectual property rights. ABM will not indemnify you for any infringement claim that is based on: (1) a patent that you were made aware of prior to the effective date of the agreement (pursuant to a claim, demand, or notice); or (2) your actions prior to the effective date of the agreement. This section provides the parties’ exclusive remedy for any infringement claims or damages.

## **H. Support Services**

Support services provided under the agreement are specified in the services policies referenced in the ordering document.

## **I. End of Agreement**

Services provided under this agreement shall be provided for the period defined in the ordering document unless earlier terminated in accordance with the agreement. The term of the services and any renewal years are collectively defined as the “services term.” At the end of the services term, all rights to use the services, including all ABM products listed in the ordering document, shall end.

If either of us breaches a material term of the agreement and fails to correct the breach within 30 days of written specification of the breach, then the breaching party is in default and the non-breaching party may terminate the applicable ordering document under which the breach occurred. If ABM ends the ordering document as specified in the preceding sentence, you must pay within 30 days all amounts which have accrued prior to such

end, as well as all sums remaining unpaid for the services ordered under the agreement plus related taxes and expenses. If ABM ends the services under the Indemnification section, you must pay within 30 days all amounts remaining unpaid for services plus related taxes and expenses. The non-breaching party may agree in its sole discretion to extend the 30 day period for so long as the breaching party continues reasonable efforts to cure the breach. You agree that if you are in default under the agreement, you may not use the services ordered. You further agree that if you have used an ABM Financing Division contract to pay for the fees due under an order and you are in default under that contract, you may not use the services that are subject to such contract.

In addition, ABM may immediately suspend your password, account, and use of the services (i) if you fail to pay ABM as required under the agreement and do not cure within the first ten days of the 30 day cure period, or (ii) if you violate any provision within sections C, D, N or R of this Products agreement. ABM may terminate the services hereunder if any of the foregoing is not cured within 30 days after ABM 's initial notice thereof. Any suspension by ABM of the services under this paragraph shall not excuse you from your obligation to make payment(s) under the agreement.

At your request, and for a period of up to 60 days after the termination of the applicable ordering document, ABM may permit you to use the services solely to the extent necessary for you to retrieve a file of your data then in the services environment.

You agree and acknowledge that ABM has no obligation to retain your data and that your data may be irretrievably deleted after 60 days following the termination of the ordering document.

Provisions that survive termination or expiration of the agreement are those relating to limitation of liability, infringement indemnity, payment, and others which by their nature are intended to survive.

## **J. Fees and Taxes**

You agree to pay for all products / services ordered as set forth in the applicable ordering document. All fees due under the agreement are non-cancellable and the sums paid non-refundable. You agree to pay any sales, value-added or other similar taxes imposed by applicable law that ABM must pay based on the services you ordered, except for taxes based on ABM 's income. You will reimburse ABM for reasonable expenses related to providing any on-site portion of the services. Fees for services listed in an ordering document are exclusive of taxes and expenses. All amounts invoiced hereunder are due and payable within 30 days of the date of the invoice.

You agree that you have not relied on the future availability of any services, programs or updates in entering into the payment obligations in the ordering document; however, the preceding does not relieve ABM of its obligation to deliver services that you have ordered per the terms of the agreement.

## **K. Nondisclosure**

By virtue of the agreement, the parties may have access to information that is confidential to one another ("confidential information"). We each agree to disclose only information that is required for the performance of obligations under the agreement. Confidential information shall be limited to the terms and pricing under the agreement, your data residing in the services environment, and all information clearly identified as confidential at the time of disclosure.

A party's confidential information shall not include information that: (a) is or becomes a part of the public domain through no act or omission of the other party; (b) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (c) is lawfully disclosed to the other party by a third party without restriction on the disclosure; or (d) is independently developed by the other party.

We each agree to hold each other's confidential information in confidence for a period of three years from the date of disclosure. Also, we each agree to disclose confidential information only to those employees or agents who are required to protect it against unauthorized disclosure in a manner no less protective than under the agreement. ABM will protect the confidentiality of your data residing in the services environment in accordance with the ABM security practices specified in the services policies referenced in the ordering document. Nothing

shall prevent either party from disclosing the terms or pricing under the agreement in any legal proceeding arising from or in connection with the agreement or from disclosing the confidential information to a governmental entity as required by law.

#### **L. Entire Agreement**

You agree that the agreement (including the information which is incorporated into the agreement by written reference (including reference to information contained in a URL or referenced policy), is the complete agreement for the services ordered by you, and that the agreement supersedes all prior or contemporaneous agreements or representations, written or oral, regarding such services. If any term of the agreement is found to be invalid or unenforceable, the remaining provisions will remain effective and such term shall be replaced with a term consistent with the purpose and intent of the agreement. It is expressly agreed that the terms of the agreement, including any ABM ordering document, shall supersede the terms in any purchase order or other non-ABM document and no terms included in any such purchase order or other non-ABM document shall apply to the services ordered. The agreement may not be modified and the rights and restrictions may not be altered or waived except in a writing signed or accepted online through the ABM central administration portal by authorized representatives of you and of ABM .

#### **M. Limitation of Liability**

NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, OR ANY LOSS OF REVENUE OR PROFITS (EXCLUDING FEES UNDER THE AGREEMENT), DATA, OR DATA USE. ABM 'S MAXIMUM LIABILITY FOR ANY DAMAGES ARISING OUT OF OR RELATED TO THIS PRODUCTS AGREEMENT OR YOUR ORDER, WHETHER IN CONTRACT OR TORT, OR OTHERWISE, SHALL IN NO EVENT EXCEED, IN THE AGGREGATE, THE TOTAL AMOUNTS ACTUALLY PAID TO ABM FOR THE SERVICES UNDER THE ORDER THAT IS THE SUBJECT OF THE CLAIM IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM. ANY DAMAGE IN YOUR FAVOR AGAINST ABM SHALL BE REDUCED BY ANY REFUND OR CREDIT RECEIVED BY YOU UNDER THE AGREEMENT AND ANY SUCH REFUND AND CREDIT SHALL APPLY TOWARDS THE LIMITATION OF LIABILITY.

#### **N. Other**

1. ABM is an independent contractor and we agree that no partnership, joint venture, or agency relationship exists between us. We each will be responsible for paying our own employees, including employment related taxes and insurance.
2. You shall obtain at your sole expense any rights and consents from third parties necessary for ABM and its subcontractors to perform the services under the agreement.
3. The agreement is governed by the substantive and procedural laws of India and you and ABM agree to submit to the exclusive jurisdiction of, and venue in, the courts at Bangalore in India in any dispute arising out of or relating to the agreement.
4. You may not assign the agreement or give or transfer the services or an interest in them to another individual or entity.
5. Except for actions for nonpayment or breach of ABM 's proprietary rights, no action, regardless of form, arising out of or relating to the agreement may be brought by either party more than two years after the cause of action has accrued.
6. ABM may audit your use of the services. You agree to cooperate with ABM 's audit and provide reasonable assistance and access to information. Any such audit shall not unreasonably interfere with your normal business operations. You agree to pay within 30 days of written notification any fees applicable to your use of the services in excess of your rights. If you do not pay, ABM can end your services and/or the agreement. You agree that ABM shall not be responsible for any of your costs incurred in cooperating with the audit.
7. You understand that ABM 's business partners, including any third party firms retained by you to provide computer consulting services, are independent of ABM and are not ABM 's agents. ABM is not liable for nor bound by any acts of any such business partner, unless the business partner is providing services as an ABM subcontractor on an engagement ordered under this Products agreement.

#### **O. Force Majeure**

Neither of us shall be responsible for failure or delay of performance if caused by: an act of war, hostility, or sabotage; act of God; electrical, internet, or telecommunication outage that is not caused by the obligated party; government restrictions (including the denial or cancellation of any export or other license); other event outside the reasonable control of the obligated party. We both will use reasonable efforts to mitigate the effect of a force majeure event. If such event continues for more than 30 days, either of us may cancel unperformed services upon written notice. This section does not excuse either party's obligation to take reasonable steps to follow its normal disaster recovery procedures or your obligation to pay for the services.

#### **P. Your Data**

You agree to provide any notices and obtain any consents related to your use of the services and ABM's provision of the services, including those related to the collection, use, processing, transfer and disclosure of personal information. You shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness and ownership of all of your data.

#### **Q. Restrictions on Use of the Services**

You agree not to use or permit use of the services, including by uploading, emailing, posting, publishing or otherwise transmitting any material, for any purpose that may (a) menace or harass any person or cause damage or injury to any person or property, (b) involve the publication of any material that is false, defamatory, harassing or obscene, (c) violate privacy rights or promote bigotry, racism, hatred or harm, (d) constitute unsolicited bulk e-mail, "junk mail", "spam" or chain letters; (e) constitute an infringement of intellectual property or other proprietary rights, or (f) otherwise violate applicable laws, ordinances or regulations. In addition to any other rights afforded to ABM under the agreement, ABM reserves the right to remove or disable usage to any material that violates the foregoing restrictions. ABM shall have no liability to you in the event that ABM takes such action. You agree to defend and indemnify ABM against any claim arising out of a violation of your obligations under this section.

#### **R. Services Tools**

ABM may use tools, scripts, software, and utilities (collectively, the "tools") to monitor and administer the services and to help resolve your ABM service requests. The tools will not collect, report or store any of your data residing in the service production environment, except as necessary to troubleshoot service requests or other problems in the service. Data collected by the tools (excluding production data) may also be used to assist in managing ABM's product and service portfolio and for license management. You agree that (a) except as set forth in the following paragraph, you may not use the tools, and (b) you will not use or restore the tools from any tape backup at any time following termination of the agreement.

If ABM provides you with use of any tools in connection with the services, your right to use such tools is governed by the license terms that ABM specifies for such tools; however, if ABM does not specify license terms for such tools, you shall have a non-transferable, non-exclusive, limited right to use such tools solely to facilitate your administration and monitoring of your services environment, subject to the terms of the agreement. Any such tools are provided by ABM on an "as is" basis and ABM does not provide technical support or offer any warranties for such tools. Your right to use such tools will terminate upon the earlier of ABM's notice, the end of the services term, or the date that the license to use such tools ends under the license terms specified for such tools.

#### **S. Statistical Information**

ABM may compile statistical information related to the performance of the services, and may make such information publicly available, provided that such information does not incorporate your data and/or identify your confidential information or include your company's name. ABM retains all intellectual property rights in such information.

#### **T. Third Party Web Sites, Content, Products and Services**

The services may enable you to add links to Web sites and access to content, products and services of third parties, including users, advertisers, affiliates and sponsors of such third parties. ABM is not responsible for any

third-party Web sites or third-party content provided on or through the services and you bear all risks associated with the access and use of such Web sites and third-party content, products and services.

#### **U. Customer Reference**

You agree (i) that ABM may identify you as a recipient of services and use your logo in sales presentations, marketing materials and press releases, and (ii) to develop a brief customer profile for use by ABM on [www.abmindia.com](http://www.abmindia.com) for promotional purposes.