

IMPORTANT, PLEASE READ CAREFULLY. THIS IS AN END USER LICENSE AGREEMENT

This Software Product is protected by copyright laws as well as other intellectual property laws. This Software Product is licensed, not sold.

End User License Agreement

This End User License Agreement ("EULA" or "Agreement") is a legal agreement between you (either an individual or a single entity) and Elegant MicroWeb Technologies Pvt. Ltd. (hereinafter referred to as "Company") covering your use of Smarten Insights (hereinafter referred to as "Software Product" or "Software") provided with this EULA. The Software Product includes computer software, the associated media, any printed materials, and any "online" or electronic documentation. Use of any software and related documentation provided to you by the Company in whatever form or media, will constitute your acceptance of these terms, unless separate terms are provided by the software supplier, in which case certain additional or different terms may apply. If you do not agree with the terms of this EULA, do not download, install, copy or use the Software. By installing, copying or otherwise using the Software Product, you agree to be bound by the terms of this EULA. If you do not agree to the terms of this EULA, the Company is unwilling to license the Software Product to you.

1. Eligible Licensees.

This Software is available for license solely to you as a licensee to be used in accordance with the terms of this EULA, with no right of duplication or further distribution, licensing, or sub-licensing. IF YOU ARE NOT THE INTENDED LICENSEE, THEN DO NOT DOWNLOAD, INSTALL, COPY OR USE THE SOFTWARE.

2. License Grant.

The Company grants to you a perpetual, nonexclusive and non-transferable license to use the current version of the Software provided with this EULA. You shall have an option to purchase other licenses in future at any time during the term of this EULA by paying appropriate License Fee as decided by the Company.

The installation of the Software will be through a license key provided by Company. You shall provide requisite information to the Company to enable Software installation. You shall not tamper with the license key, and the installation of the Software shall be in accordance with the license key provided by the Company.

3. License Restrictions.

- (a) The Software contains copyrighted material, trade secrets and other proprietary material. You shall not:
 - (i). sell, lease, license, sublicense, distribute or otherwise transfer in whole or in part the Software;
 - (ii). copy the Software except as expressly permitted herein;
 - (iii). modify, translate, adapt, alter, or create derivative works from the Software;
 - (iv). merge the Software with any other software or documentation; (v). reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code of the Software;
 - (vi). remove, alter or obscure any titles, product logo or brand name, trademarks, copyright notices, proprietary notices or other indications of the intellectual property rights and/or Company's rights and ownership thereof, whether such notice or indications are affixed on, contained in or otherwise connected to the Software or on any copies made in accordance with this Agreement.
 - (vii). use, or authorize or permit the use of, the Software except as

expressly permitted herein use this Software to perform any activity which is or may be, directly or indirectly, unlawful, harmful, threatening, abusive, harassing, tortuous, or defamatory, nor to perform any activity which breaches the rights of any third party.

- (b) No rights or licenses shall be deemed to be granted by estoppel, implication, exhaustion, other doctrine of law, equity or otherwise, and the Company reserves any and all rights not expressly granted herein. The Source Code is not being provided or licensed hereunder and is a trade secret of the Company to which access is not authorized. You shall not attempt to derive Source Code from the Software and will not attempt to reveal or recreate or reverse engineer the Source Code.
- (c) Company may, at any time and from time to time, change or discontinue or introduce products, add-ons or modules, new license schemes or user types or modify access rights of some user types. Further, Company reserves the right, in its sole discretion, at any time and from time to time, to add, delete or modify any or all of the Software Product, or to discontinue the publication, distribution, sale, support or licensing of any or all of the Software Product without liability of any kind.

4. Copyright.

The Software is licensed, not sold. You acknowledge that no title to the intellectual property including copyrights, trademarks or any other proprietary rights in the Software is transferred to you. You further acknowledge that title and full ownership rights to the Software will remain the exclusive property of the Company, and you will not acquire any rights to the Software, except as expressly set forth above. Company shall own all rights, title and interest in all developments of and enhancements to the Software. All copies of the Software will contain the same proprietary notices as contained in or on the Software. All title and copyrights in and to the Software Product (including but not limited to any images, photographs, animations, video, audio, music, text and "applets," incorporated into the Software

Product), the accompanying printed materials, any copies of the Software Product, and any trademarks related to the Software Product, are owned by the Company or its suppliers. The Software Product is protected by copyright laws and other intellectual property laws. You may not copy the printed materials accompanying the Software Product.

5. Termination.

Without prejudice to any other rights, the Company may terminate this EULA if you fail to comply with the terms and conditions of this EULA. In such event, your right to use the Software and the rights to use the files produced using the Software by third parties terminates automatically and you must then destroy all copies of the Software in your possession. Any License Fee paid by you is non-refundable except as expressly set forth otherwise in this EULA.

Termination or expiration of this EULA shall not release you from the obligations arising hereunder prior to such termination or expiration including the obligation to make payment of all amounts then or thereafter due and payable. Termination of this EULA shall not preclude the Company from exercising any other rights or remedies that it may have under this EULA or at law. Any terms of this EULA which by their nature extend beyond the day this EULA ends remain in effect until fulfilled.

6. Limited Warranty.

- (a) Company warrants that Software will conform, as to all substantial operational features for ninety (90) days following delivery of the Software to you (not including delivery of any subsequent modifications, updates or upgrades to the Software), when installed on the hardware or other platform, designated or recommended by Company, without modification.
- (b) COMPANY DOES NOT WARRANT THAT: (A) THE OPERATION OF THE SOFTWARE OR HARDWARE WILL BE UNINTERRUPTED OR ERROR-FREE OR THAT FUNCTIONS CONTAINED IN THE

SOFTWARE WILL OPERATE IN COMBINATIONS OF SOFTWARE OR HARDWARE THAT MAY BE SELECTED FOR USE BY YOU; (B) THE SOFTWARE WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS; OR (C) ANY RESULTS, OUTPUT, OR DATA PROVIDED THROUGH OR GENERATED BY THE SOFTWARE WILL BE ACCURATE, UP-TO-DATE, COMPLETE OR RELIABLE.

(c) The warranty shall not apply:

(i) if the Software is not installed in accordance with the license key mechanism provided by Company or used in accordance with the Company's current published specifications; or

(ii) if you are not using the latest version of the Software or the version being used by you is not currently supported by Company; or

(iii) if you have not subscribed to the annual maintenance and support provided by Company or have failed to pay the fee for annual maintenance and support and hence do not have the updates and or the upgrades mandated by Company; or

(iv) to any third party software or hardware, including the third party database or application server; or

(v) if the Software has been subjected to any modification; or

(vi) if the Software is not installed on the hardware or platform designated or recommended by Company; or

(vii) to the extent that the defect is caused by or is contributed to by you; or

(viii) if you do not provide access, including remote access, to the Software to Company's support personnel; or

(ix) if the failure is caused by an accident, abuse or misapplication of the Software; or

(x) if the defect is caused by any third party software or hardware not belonging to Company.

(d) The obligations of Company to provide remedy set out in Section 6(e) below, is subject to the following conditions precedent:

(i) You shall provide sufficient detail to allow the Company to reproduce the error or duplicate the problem, demonstrate to Company the occurrence of the defect or error and shall provide Company with sufficient test time to verify the problem;

(ii) all corrections will be made at the Company's facility and the expense of any travel to your facility will be borne by you;

(iii) You shall obtain a return material authorization from Company before returning the defective product,

(iv) You may be required to reimburse Company for its services in the event that Company confirms that there is no error in the Software or that the error was caused by you and

(v) You shall notify the Company in writing with a specific description of the Software's non-conformance within the warranty period and Company validates the existence of such non-conformance.

(e) Subject to the satisfaction of all the conditions precedent in Section 6(d) above, if the Company validates the existence of the non-conformance of the Software with the warranty provided by Company to you in Section 6(a) above, Company will, at its option:

(i) fix the errors that significantly affect the performance of the nonconforming Software or repair or replace the nonconforming Software, or

(ii) in exchange of such nonconforming Software, refund the License Fee after deducting five percent (5%) per month of the total

License Fee amount for the number of months the nonconforming Software is used, provided however the refund shall not exceed the total License Fee paid for the applicable nonconforming Software.

These are your sole and exclusive remedies provided for breach of any warranty provided by Company under this EULA.

- (f) THE ABOVE IS A LIMITED WARRANTY AND IT IS THE ONLY WARRANTY MADE BY COMPANY. EXCEPT AS EXPRESSLY STATED IN THIS SECTION 6, TO THE MAXIMUM EXTENT PERMITTED BY LAW, COMPANY SPECIFICALLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ORAL OR WRITTEN, ARISING BY LAW OR OTHERWISE, RELATING TO THIS AGREEMENT AND THE SOFTWARE AND ANY SERVICES PROVIDED TO YOU, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR USE, TITLE AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, THE COMPANY IS MAKING NO REPRESENTATION OR WARRANTY WITH RESPECT TO THIRD PARTY PRODUCTS AND SERVICES. NO PERSON IS AUTHORIZED TO MAKE ANY OTHER WARRANTY OR REPRESENTATION CONCERNING THE SOFTWARE OR THE MEDIA ON WHICH SOFTWARE IS SUPPLIED.

7. Third Party Rights

- (a) Company makes no representation with respect to the possibility of infringement by Combination Use (as defined below) of the Software. Company has no duty to investigate or to warn you of such possibility. Without limiting the generality of the foregoing, the obligations of Company under Section 7(b) shall not apply to the extent the alleged

infringement or misappropriation results from:

- (i) alteration of the Software by anyone other than Company ;
 - (ii) failure to use a substantially equivalent non-infringing alternative program provided by Company if such infringement or misappropriation could have been avoided by use of the update, or unlicensed activities or
 - (iii) the fact that you continue to use a particular version, release or correction level of the Software after being notified of the possibility of an infringement and after having been supplied by Company with a modified version, release or correction level which would have avoided the alleged infringement, or
 - (iv) the Combination Use of the Software, Documentation or Company materials; when such alteration or Combination Use is a part of the alleged infringement claim. As used herein, "Combination Use" means use of the Software or Company materials in combination or conjunction with any of the following: (i) any software other than the Software; (ii) any apparatus other than a platform or hardware prescribed by Company as compatible for use with the Software and/or (iii) any activity not licensed under the EULA.
- (b) If an infringement or misappropriation of the intellectual property rights of a third party by the Software in accordance with Section 7 above is alleged or, in the reasonable opinion of Company, an infringement or misappropriation of the intellectual property rights of a third party is likely to occur or be alleged, Company may, at its discretion:
- (i) procure the continued right to use the Software at no additional charges to you, or
 - (ii) modify the Software or substitute alternative substantially equivalent non-infringing programs and supporting documentation for the

Software, or

(iii) if none of the foregoing alternatives can be achieved at a reasonable cost, Company may terminate the Agreement and refund the License Fee after deducting five percent (5%) per month of the total license fee amount for the number of months the Software is used, provided however such refund shall not exceed the total License Fee paid for the applicable Software.

(c) Notwithstanding the foregoing, Company shall not be liable or obligated to indemnify you to the extent the claim would not have arisen but for your negligent or wrongful act or omission.

(d) THE PROVISIONS OF SECTION 7(a) TO SECTION 7(c) STATE THE SOLE, EXCLUSIVE AND ENTIRE LIABILITY AND OBLIGATION OF COMPANY TO YOU, AND YOUR SOLE REMEDY WITH RESPECT TO ANY CLAIMS OF INFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS THAT MAY ARISE RELATED IN ANY WAY TO THE SOFTWARE OR DOCUMENTATION. The liability limitations contained in Section 8 below shall apply to all claims made under Section 7.

8. Limitation of Liability.

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT OR ELSEWHERE, UNDER NO CIRCUMSTANCES SHALL THE COMPANY OR ITS LICENSORS OR AGENTS BE LIABLE TO YOU, OR ANY OTHER PERSON OR ENTITY FOR AN AMOUNT OF DAMAGES IN EXCESS OF THE TOTAL AMOUNT PAID BY YOU TO COMPANY FOR THE SOFTWARE DIRECTLY CAUSING THE LIABILITY DURING THE TWELVE MONTH PERIOD IMMEDIATELY PRECEDING THE EVENTS GIVING RISE TO THE CLAIM, AND UNDER NO CIRCUMSTANCES THE AGGREGATE FOR ALL CLAIMS TO

EXCEED AN AMOUNT PAID TO COMPANY FOR THE PRECEDING TWO YEARS.

IN NO EVENT WILL COMPANY, ITS EMPLOYEES, CONTRACTORS, AGENTS OR DISTRIBUTORS BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, LOSS OF GOODWILL OR BUSINESS PROFITS, WORK STOPPAGE, DATA LOSS, COMPUTER FAILURE OR MALFUNCTION, ANY AND ALL OTHER COMMERCIAL DAMAGES OR LOSS, HOWEVER CAUSED, WHETHER FOR BREACH OF CONTRACT, NEGLIGENCE OR OTHERWISE, AND REGARDLESS OF WHETHER COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF THOSE DAMAGES AND EVEN IF ANY EXCLUSIVE REMEDY PROVIDED FOR HEREIN FAILS OF ITS ESSENTIAL PURPOSE, INCLUDING WITHOUT LIMITATION, THE USE OR INABILITY TO USE THE SOFTWARE, OR ANY RESULTS OBTAINED FROM OR THROUGH THE SOFTWARE. COMPANY WILL NOT BE LIABLE FOR ANY HARDWARE OR PLATFORM OR NETWORK-RELATED PROBLEMS ATTRIBUTABLE TO THE SOFTWARE OR CHANGES TO HARDWARE OR PLATFORM OR NETWORK CONFIGURATION THAT MAY AFFECT THE PERFORMANCE OF THE SOFTWARE AND FOR THE DELAY IN DELIVERY, INSTALLATION OR FURNISHING OF LICENSED MATERIAL OR SERVICES UNDER THIS AGREEMENT.

IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT EACH AND EVERY PROVISION OF THIS EULA WHICH PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES OR EXCLUSION OF DAMAGES, IS INTENDED BY THE PARTIES TO BE SEVERABLE AND INDEPENDENT OF ANY OTHER PROVISION AND TO BE ENFORCED AS SUCH.

9. Third Party Software

Third party software has been supplied with Smarten Insights under specific license agreements. Detailed information about the license of these software is available in the notice.txt file in the documents folder of Smarten Insights. These software and

license agreement may change with upgrades. Software distributed under these License is distributed on an "as is" basis, without warranties or conditions of any kind, either express or implied. The license agreement of these software are independent of this agreement.

10. Maintenance and Support Program.

- (a) You shall subscribe to Company's annual Maintenance and Support Program whereby Company shall provide maintenance, support and enhancements in connection with the Software. Please contact the Company to subscribe to Maintenance and Support Program or should you have any questions concerning the Maintenance and Support Program.
- (b) Annual Maintenance and Support Program entitles you to future releases of the Software. Notwithstanding the other provisions of the Agreement, Company shall not be expected to support any previous version of the Software or ensure that the Software is compatible with the third party products or software.
- (c) Subscribing to Maintenance and Support Program does not guarantee automatic Software updates. You agree to install the latest Software update available from Company, when required, as a condition of Company providing support services. Company reserves the right to terminate your subscription to Maintenance and Support Program anytime without notice should Company, in its sole discretion, determine that continued support for the Software is no longer economically practicable and/or in the event that the Software has become inoperable or incompatible with current operating systems, hardware, or other technologies. Maintenance and support services under this agreement extend only to the Software free of any modifications and such services shall be rendered by Company from its location in Ahmedabad, India and not onsite.

- (d) Maintenance and support services do not include and Company shall not be liable for hardware, vendor operating systems and other system software, any software developed by you, and third-party software. Also, maintenance and support services are conditioned upon provision by you to Company of reasonable appropriate access to the system(s) using the Software, including, but not limited to passwords, system data, file transfer capabilities, and remote log-in-capabilities. Company shall maintain security of the system and use such access only for the purposes of this Agreement and will comply with your standard security procedures.
- (e) In addition to this, the Company may provide training and consulting services at locations and for price and terms as the Company may deem fit.

11. Indemnification by You.

You hereby agree that you shall fully indemnify and completely save harmless Company and any of its directors, officers, employees, agents, representatives of and from any and all liabilities, claims, expenses, damages, costs including reasonable legal fees and disbursements arising out of any claims or suits for damage or injury to person in connection with, directly or indirectly, in whole or in part, (i) any negligent act or omission of your employees, agents, contractors, directors, officers or any person for whom you have a legal responsibility or (ii) your failure to comply with any applicable law or (iii) any breach by you of this EULA or any act or omission which is, or can be determined to be, a breach of any term or condition of this Agreement; or (iv) any infringement of intellectual property rights of third parties caused by any use of the Software not in accordance with this EULA.

12. General.

- (a) **Governing Law and Arbitration.** This Agreement will be governed by and construed in accordance with the laws of the India without reference

to its conflicts of law principles and subject to the arbitration provisions of provided under this Section 12(a), the courts at Ahmedabad, India shall have exclusive jurisdiction. If any dispute or difference shall arise between you and Company as to the interpretation of this Agreement or any terms hereof or as to your or Company's rights, duties or liabilities hereunder or as to any act, matter or thing arising out of or relating to or under this Agreement, the same shall be referred to the decision of a sole Arbitrator appointed by Company, who shall act as the presiding arbitrator under the provisions of the Indian Arbitration and Conciliation Act, 1996 and the proceedings shall be subject to the Indian Arbitration and Conciliation Act, 1996. You shall have no objection, whatsoever, to the choice of sole Arbitrator as appointed by Company. The venue of arbitration shall be Ahmedabad.

- (b) **Publicity Rights.** You expressly grant Company the right to include you as a customer on Company's website or other promotional material in relation to the Software for marketing purposes. You can deny Company this right at any time by submitting a written notice, requesting to be excluded from promotional material. Upon receipt of such notice, Company will remove any reference to you from such promotional material within thirty (30) days and make no further reference to you.
- (c) **Non-Solicitation.** During the Term of this Agreement and for a period of two (2) years thereafter, you will not, and will ensure that your affiliates/ associates will not, directly or indirectly: (i) solicit for employment or for performance of any services any person employed by Company or (ii) hire or engage for any services any person employed by Company. Breach of this clause will constitute a material breach of this Agreement and apart from the consequences laid out in this Agreement, additionally you shall pay Company such compensation as may be agreed with Company to be fair and reasonable compensation for Company.
- (d) **No Waiver.** The failure by any party to exercise any right provided for herein shall not be deemed a waiver of any right hereunder.

- (e) **Effect of Termination.** Sections 7 (Limited Warranty), 8 (Limitation of Liability), 12(a) (Governing Law and Arbitration), and this Section 12 shall survive the expiration or termination of this Agreement.
- (f) **Entire agreement; Modifications.** This Agreement constitutes the entire agreement between you and Company with respect to the subject matter hereof, and supersedes all proposals, oral or written, and all other communications between the parties with respect to such subject matter. This Agreement shall not be modified, except by written agreement signed by the parties hereto.
- (g) **Force Majeure.** Company shall not be liable for and shall be excused from any failure to deliver or perform or for delay in delivery or performance due to causes beyond its reasonable control, including but not limited to, work stoppages, shortages, civil disturbances, terrorist actions, transportation problems, interruptions of power or communications, failure of suppliers or subcontractors, war, invasion, act of foreign enemies, hostilities (whether war is declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, nationalization, government sanction, blockage, embargo, labour dispute, strike or lockout, natural disasters or other acts of nature.

Please contact the Company should you have any questions concerning this Agreement or wish to provide notice to Company.

Elegant MicroWeb Technologies Pvt. Ltd.

contact@smarten.com

www.smarteninsights.com