

ABM Support Services Agreement

ABM Systems Pty Ltd (ABM) undertakes to maintain the Software and / or “Software as a Service”(SaaS) sold by ABM in partnership with the Developer in accordance with the terms and conditions stated in this Agreement, and the relevant software licence or subscription agreement.

Definitions

In addition to the terms defined in the License Agreement, when applicable, or elsewhere defined in this Agreement and its Appendices, the following terms used in this Agreement and its Appendices shall have the following meanings:

“**Agreement**” means the Standard Support Services Agreement between the End User & ABM in its role as Australian Distributor for the Developer, plus any Appendices;

“**Developer**” means the company that developed / owns the software and provides the software license codes / SaaS access in accordance with their relevant terms and conditions, and include ABM partners Prodacapo AB, QlikTech Inc, Adaptive Insights Ltd, AWS and Microsoft.

“**Documentation**” means the End User documentation published by the Developer and ABM relating to the use of and accompanying the Software in the form of manuals and function descriptions in printed or electronic form, as the same may be modified by the Developer and ABM from time to time;

“**Error**” means any repeatable failure of the Software to perform in any material respect in accordance with the Documentation; “**Error Correction**” means any modification, fix, or addition, delivered within a new Release or a new Version of the Software, that brings the Software into material conformity with the Documentation, or a procedure or routine that, when observed in the regular operation of the Software, avoids the practical adverse effect of such nonconformity;

“**Maintenance**” means the support and updates of the Software provided to the End User pursuant to this Agreement;

“**Release**” means a new release of a current Version of the Software, e.g. Release 9.3 compared to Release 9.2;

“**Software**” means the proprietary software / SaaS developed and owned by the Developer and its affiliates and provided under their mark as set forth in the License / Subscription Agreement and as the same may be modified by the Developer and its affiliates from time to time;

“**Update**” means a new Version or a new Release of the Software;

“**Version**” means an entirely new version of the Software, e.g. Version 10 compared to Version 9 indicating a Major rather than Minor Release.

1. MAINTENANCE SERVICES OBLIGATION

Subject to the payment by the End User of the Maintenance or Subscription Fee and compliance by the End User with its obligations under Section 3 below, ABM shall provide Support Services to the End User in connection with the Software in accordance with the provisions of these Maintenance Terms and Conditions, as follows:

1.1 The maintenance obligation includes:

- Correction of defects preventing the proper functioning of the Software, including instructions on circumvention of such defects, provided that ABM and/or the Developer’s support staff have been able to verify (repeat) such defects.
- Improvements to the functioning and/or way of working of the Software at the Developers discretion.
- Support regarding the handling of the Software in accordance with the Documentation accompanying the Software.
- Delivery to you, if available, of updated versions of the Software Updates which eliminate previous defects or improve the function of the software as described in the Documentation.

1.2 ABM shall provide the End User with off-site troubleshooting and other technical assistance and support concerning the installation and operation of the Software, via telephone, email and / or internet connection. Support shall be provided via contact details maintained on ABM’s official website, which are currently:

- **Email Address: support@abmsystems.com**
- **Phone Support: 02 9029 8021**

1.3 When contacting ABM support, please provide the following information:

- The phone number where you can be reached
- The version of the software you are using
- The version of the operating environment you are working in
- The type of hardware you are using
- Network configuration and version
- The types and versions of databases you are accessing
- A description of what you were doing when the problem occurred
- The exact wording of any error messages that appeared on your screen
- Any steps you have taken to attempt to solve the problem.
- Screenshots, illustrating the problem

1.4 There are several ways a call can be resolved:

- The support specialist is able to determine the cause of your problem, and explains the steps necessary to resolve the issue
- The support specialist is unable to determine the cause, and escalates the call until a solution is found
- The problem is determined to be a bug, and the support specialist attempts to find a workaround. Both the bug and the workaround, if one is provided, are logged; the call is closed, but the “bug” incident report stays open until the bug is fixed and tested.
- The problem cannot be reproduced, but is logged and addressed again when further information becomes available.
- Once a resolution has been reached, the call is closed. If you need to test the solution, the call is given a “suspended” status. The call can be reopened if errors recur. If we do not hear from you within five days, the call is closed.

1.5 Workarounds: When you report a problem, ABM’s objective is to find a satisfactory solution as soon as possible. The first step is to decipher whether there are certain coding techniques or workarounds that meet your business requirement. A workaround provides a temporary solution to complete a task that would not otherwise be possible due to a problem or limitation in the software.

1.6 Maintenance services shall be supplied during ABM’s normal office hours, which are 9am to 5pm Eastern Australian Standard Time, Monday through Friday, except on recognized holidays. Outside these hours, 24 hour support is available via ABM and Developer’s Support Web sites. In addition, telephone or by e-mail maintenance may be provided by the Developer outside ABM’s normal office hours. If specially agreed, maintenance can also be carried out on your premises against a separate fee payable in accordance with clause 4.2 below.

1.7 Support and Maintenance shall be provided to all SaaS clients, all of whom operate on the same version. For Software clients, support services will be provided with regard to the ‘current’ Version and Release, and the Version and Release that has preceded the ‘current’ Release. If available, the Developer shall deliver new Versions and Releases to you directly or via ABM, on the following terms and conditions:

- The Developer has the choice of when and how delivery of the Version and Release shall be made and is not responsible for installation of the Release except for SaaS where the vendor will implement the new Version or Release. Normally, the Developer issues one Version and two Releases each year.
- You are entitled to new Versions and Releases without payment of any additional licence or subscription fee.
- This Agreement applies equally to any Version and Release delivered hereunder.

1.8 The Developer is entitled to correct defects in earlier versions of Software by delivering the latest version of the Software, if the defect has been corrected therein.

1.9 For SaaS or Hosted clients the Developer or ABM, as separately contracted, will routinely backup all Customer Data; use industry standard security measures to maintain your authorized users’ login information (e.g., User IDs and passwords) for the Services in confidence; and not use Customer Data for any purpose other than to provide support services. ABM may access your account and Customer Data as necessary to identify or resolve technical problems or respond to complaints about the Services. ABM will use commercially reasonable efforts to maintain the confidentiality of Customer Data. Any downtime associated with upgrades and maintenance to the Services will be pre-announced via email communication. SaaS Updates and maintenance will be performed during non-business US hours and/or on weekends and may take several hours to complete, during which time the Services will not be available. Outside of maintenance and upgrade downtime, the Developer provides contractual undertakings as separately contracted which provide for uptime and non-performance penalties which may apply.

1.10 Software Forums managed by the Developer provide on-line community for support. Some allow users to submit questions and answers in a forum environment. These forums are regularly monitored by ABM and the Developers that maintain them. The Developers may also provide for direct user access to support bypassing ABM during non-Australian Business Hours Systems staff, and may be contacted via support@prodacapo.com, support@adaptiveinsights.com, support@glik.com etc. as appropriate. ABM recommends that any such email is also addressed to support@abmsystems.com.

1.11 Level of Service - If the resolution time is not met, the issue will be escalated to the Developer, who are contracted to provide maintenance support services to ABM to assist in resolution of End User software issues.

Priority	First Feedback	Frequency	Escalation Time	Nature
1	1 hour	Every 2 hours	1 working day	<ul style="list-style-type: none"> Software fails to operate. Data-source connection fails. Software installation/upgrade problems. User is unable to service the direct requirement of the Board. User is unable to service external customers/suppliers. A problem affects time-critical information-gathering.
2	4 hours	Every day	1 working week	<ul style="list-style-type: none"> Performance issues. Software Environment issues. (E.g. Security, INI file settings, etc.)
3	1 day	Every week	1 working month	<ul style="list-style-type: none"> Data retrieval or calculation inaccuracies. Syntax enquiries. Data formats and cosmetic changes.
4	1 week	As agreed	As agreed	<ul style="list-style-type: none"> Automation-routine failures. A problem that cannot be replicated by user or ABM. A problem with documentation.

2. EXCEPTIONS FROM MAINTENANCE OBLIGATION

2.1 The maintenance obligation and stated fees do not cover:

- Defects caused by faults in the hardware, operating system or other system programs (e.g. IE 8, Java version incompatibility).
- Defects caused by the End User's use of Software on other equipment or with other parts or software not provided by the Developer or not intended for the combination with Software.
- Defects resulting from the use of Software in a different way than described in the Documentation or through accident, misuse or neglect of the Software by you, your staff or any other third party outside the Developer's control.
- Defects caused by an error in Third Party Software used in connection with the Software or otherwise affecting the Software, or
- Measures that must be taken because there is no current backup copy of client maintained databases.

3. USER OBLIGATIONS

3.1 The End User is responsible for using the software in accordance with the Software End User License Agreement and/or End Users Subscription Agreement.

3.2 The End User shall appoint at least one technical contact person (the "Technical Contact"), who shall be responsible for obtaining and maintaining a level of familiarity with and knowledge of the operation and use of the Software sufficient to ensure the operation of the Software in the End User's IT environment. The name and contact information of the Technical Contact(s) will be provided by the End User, and the End User will notify ABM in writing of any changes in the identity of or contact information for the Technical Contact(s). To the maximum extent practicable, the End User's contact with ABM Systems and / or the Developer in connection with the End User's requests for support shall be through the Technical Contact(s).

3.3 Before requesting support, the End User shall first review all relevant Documentation and visit the Developer's website to review "Frequently Asked Questions" (FAQ). If, after having reviewed the Documentation and FAQs, the End User needs further assistance, the End User shall contact ABM to request support via either telephone support or e-mail support as set forth above.

3.4 The End User shall have access at all times to the necessary technical equipment to enable it to utilize the Software in its latest Release to the extent set out in the License / Subscription Agreement. In addition, the End User shall ensure that a functioning system enabling ABM to have remote access to the End Users Software and environment and that satisfactory communication between the Parties' computer systems is otherwise possible at all times in accordance with ABM Systems and / or the Developer's detailed instructions.

3.5 As well as reporting of Errors in the Software, the End User must at all times be prepared to provide a detailed description of its IT system(s) together with the basic structure of that system, any operational disruptions experienced by the End User, and the effect of the disruptions on the End User's operations.

3.6 During the term of the Agreement the End User shall: (i) install and use all Updates of the Software issued by the Developer; (ii) ensure that the Software is used only in accordance with any Documentation or advice from the Developer and / or ABM; (iii) not alter or modify the Software or the Documentation nor permit the Software to be combined with any other software to form a combined work; (iv) not request, permit or authorize anyone other than ABM and / or the Developer to provide any support services in respect of the Software or the Documentation; and (v) cooperate fully with ABM and / or the Developer's personnel in the diagnosis of any Error or defect in the Software or Documentation.

3.7 You shall provide VPN or equivalent access for support purposes. When maintenance is carried out on your premises in accordance with clause 1.3, you shall at your own cost provide the necessary working space to carry out the maintenance within a reasonable distance from the Software. At ABM's request, your representative shall be available during ABM's work. Furthermore, consumable supplies and computer media necessary for carrying out the maintenance shall be provided by you.

3.8 You are responsible for taking backup copies of databases and for storage of computer media, unless these are hosted by ABM or the Developer as a SaaS supplier.

4. MAINTENANCE FEE

4.1 A fixed yearly maintenance fee is payable in advance, for the maintenance included under this Agreement. Payment shall be made in accordance with invoice terms. This fixed maintenance fee is payable irrespective of to which extent ABM and/or the Developer is called on to carry out maintenance. ABM is entitled to adjust the maintenance fee once a year in accordance with the relevant Government Inflation Index at the time of the renewal invoice.

4.2 This maintenance fee does not cover maintenance carried out on your premises for which a separate fee will be payable in accordance with ABM current list price.

5. CONFIDENTIALITY

5.1 Each Party agrees not to disclose to any third party any confidential information of the other Party, e.g. all information of a technical or commercial character that a Party has reason to believe is treated as confidential or proprietary by the other Party. Each Party shall take reasonable measures to ensure that confidentiality is maintained through confidentiality undertakings or other appropriate measures by employees and/or consultants. The duty of confidentiality shall not apply to information which is already in the public domain at the time of disclosure. The confidentiality obligations set forth herein shall survive any termination of this Agreement.

6. RESPONSIBILITY

6.1 If, following a request by you, ABM does not fulfil its obligations under clause 1.1 and as a consequence thereof your use of the Software is significantly affected, they shall refund the maintenance fee for that period regarding the software module(s) in question. In order to be valid, the request for repayment shall be submitted no later than three months after the expiry of the period for which compensation is requested.

6.2 To the maximum extent permitted by law, ABM's liability under this Agreement, where your use of the software is effected, is limited to what has been stated above unless intent or gross negligence can be shown, and you cannot make other claims on ABM on account of failure in the maintenance obligation, except where ABM would be liable at law for additional amounts in the absence of this Agreement.

7. LIMITATION OF LIABILITY, FORCE MAJEURE

7.1 If a party is prevented from fulfilling this Agreement by circumstances outside the party's control where they could not reasonably have foreseen at the time of the entering into force of the Agreement, and the consequences of which they could not reasonably have avoided or overcome, or if a subcontractor is prevented from fulfilling its delivery

because of circumstances stated herein, this shall constitute grounds for discharge leading to postponement of the time of performance and exemption from penalties and other sanctions.

7.2 If a circumstance pertains to ABM's obligation in accordance with the above and you for this reason are unable wholly or partly to use the software, you are entitled to reduction of the maintenance fee for that period regarding the software component(s) in question. If fulfilment of the Agreement is prevented to a considerable degree for longer than one month due to circumstances stated above, either party may withdraw from this Agreement without liability to pay compensation by notifying the other party in writing. Irrespective of the above, ABM is not liable for the loss of data, and database backup procedures are not the responsibility of ABM unless the software is hosted by ABM or unless ABM is liable at law in the absence of this Agreement.

7.3 To the maximum extent permitted by law, in no event shall either party be liable to the other for any fines, penalties, taxes (except GST) and any exemplary, aggravated, liquidated, indirect, consequential, incidental, special, or punitive damages or losses, including without limitation damages or losses for loss of profits, loss of production or expected savings, business interruption, loss or corruption of business data or information, loss of opportunity, or other pecuniary loss, or legal costs and expenses (except reasonable legal costs awarded by a court) even if the party has been advised of the possibility of such damages, except where such losses are covered by an insurance policy held by the party.

7.4 Except where a limitation on ABM's liability in another clause of this Agreement applies, in the event that an insurance policy held by ABM does not cover the loss or liability of ABM in relation to the software, or any indemnity given under this Agreement, ABM's maximum aggregate financial liability under this Agreement (regardless of the form of action, whether in contract, tort, or otherwise) to the Client shall not exceed the amount of the maintenance fee payable by the end user to ABM for the year in which the damage occurred.

8. RELOCATION AND CHANGE OF PRODUCT

8.1 If you intend to relocate the Software, and the relocation will entail increased maintenance costs, ABM shall be notified of the change and may seek additional maintenance fees, subject to written approval from you to proceed. The same shall apply for such configuration changes/upgrades that you have specifically ordered and which entail increased maintenance costs.

9. TRANSFER OF THE AGREEMENT

9.1 Neither party may transfer this agreement without written authority from the other party.

10. PERIOD OF VALIDITY

10.1 The Agreement enters into force upon delivery of the Software to you and is valid for 12 (twelve) months thereafter. If notice of termination has not been given, the Agreement will automatically be prolonged with 12 (twelve) months each time. Notice of termination can be given by both parties by notice in writing no later than 3 (three) months before the expiry of the term of the Agreement.

10.2 If you do not pay the fee stated in clause 4.1 within 45 days after the date stated on the invoice, ABM and the Developers responsibilities under this Agreement shall cease until such fee has been paid. Customers wishing to reinstate lapsed maintenance services will be required to pay a 25% reinstatement fee in addition to any outstanding fees.

10.3 ABM and the Developer will remain responsible for maintenance carried out during the term of the Agreement, and also after the Agreement has expired, provided that you notify ABM of any defect within reasonable time and in any event no later than three months after maintenance was carried out.

11. DISPUTES

11.1 The parties will endeavour to resolve any dispute, speedily, by negotiation.

11.2 If the dispute is not resolved by negotiation, then before either party has recourse to litigation, the party must submit the dispute for expert determination. If the parties do not agree upon an independent expert ("Expert"), either may request the Secretary General of the Australian Commercial Disputes Centre to nominate an Expert.

11.3 This Agreement shall be governed by the laws of New South Wales, and be subject to the jurisdiction of New South Wales courts.