

# End User Licence Agreement (EULA) for Abacus Software

## I. Subject of the Licence

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1. Abacus Research Inc., ("Abacus"), grants to the Customer a personal, non-transferable, non-assignable and non-exclusive licensing right for their own use for the Abacus programs, applications, and modules, ("Abacus Software"), duly purchased, registered and activated under their licence number. The Abacus Software covered by this licence also includes software updates, Service Packs and Hotfixes of the Abacus Software acquired, registered and activated by the Customer.
2. In addition to the Abacus Software, the right of use also includes the corresponding documentation as well as the installation instructions, which Abacus provides free of charge or which have been acquired separately by the Customer.

## II. Scope of the Licence

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1. The Abacus Software is protected by copyright. All rights to the Abacus Software created by Abacus are held exclusively by Abacus.
2. The Customer is granted a single, spatially and temporally unrestricted and non-exclusive right to use the Abacus Software licenced by them for their own business purposes. 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 respective Licence model.
3. The Abacus Software licence includes using its functionalities, loading, accessing, using, and displaying data generated from it. To the extent permitted by Abacus, use may also be made via interfaces already integrated in the Abacus Software.
4. If the Customer installs a newer version of the Abacus Software ("update"), at the latest three months after installation, they lose the right to continue using the old version. Should the Customer desire to continue using the old version, an additional licence will have to be obtained for it. Otherwise, the Customer shall ensure that no further use of the old version of the Abacus Software takes place after the expiry of the above-mentioned period. Abacus may verify this by monitoring the activations made by the Customer and request written confirmation from the Customer that the old version is no longer being used.
5. The licence entitles the Customer to use a single installation of the Abacus Software 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.
6. If the Customer wishes to have the Abacus Software installed on more than one machine at the same time, then each installation requires its own Licence. This also applies to test systems except if the Customer has purchased a licence that also allows for a test installation in addition to the productive installation.
7. The Customer acquires the licence exclusively for their own use. This means that only the Customer, their employees or persons commissioned by them can have access to the licenced Abacus Software.
8. 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 licence model, and if a separate licence in the form of a subscription ("Subscription Licence") is purchased for the third parties for this purpose. The scope of the rights of use of the third party and the use of the subscription result from the respective licence model of the Customer as well as from the selected subscription.

9. Some licence models require a connection to the Internet in order to use the functions of the Abacus software that are available. The Customer bears the sole responsibility for an uninterrupted and secure connection to the Internet when using the Abacus Software.
10. 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, they will require an additional licence as well as the corresponding subscription in each case. Third parties in this sense also include companies affiliated with the Customer in a group or in any other way.
11. Any exploitation of the person's own licence that are not specifically outlined in this Licence Agreement but fall outside the licence 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-licences are not permitted without prior written consent from Abacus. This also applies to the resale of the Abacus Software.
12. The components and programs from third parties which Abacus includes with the Abacus Software, such as databases, viewers and the like, are only licenced for use with the Abacus Software and may not be used by the Customer outside this context. The licensing terms of these third-party providers also apply in this regard. These third-party components and programs may also be subject to the terms of open-source software licences. This may be identified in the documentation of the Abacus Software or Abacus may provide the Customer with a list of third-party components and software for a specific version of the Abacus Software upon written request. The licence terms of these third-party suppliers may require Abacus to acknowledge the authors, to provide information in this regard or that the Abacus Software itself contains this information.
13. The use of the Abacus Software is only granted on condition that the Customer assumes responsibility for full compliance with all relevant applicable export laws and regulations as well as sanction and embargo requirements. To the extent that any third-party components or software in the Abacus Software are subject to such restrictions, the Customer agrees to comply fully with all relevant applicable laws and regulations to ensure that the Abacus Software with the third party components and software is not exported in violation of such laws and regulations. The Customer is obliged to seek legal advice when exporting the Abacus Software to determine whether the relevant applicable laws and regulations are being complied with. The Customer shall indemnify Abacus for any breach by the Customer of such laws and regulations. Abacus may provide the Customer, upon written request, with a list of third-party components and software for a particular version of the Abacus Software.
14. Some licence models allow the activation and use of additional services from third-party companies against payment or free of charge. In these cases, the Customer accepts the applicable contractual provisions of the respective third-party company for the provision of the services. Abacus is neither a contracting party nor obliged to provide the services of the third-party company, to maintain its connection or to offer any other guarantee for the use of the services.
15. Abacus retains all rights to Abacus Software other than those expressly granted to the Customer in this Licencing Agreement. This includes ownership rights, copyrights, designer rights, patent rights, trademark rights and all other protective rights in the Abacus Software, distribution rights, rights to edit including rental and the like.

### **III. Terms of Use**

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1. Installation and configuration of the Abacus Software by the Customer or by third parties commissioned by the Customer shall be at the Customer's own responsibility and expense.
2. The delivery of Abacus Software source code is not part of the contract. The Customer may not modify the Abacus Software and especially not decompile it.
3. The Customer may not circumvent the limitation of the scope of the licence by integrating proprietary program components in the Abacus Software. In particular, they are not entitled to expand the number of licenced users by programming their 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 licenced.
4. Abacus licences 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 to view and evaluate the data there. The use of interfaces and report generators with the primary purpose of visualising or printing the data by means of a third-party system is only permitted if a user of the third-party system is also registered as a user with Abacus.
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 as well as its business and trade secrets. They are to be treated confidentially and used only for the specified purposes.
6. If the Customer purchases a licence 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 Abacus Software, then the Customer shall notify Abacus or the sales or contractual partner of any changes in this respect.
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 them by this Licensing Agreement. A breach of the Licensing Agreement by such persons shall also be deemed a breach of this Licensing Agreement.
8. The Customer is allowed to make such backup copies of the Abacus Software as are required for a secure operation. Where technically feasible, the backup copies must be marked with the copyright notice of the Abacus and stored securely. Existing copyright notices may not be deleted, altered or suppressed. Copies which are no longer needed are to be deleted or destroyed. The online user manual within the Abacus Software may only be used for internal, own purposes. Other documents provided by Abacus, such as course materials, are subject to separate provisions.
9. Abacus undertakes to make available to every Customer the interface information for the Abacus business objects, insofar as this is technically feasible and practicable.
10. If the Abacus Software licenced by the Customer is damaged in whole or in part or accidentally deleted, it will be replaced by the Customer's sales or contractual partner or, if applicable, by Abacus free of charge, subject to a charge for expenses and outlays incurred.
11. Abacus ensures the electronic delivery of the Abacus Software by means of downloads. The Customer is responsible for downloading the Abacus Software. Abacus may make the installation of the Abacus software and the installation of updates, Service Packs, Hotfixes and the use of subscriptions and other services dependent on contractual maintenance or a similar agreement, activation and the acceptance of the applicable Abacus Software Licence Agreement (EULA) for Abacus Software. Within the scope of the activation process, especially the licence number of the Customer, information about the system environment such as IP address, MAC address, server name and the like, and the details added by the Customer (e.g. contact person, subscription user) are automatically transferred to the Abacus servers. Abacus treats this information confidentially.

12. Abacus also reserves the right to verify compliance with the terms of the licence on an ongoing basis by means of self-assessments by the Customer or by logging the activations made at the Customer's premises and by a recognised auditing company (once a year). Abacus and the auditing company are required to safeguard the legitimate interests of the Customer and its trade secrets and ensure business continuity. The Customer will support an audit in good faith. The Customer will bear the reasonable costs should the audit reveal a non-contractual use of the Abacus Software and acquire the additional licences required since the start of use. Further claims for damages or interest on arrears remain reserved.

#### **IV. Procedure in the event of defects**

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1. The limited rights of use exist for the Abacus Software as it was delivered.
2. Abacus guarantees that the contractual use of the Abacus software by the Customer does not conflict with any rights of third parties ("defects of title"). In the event of defects of title, Abacus warrants that it will, at its discretion, provide the end Customer with legally sound use of the Abacus Software or equivalent software.
3. 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 Abacus 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 themselves entitled to recognise any claims of the third-party without first receiving the consent of Abacus . Abacus will then defend the claims of the third-party at its own expense, insofar as these are not based on conduct of the Customer or the end Customers in breach of duty (e.g. the use of the Abacus Software in breach of contract).
4. Abacus Software is of the usual quality expected for similar systems. It is not, however, error-free. A functional impairment of the Abacus Software resulting in whole or in part from hardware defects, environmental conditions, incorrect operation or similar is not a defect. An insignificant reduction in quality shall be disregarded.
5. This licence agreement does not provide any warranty for material defects. This warranty is provided exclusively within the framework of separate contracts, usually between the Customer and their sales or contractual partner. Abacus, for its part, has regulated the warranty as software manufacturer to the Customer's sales or contractual partner.

#### **V. Liability and Limitation of Liability**

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1. Any liability of Abacus in warranty cases which exceeds the claims of the Customer described in section 4 is – as far as legally permissible – excluded in its entirety. This applies in particular to damages arising from strict liability.
2. Abacus is liable to the Customer for direct damages only especially from the use of the Software, unless this is due to gross negligence or intent.
3. Liability of Abacus for slight negligence is excluded. Likewise, any liability for auxiliary persons of Abacus – as far as legally permissible – is excluded.
4. Liability for indirect damages, for example indirect consequential damages such as downtime costs, additional costs, loss of income or reputation, damage to reputation, other indirect losses such as the loss of data, damages due to business interruptions, from third parties or other damages, unrealised savings, claims or consequential costs for expenses incurred by the Customer, loss of profit is excluded – to the extent permitted by law.

5. Otherwise, their liability is limited – to the extent permitted by law – to the purchase price of the licence, if relevant, otherwise to four times the recurring annual usage fees.
6. Claims of the Customer expire by limitation within 12 months.
7. These – insofar as legally permissible – limitations of liability apply to both contractual and non-contractual claims.
8. Abacus is not liable for claims or damages arising from the use of third-party software or services which the Customer has activated or connected himself. The Customer is obliged to indemnify Abacus against all claims arising from the use of such a service and to compensate Abacus for any damage incurred as a result of the Customer's use of a service.

## **VI. Duration and Termination**

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1. Ownership of the goods delivered, and the limited rights to use of the Abacus Software, shall only pass to the Customer upon acceptance of this Licence Agreement. Without acceptance of this Licence Agreement, Abacus is entitled to have the Customer return the delivered goods and require a written confirmation that these and all copies thereof have been destroyed.
2. The Licence Agreement is concluded for an indefinite period and comes into force upon activation of the licence. If the Customer uses the Abacus Software in accordance with the contract, neither the Customer nor Abacus may terminate this Licence Agreement.
3. However, should the Customer infringe the Licence Agreement in a serious manner, specifically if they fail to observe the scope of the licence rights granted to them or infringes the copyrights of Abacus, Abacus may then terminate this Licence Agreement with immediate effect and without giving prior warning. In addition, Abacus may terminate this Licence Agreement after one single warning with immediate effect if the Customer does not pay the licence fees contractually agreed upon with Abacus or a sales partner or a distributor.
4. Both parties reserve the right to terminate the contract for good cause.
5. A termination extends to all programmes, applications and modules as well as to all rights of use granted for these.
6. In the event of termination of the Licence Agreement, the Customer shall not be entitled to any refund of payments. However, the Customer is obliged to stop using the Abacus Software, the corresponding documentation and installation instructions and to delete them and destroy all storage devices containing the Abacus Software. On demand of Abacus, the Customer must confirm in writing the destruction or deletion.
7. Existing contracts in connection with the Abacus Software (such as support/hotline, update/maintenance contracts for the Abacus Software and contracts for the Abacus City Services or subscription contracts) shall also end in the event of termination. The Customer shall fulfil its obligations arising therefrom, in particular its payment obligation, by the next possible ordinary termination date.
8. The Customer is entitled at any time to waive their rights to use the Abacus Software granted herein. This shall not release the Customer from fulfilling or complying with existing obligations arising from this Licence Agreement or from other agreements in connection with the Abacus Software.
9. Termination must be made in writing.

## **VII. General Provisions**

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1. This Licence Agreement supersedes any previous Licence Agreements between Abacus and the Customer. It is the latest version of the End User Licence Agreement (EULA) for Abacus Software which has been accepted by the Customer. A new version shall also be deemed accepted if it is confirmed by the Customer or by a person appointed by the Customer during the installation of new program versions ("updates"), of Service Packs or Hotfixes.
2. Existing amendments or supplements to this Licence Agreement agreed in writing between the Customer and Abacus shall remain valid in the event of a new version of the End User Licence Agreement (EULA) for Abacus Software.
3. The rights of the Customer in relation to Abacus and Abacus software are declared exhaustively in this Licence Agreement. Any divergent general business or licence conditions of the Customer are excluded.
4. Additional or differing licence stipulations are only valid if made in writing and signed with legal effect by both contractual parties. This written form requirement also applies to the cancellation or amendments of this clause.
5. Should individual provisions of this Licence Agreement prove to be ineffective or void, this shall not result in the ineffectiveness or invalidity of the remaining provisions, but these shall be replaced by provisions which come closest to the economic purpose of the contract. The same applies in the event of a gap in the contract.
6. The exclusive place of jurisdiction for all disputes arising out of or in connection with this Licence Agreement is the registered office of Abacus. However, Abacus is also entitled to bring a claim before the court with jurisdiction for the Customer's place of business.
7. This Licence Agreement is governed by the laws of Switzerland to the exclusion of private international law and the Vienna Sales Convention.
8. This Licence 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 Licence Agreement (EULA) for Abacus Software

Company

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Department

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Contact person

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Street

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Postcode / City

Phone

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Country

Licence number

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

Place, Date: \_\_\_\_\_

Name: \_\_\_\_\_ Signature: \_\_\_\_\_

Name: \_\_\_\_\_ Signature: \_\_\_\_\_