

# END USER LICENSE AGREEMENT

For  
PRIME BPM SUITE

## AGREEMENT

1. Agreement between you and STAR PROCESS PERFORMANCE WLL a group company of PRIME PMG (hereinafter referred to as "Prime"). You and Prime are jointly referred to as Parties and individually referred to as Party.
2. Prime offers software as a service (SAAS) of Business Process Mapping, Business Process Analysis and Business Process Improvement to corporations and individuals. (The above software products are hereinafter referred to as "Application" and/or "Software"). This application is available in the domain "www.primebpm.com".
3. This Prime software user agreement (hereinafter referred to as the "Agreement") regulates the use of the application by you. The authorized party signing or electronically submitting the Order or accessing the Services represents that it has the authority to bind the End User and understands and agrees to the Order, these Terms, and the applicable Service Descriptions (collectively the "Agreement").

## DEFINITIONS

**Confidential Information** of Prime means (a) the Licensed Products (in any form), the Documentation, the License Keys, and SolvNet; (b) Design Techniques and all ideas and information (such as algorithms, design rules, and design techniques) contained or embodied in the Licensed Products, Documentation, License Keys, or SolvNet; (c) the prices, discounts, payment terms, and other information in the Purchasing Agreements; (d) Prime Training Services materials including without limitation presentations, demonstrations, software and course handouts, and (e) any other confidential or proprietary information that Prime provides to you in connection with this agreement. Your **Confidential Information** is any confidential or proprietary information in (i) written form that you provide to Prime in order for Prime to fulfill your orders and provide products and services to you under this agreement, and (ii) oral form that you provide to Prime in order to receive Maintenance Services; as long as you notify Prime at the time of disclosure that such information is to be treated as confidential under this agreement. However, Feedback is not your **Confidential Information**. Also, Confidential Information does not include any of the following:

- a) information that has become generally available to the public, through no fault of yours (in the case of Prime Confidential Information) or Prime (in the case of your Confidential Information) and that is not still regarded as a trade secret under laws governing information that was negligently or maliciously distributed;
- b) information that the receiving party had already obtained in a tangible form, through lawful means, before obtaining it under this agreement;
- c) information that the receiving party developed independently, without the use of any materials or information obtained from the other party in connection with this agreement;
- d) information that the receiving party has lawfully obtained, in a tangible form, from a third party that had the right to provide it to the receiving party; or

e) information that the disclosing party releases for publication in writing.

**End User** means an individual who works for you as an employee or independent contractor and whom you designate and authorize to access and use a Licensed Product as permitted by this agreement.

**EST** means electronic software transfer.

**Feedback** means any ideas or suggestions you voluntarily provide to Prime (in any manner, whether in writing or orally or otherwise) regarding the Licensed Products, Documentation, or Design Techniques, including possible enhancements or improvements.

**Fees** means the amounts you must pay when you purchase products and services from Prime under this agreement, as indicated in the clause 14.

**FTP Server** means a Prime server that you can access via the Internet in order to access the Licensed Products you have ordered.

**Intellectual Property Rights** means all patent rights, copyrights, trade secret rights, mask works, and trademark rights (including service marks and trade names), and any applications for these rights, in all countries.

**License Term** means the period of time during which you may use a Licensed Product under a particular license.

**Licensed Products** has the meaning given in clause 1 of the Terms and Conditions.

**Licensed Software** has the meaning given in clause 1 of the Terms and Conditions.

**Maintenance Services** has the meaning given in clause 1 of the Terms and Conditions.

**Prime Competitor** means any corporation or other legal entity in the business of developing and/or marketing (including making generally commercially available to end user customers) in the field of Business Process Management and Business Process Improvement or intellectual property cores or related services.

**TSL** means a time-based technology subscription license of a Licensed Product. A TSL lasts for a specific period of time (the License Term) from when the license is delivered and includes (at no additional charge) Maintenance Services for the Licensed Product in question.

**Verification IP** means test benches (including software models, test suites, and monitors) that simulate, test, and verify the functionality of certain electronic circuits or devices.

#### 4. Formation of Agreement

This agreement covers the products and services you license (or purchase) from Prime, unless and until we enter into a new agreement that expressly replaces this one. If you use the Prime products and services as an employee of or for the benefit of your company, you represent that you have the power and authority to accept this agreement on behalf of your company. Your company will be the licensee under this agreement (hereinafter also referred to as the "User"). By clicking on the "Accept" button of this agreement, or by registering yourself with the prime website in the manner specified therein or using the Prime products or services, you consent to the terms and conditions of this agreement on behalf of yourself and the company on whose behalf you will use the Prime products and services provided under this agreement. The effective date of this agreement is the date on which you first register yourself as a user in the Prime website in the manner provided therein whether for the free trial or after purchase or use the Prime products or services. If you do not agree to the terms and conditions of this agreement or if you do not have the power and authority to accept the terms and conditions of this agreement on behalf of your company, you may not use the Prime products and services and Prime is unwilling to provide you with them

#### 5. Usage of the free trial version

5.1 A pre-requisite of the use of the SERVICE and APPLICATION is registration by YOU. Through successful registration, an individual USER account is opened on behalf of YOU. At the registration and thereafter in the APPLICATION, YOU may nominate further USERS to be specified by name. YOU are obliged to provide the data requested at registration correctly and in full. YOU are obliged to notify Prime without delay of any changes to its USER structure.

5.2 YOU must be a corporation or entrepreneur, that is a natural or juristic person or a non-incorporated firm having legal capacity.

5.3 Prime offers its users an option for the use of an evaluation version of the APPLICATION and the SERVICE free of charge for a limited period of time. The Agreement for the use of the evaluation version if you choose to avail it is established once YOU completes the registration details at Prime and has declared its acceptance of this Agreement by clicking on Try PRIME button, Prime acknowledges its acceptance by an e-mail confirmation to YOU. This e-mail also contains a hyperlink which YOU use to activate its USER account.

5.4 The provisions of this Agreement shall also apply to the use of the free trial version of the APPLICATION and SERVICE. YOU accept these terms by using the free trial version.

5.5 The Agreement concerning the use of the APPLICATION and SERVICE subject to charge is formed as follows: the submission of the registration form by you, the invoicing details in full, as well as the selection by YOU of the offer concerning the booking functionality within the APPLICATION through pressing the button "Purchase Now" represents the binding request of YOU to conclude the Agreement. The acceptance of YOUR request is made by an e-mail from Prime which confirms the receipt of the booking as well as the formation of the Agreement. Alternatively, Prime may provide YOU with a written quotation to use the SERVICE upon YOU'S request. This Agreement is concluded by acceptance of this quotation in writing by YOU.

5.6 The Prime websites by themselves simply represent an invitation to submit requests.

## 6. Products and Services

The Prime products and services that you may license or purchase under this agreement include (but are not limited to):

## 7. Business Process Mapping

The business process mapping services are offered to help you to document your business processes by covering tasks by individuals, documents and systems used and decisions made by executing the process. You can also capture information such as daily tasks, value provided by each task to you or the customer, business rules, key performance indicators, step by step tracking work instructions to create a recognized procedure, compliance requirement and identification of any issues or opportunities for your business analysis.'

## 8. Business process analysis

- 8.1 This will help you to utilize all the captured information and undertake performance analysis to understand the bottlenecks and ways to improve your business process. Prime has built in a statistical calculation engine that will give you an approximation of the annual time wasted by performing non value added activities. This functionality will also give you details on how much time, money your organization spends in performing non value added activities. These provide immediate potential for cost savings and productivity improvement within the organization.
- 8.2 Business Process Improvement: This functionality will allow users to track all the improvements identified thorough analysis and suggested by the employees within the organization. The tool will help create tasks against each improvement and track the progress towards completion ensuring the improvements are addressed and implemented within the organization to realise the benefits.
- 8.3 PRIME software will allow organisations to Map, Analyse and Improve their business processes through collaboration and analytical methods.

## 9. The following are the package options available to you:

- (i) PRIME Modeller
- (ii) PRIME Analyser
- (iii) PRIME Improver

Additional terms and conditions (beyond those stated here and in any attached supplements) may apply to certain Licensed Products. When placing orders for these Licensed Products, you will be also given an opportunity to review the additional terms and conditions if any that must be accepted for you to access the Licensed Products. If the additional terms and conditions conflict in any way with the terms and conditions stated here, the additional terms and conditions will prevail.

## 10. Excluded Services

10.1 Apart from the services expressly mentioned hereinabove, Prime is not obligated to offer any additional service to you, Neither is Prime liable to provide any support for matters which do not pertain to clauses.

10.2 The following services are not covered:

- a. User Support outside of the Support service hours i.e from 08.00 to 20.00 Indian Standard Time on each day from Monday of the week to Friday of the week excepting the public holidays.
- b. Solving of problems which are caused by inappropriate usage of the APPLICATION;

- c. Recovery of data;
- d. Restoration of backed up data;
- e. Customized programming;
- f. On-site services;
- g. Trainings;
- h. User-Support regarding the interaction/integration of the SERVICE or APPLICATION with software of third parties that is not object of this Agreement;
- i. Development of YOUR specific scripts; and
- j. Assistance regarding modeling questions.

10.3 In the event you require the aforementioned services the Parties may separately agree on the definition and delivery of such services which are to be paid for separately.

## 11. Licenses

11.1 Your License Rights: When you purchase a license for a Licensed Product, by registering yourself as the authorized user of the Licensed product you will have a nonexclusive right to: allow you to use the Licensed Product for activities mentioned in hereinabove.

11.2 End Users: You shall designate any of your employees who are authorized by your company to use Prime products.

11.3 Conditions: Your right to use the Licensed Product is conditioned upon your timely payment of the full amount of Fees due for the Licensed Product and your compliance with the terms of this agreement, including the following restrictions. When the License Term expires, your license rights also expire and you may no longer use the Licensed Product.

11.4 Restrictions: You shall not (and shall not allow anyone else to):

- a) copy or use any Licensed Product (or Documentation) in any manner that is not expressly allowed by the license rights stated above;
- b) decompile, reverse engineer, or otherwise attempt to derive the source code for any Licensed Product or any underlying algorithms, user interface techniques, or other ideas embodied in a Licensed Product;
- c) distribute any copy of a Licensed Product (or Documentation) except as expressly allowed by the license rights stated above, or allow anyone other than your End Users to have access to or use (such as in a timesharing, service bureau, or application service provider model) any Licensed Product;
- d) use a Licensed Product or its output to create, modify, or simulate business solutions for third parties;
- e) use a Licensed Product or its output to develop or enhance any product that competes with a Prime product;
- f) modify or create a derivative work of any part of a Licensed Product or Documentation;
- g) disclose the results of any benchmarking of a Licensed Product (whether or not the results were obtained with assistance from Prime) to any third party; or use a Licensed Product in the development of any product if the failure or malfunction of that product could reasonably be expected to result in personal injury, death, or catastrophic loss.

11.5 Copies: If you make backup or archival copies of a Licensed Product or Documentation, you must reproduce all copyright,

trademark, and other notices that appear on the original copy.

11.6 Transfers and Assignments: You shall not transfer or assign your license rights to any other person in any manner (by assignment, operation of law or otherwise) unless you have obtained written consent from Prime. If you attempt to transfer or assign any of your license rights without Prime's consent, the transfer or assignment will be ineffective, null, and void (and you will be in material breach of this agreement). For purposes of this 2.11, a transfer or assignment of your license rights will be deemed to have occurred (a) if a third party (or group of third parties acting in concert) acquires beneficial ownership of fifty percent (50%) or more of either (i) your or a Parent Entity's assets or (ii) the stock or other equity interests entitled to vote for your or a Parent Entity's directors or equivalent managing authority, or (b) in the event of a merger, consolidation or other business combination between you or a Parent Entity and one or more third parties where your or a Parent Entity's stockholders immediately before that transaction own (directly or indirectly), after that transaction, less than fifty percent (50%) of the stock or other equity interests entitled to vote for the directors or equivalent managing authority of the surviving entity.

11.7 Open Source Software: The Licensed Product may be delivered with software that is subject to open source licensing terms ("Open Source Software") which are available at <http://www.primebpm.com/>. If the Open Source Software license also requires source code to be made available, Licensee may reference <http://www.primebpm.com/> for information on how to obtain such source code. Licensee agrees that all Open Source Software shall be and shall remain subject to the terms and conditions under which it is provided. The Open Source Software is provided "as is," without any warranty of any kind, and prime further disclaims all other warranties, express, implied or statutory, with respect to open source software, including but not limited to the implied warranties of noninfringement, merchantability and fitness for a particular purpose. neither prime nor the licensors of open source software shall have any liability for any direct, indirect, incidental, special, exemplary, or consequential damages (including without limitation lost profits), however caused and on any theory of liability, whether in contract, strict liability, or tort (including negligence or otherwise) arising in any way out of the use or distribution of the open source software, even if advised of the possibility of such damages. Copyrights to the Open Source Software are held by the copyright holders indicated in the copyright notices in the corresponding source files.

## 12. Order and Delivery

12.1 Ordering Prime Products: You may place an order for the products and services identified hereinabove at any time by submitting to the Prime's on-line ordering system or as otherwise directed by Prime. When using Prime's on-line ordering system, you shall be responsible for ensuring that all information you provide is accurate and complete and that any person placing an order on your behalf has your authority to do so. Once you submit an order, you may not cancel or change it. Your order must indicate which products and services you want to purchase (including, in the case of Licensed Products, the type of license, the quantity, the License Term) Prime may, in its reasonable discretion, accept or reject your order. Prime may accept your order by sending you an electronic notice of acceptance or simply by fulfilling your order.

12.2 ACCEPTANCE OF YOUR ORDER: If Prime accepts your order for one or more Licensed Products, Prime will then authorize you to

access the Licensed Products through internet by registering your created user ID and Password. Prime will send the notice of acceptance of your order electronically except where prohibited by law.

12.3 When Prime accepts an order for a Licensed Product by EST, Prime will send you an e-mail to your designated EST e-mail address(es) to notify you that you are now authorized to access the Licensed Products through prime website at [www.primebpm.com](http://www.primebpm.com). Prime's obligation to notify you about its acceptance of your order for the Licensed Product will be fulfilled when this e-mail notice is sent to you.

### 13. Your Responsibilities and Obligations

YOU shall fulfill all duties and obligations as necessary for the performance of the Agreement and in particular shall:

13.1 keep the authorizations of use and access credentials and rights allocated to it and/or to its USERS confidential, protect the SERVICE from access by third parties not specifically allowed under this Agreement and not pass on the same to unauthorized USERS. This authorization data and credentials are to be protected by appropriate and usual measures. YOU shall immediately notify Prime if the suspicion exists that non-authorized individuals may have become aware of any USER's access credentials or passwords, or have otherwise circumvented the provided USER authentication methods of the SERVICE; and

13.2 comply with the restrictions/obligations in relation to the rights of use under clause 4, in particular and:

- a) without authorization, extract any programs, components, information or data, or enable third parties to extract the same, or interfere with APPLICATIONS or SERVICES which are provided by Prime, or cause any such interferences to be made, or, without authorization, to probe or penetrate data networks of Prime or promote any such penetrations;
- b) indemnify Prime from claims of any third parties which are based on any unlawful use of the APPLICATION or SERVICE by it or which arise from disputes relating to data protection, copyright or other legal disputes caused by YOU which are associated with the use of the APPLICATION or SERVICE;
- c) obligate the authorized USERS that they will comply with all provisions of this Agreement applicable to them;
- d) Report any defects of the APPLICATION or SERVICE in text form. An oral report is possible, if YOU also report the defect in text form within two (2) working days. The report has to describe the defect in detail (in particular the conditions, under which it appears, symptoms and effect of the defect);
- e) ensure that it observes (e.g. in the transmission of texts/data of third parties onto the SERVER of Prime) all rights of third parties in material used by it;
- f) according to § 8 (2), obtain any necessary consent of the respective person affected, in so far as it collects, processes or uses any Personally Identifiable Information (PII) in the use of the APPLICATION and insure that no statutory consent criteria apply; and

- g) in so far and to the extent that, by mutual agreement, YOU has the option to regularly secure the CLIENT DATA stored on the SERVER through download; the obligation of Prime under § 2 (4), to create data back-ups remains unaffected hereby.

#### 14. Remuneration / Payment

- 14.1 A fee will be charged for the services ordered. The amount of the fee shall depend upon the software products and their features chosen, the number of USERS, the components/options selected by YOU and also the term of the Agreement. Pricing details are available from prime software, In case those individual months are billed pro rata, each calendar day is billed as 1/365 of the annual (12 months) fee.
- 14.2 Payments:. If you do not pay an amount by the scheduled due date, Prime will have the right to withhold your authorization to access the Licensed product and/or terminate this agreement or a Purchasing Agreement and accelerate the due date of all remaining payments. In this event, you will owe the entire outstanding balance as soon as you receive written notice from Prime that your payment is due. All payments you make to Prime are non-refundable. You may not offset any amounts you believe Prime owes you against any payments you make to Prime under this agreement. You must make payments in U.S. dollars.
- 14.3 Additional services may be quoted by Prime according to then current rates for time and actual expenses incurred in the delivery of such services at a cost mutually agreed to in advance by the Parties. This shall apply in particular for Your training.
- 14.4 All invoices shall be prepared and delivered in electronic form..
- 14.5 Taxes: You will be solely responsible for paying all taxes (including sales, use, consumption, withholding, and value-added taxes and similar taxes), other than Prime's income taxes, that are imposed on or result from your purchase, license, or use of Prime products and services. If Prime is required by law to collect and remit any such taxes, Prime may invoice you for such taxes and you agree to pay the invoiced amount to Prime. If you are required by the respective jurisdiction where the Licensed Products are used, or where services are provided, to withhold taxes from payments to Prime, you may withhold from the total amount due to the respective Prime distributing entity the minimum amount required (but no more). You may only withhold taxes related to a payment at the time of such payment. You must then promptly pay that amount to the appropriate tax authority and provide Prime with an official receipt for the payment within 60 days of your payment.
- 14.6 Bankruptcy: If you become the subject of any bankruptcy, dissolution, liquidation, or similar proceedings or make a general assignment for the benefit of your creditors, Prime may apply any payments you have previously made to Prime for products or services not yet delivered by Prime against any amounts you owe Prime at that time for products or services that have been delivered by Prime (under this agreement or otherwise

14.7 NAVIGATION TO PAYMENT WEBSITE In the case of payments by means of credit cards, the Your's credit card data will be requested , and only stored for recurring purchases in encoded form with the credit card processing company selected by Prime. The PRIME however do not take any responsibility for the payment website link . PRIME does not endorse, sanction or verify the accuracy of the information contained on the payment Websites or any products or services advertised on the said Website or any third party Website. Your navigation to the payment gateway signifies and means that you are no longer covered by the Privacy Policy of PRIME or Terms of Use of the PRIME LICENSED PRODUCT or PRIME WEBSITE, and you may be subject to the Terms and Conditions and Privacy Policy of the Website of the payment gateway. You should review the applicable terms and policies, including privacy and data gathering practices, of any site to which you navigate to from the PRIME Website for payment. All Concerns regarding the payment Website should be directed to the payment Website itself. PRIME bears no responsibility for any action associated with the payment gateway Website.

## 15. Data security, Data protection,Confidentialiy

15.1 Both Parties understand and agree that all data submitted by YOU to the database of the SERVICE and subsequently contained in any reports, spreadsheets or analysis of any kind generated by the APPLICATON, including all intellectual property rights therein and any enhancements, derivative works and improvements thereto (together "CLIENT DATA") are the exclusive property of YOU and nothing contained herein shall restrict YOU from using such CLIENT DATA in any way it deems fit. Prime shall only use CLIENT DATA for the benefit of YOU as required to fulfill its obligations under this Agreement.

15.2 The CLIENT DATA is backed up on the SERVER regularly.

15.3 Both Parties agree that the APPLICATION, depending on the service and components selected, may provide the possibility to integrate additional services from third parties (which require an explicit prior activation by the YOU) into the website of Prime or into the APPLICATION (e.g. "Microsoft Bing Translate", in the case of an optional automatic translation function within the APPLICATION).

Those third-party services are not part of Prime's service. Prime will point out such cases to the USER on the website or within the APPLICATION before allowing the activation of the corresponding functionality. YOU solely decide whether or not they choose to activate such functionality. The contractual partner of the YOU for such services is exclusively the third party and in no case Prime. Only the terms of use and privacy policy of the respective third party apply for the third-party service. If such functions remain disabled based on the YOU'S decision, these services from the third parties will not be integrated into the website of Prime or within the APPLICATION. Prime reserves the right to remove any third-party service without notice at any time.

15.4 Both Prime and YOU shall observe the respectively applicable data protection provisions and impose an obligation on those employees and/or USERS assigned in connection with the Agreement and its implementation to preserve data security in accordance with such provisions in so far as they have not already generally been placed under a corresponding obligation.

- 15.5 Prime shall in particular protect the services and systems lying within the sphere of its control and also the CLIENT DATA and, where appropriate, other data stored by YOU or relating to YOU on the SERVER against any unauthorized access, storage, modification or other non-authorized accesses or attacks - whether through technical measures, through viruses or other harmful programs or data or through physical access - by employees of Prime or third parties, quite regardless by which means such are made. Prime shall in this respect take the appropriate and usual measures which are necessary, in particular to provide virus protection and protection against similar harmful programs as well as other measures necessary in securing its facilities, including protection against burglary, fire or natural disasters according to current industry standards.
- 15.6 Prime shall only collect and use Your-related data as required for the implementation and support of this Agreement. YOU consent to the collection and use of such data solely for these purposes.
- 15.7 The obligations as specified hereunder shall exist as long as CLIENT DATA lie within the control of Prime, including beyond the end of the Agreement. The obligation under para. 4 shall also continue beyond the end of the Agreement.
- 15.8 All services which are part of this Agreement are provided by Prime as contracted data processing on behalf of YOU. All instructions need to be communicated to Prime in writing in sufficient time.
- 15.9 If necessary, the Parties govern the contracted data processing in a separately Agreement for Contracted Data Processing.

## 16. Collection and processing of your data

- 16.1 You can, as a basic principle, visit our website without giving any details as to your person (Personally Identifiable Information (PII)).
- 16.2 In the case of payments by means of credit cards, the Your credit card data will be stored in encoded form with the credit card processing company selected by Prime.

## 17. Data security

- 17.1 Your personal data will be transmitted using SSL encryption (AES, 256 bit certificate) via Internet when you use our APPLICATIONS and SERVICES which are subject to charge. You can recognize the secure transmission from the protocol designation "https://" in the URL line and also from the complete domain www.primebpm.com
- 17.2 We use commercially reasonable efforts to secure our website and other systems through technical and organizational measures against loss, destruction, access, modification or dissemination of your data by unauthorized persons.
- 17.3 The access to your User account is only possible after entering your personal password. You should at all times treat your access information confidentially and close the browser window when you have ended your communication with us, in particular if you use the computer jointly with other persons.

## 18. Confidentiality

18.1 Confidentiality Obligations: Each party (you and Prime) agrees to abide by the following confidentiality obligations with respect to the other party's Confidential Information:

- a) do not disclose it to any third party unless (i) the other party has given its specific and express prior written approval, (ii) the disclosure is expressly allowed under this agreement, or (iii) the disclosure is necessary to comply with a valid court order or subpoena;
- b) do not use it for any reason other than to exercise its rights and perform its obligation under this agreement; and
- c) protect it from unauthorized dissemination in the same manner as that party protects its own Confidential Information, and in any event with reasonable precautions (which include limiting access to employees and contractors on a "need-to-know" basis).

18.2 Mandatory Disclosures: If you believe you must disclose Prime's Confidential Information in order to comply with a valid court order or subpoena, you must promptly notify Prime and cooperate with Prime if Prime chooses to contest the disclosure requirement, seek confidential treatment of the information to be disclosed, or to limit the nature or scope of the information to be disclosed. Prime will do the same if it believes it must disclose your Confidential Information in these circumstances.

18.3 Additional Obligations: In addition to your general obligations of confidentiality regarding the Licensed Products and Documentation, you must monitor each End User's use of the Licensed Products to ensure that the End User abides by the terms of this agreement.

## 19. Services

19.1 Maintenance Services: Maintenance Services consist of the following:

- a. Support: Prime will provide you with access to your authorized license product and online Documentation, and will use commercially reasonable efforts to make available the Prime Support Center on Monday through Friday, during Prime's normal business hours, excluding Prime's scheduled holidays. A valid corporate email address is required to access the prime's Support and online Documentation.
- b. Software Updates: Prime will use commercially reasonable efforts to provide error corrections to the Licensed Products, as well as minor improvements to the Licensed Products, as such corrections and improvements become generally available. Any other upgrades or enhancements to the Licensed Products are not made available by Prime as part of Maintenance Services and may be subject to additional charges.

19.2 Updates to Terms: Prime may update its Maintenance Services terms on 60 days prior written notice, provided that these updates are applied generally to its Maintenance Service customers.

19.3 Conditions: In order to receive Maintenance Services for a Licensed Product, all of the following conditions must be met:

9.4 you must have purchased Maintenance Services for such Licensed Product (unless it is licensed under a TSL, in which case Maintenance Services are included);

- ii) you must appoint a qualified contact person to interface with Prime regarding Maintenance Services, and identify such person to Prime in advance;
- iii) such qualified contact person must be trained in the use of such Licensed Product;

- iv) you must provide Prime with access to the information and system facilities reasonably necessary to provide the Maintenance Services;
- v) you must follow the directions provided by the Prime Support Center to resolve technical problems;
- vi) you must follow the operating instructions and procedures for the Licensed Product as specified in the Documentation or provided by Prime; and
- vii) you must notify Prime of any error or other problem in the Licensed Product using Prime's current problem reporting procedure.

19.5 Exclusions: Prime will have no obligation to provide

Maintenance Services for any Licensed Products that are damaged, modified (by anyone other than Prime), incorporated into other software, or for any version of a Licensed Product other than the latest and immediately preceding version; or for any problems caused by your negligence, abuse, misuse, or by any causes beyond Prime's reasonable control.

19.6 Reinstatement of Maintenance Services: If Maintenance Services are terminated for any reason, or if you wish to renew Maintenance Services more than thirty (30) days after Maintenance Services have been terminated, you may be permitted to reinstate or renew Maintenance Services, at Prime's sole option, provided that (a) Prime offers Maintenance Services to its customers generally for the Licensed Product in question, and (b) you pay Prime the following: all applicable Maintenance Services fees for the period during which you were off Maintenance Services, and Prime's then-current reinstatement fee plus payment for the new Maintenance Services term.

19.7 Training Services: Prime offers Training Services, which may be ordered through our website at [www.primebpm.com](http://www.primebpm.com).

## 20. Term and Termination

20.1 Term of Agreement: The term of this agreement will begin on the effective date that you first use the products or services and will end when the last Purchasing Agreement expires, unless this agreement is terminated sooner by either party.

20.2 Term of Purchasing Agreement: Each Purchasing Agreement will have its own term, as indicated on that Purchasing Agreement.

20.3 Rights to Terminate: Each party has the right to terminate this agreement, by giving written notice of termination to the other party, if (a) the other party breaches this agreement and (b) either the breach cannot be cured or, if the breach can be cured, it is not cured by the breaching party within 15 days after receiving written notice of the breach from the non-breaching party. A substantial deviation of a Licensed Product from the specifications in the corresponding Documentation will not be considered a breach of this agreement that allows you to terminate the agreement, but it could give rise to a warranty claim under 8.

20.4 Consequences of Termination: If and when either you or Prime terminates this agreement, all Purchasing Agreements in effect at that time will also terminate. When this agreement, a Purchasing Agreement or an individual license to a Licensed Product expires or is terminated:

- a) you must (i) immediately cease all use of the Licensed Products, Documentation, and Design Techniques, (ii) promptly return to Prime or destroy all copies of the Licensed Products and Documentation in your possession or control, and (iii) certify in writing to Prime that you have complied with clauses (i) and (ii), except, however, that your license to Implementation IP incorporated

into Designs prior to termination shall continue according to its terms;

- b) you will remain obligated to pay any amounts you owe to Prime at that time; and
- c) the provisions of clauses 4, 6, 7.4, 8.4 and 10, and the warranty disclaimers in clause 8, will remain in effect.

## 21. Limited Warranty

- 21.1 **Warranty:** For a period of 90 days from when Prime delivers a Licensed Product to you (the "warranty period"), Prime warrants that the Licensed Product will have no Errors when used on the correct platform and according to the instructions in the corresponding Documentation. This warranty will be void if you, or anyone else other than Prime, modifies or attempts to modify the Licensed Product.
- 21.2 **Warranty Claims:** To claim a breach of this warranty, you must, during the warranty period, notify Prime in writing of the Error or Errors that you have encountered and provide Prime with all the information you have, in written or electronic form, about those Errors, so that Prime can attempt to reproduce, diagnose, and correct the Errors.
- 21.3 **Exclusive Remedy:** Your exclusive remedy for any breach of this warranty is that Prime will use commercially reasonable efforts to (at Prime's option) correct the Errors you have reported or provide a replacement product that does not contain these Errors, or if Prime is unable to provide a correction or a replacement or determines that it will not be feasible to do so, Prime will refund the Fees you paid for that Licensed Product.

## 22. Infringement Claims

- 22.1 **Indemnity:** Prime will, at its own expense, be entitled to defend (or at its sole option, settle) any claim asserted against you by a third party that any Licensed Product you obtained from Prime under this agreement directly infringes any patent, copyright, trademark, or trade secret.
- 22.2 **Conditions:** Prime's obligations to defend and indemnify you with respect to a particular claim are subject to the following conditions:
- a) you must promptly give Prime written notice of the claim;
  - b) you must identify the specific Licensed Product(s) at issue in the claim and indicate how the Licensed Product(s) is(are) utilized by you or your products;
  - c) you must give Prime sole control and authority over the defense and settlement of the claim; and
  - d) you must provide Prime with all information you have regarding the claim and cooperate with Prime when Prime defends or attempts to settle the claim.
- 22.3 **Pro-Active Steps:** If any Licensed Product is, or Prime believes is likely to become, the subject of a claim for which Prime would be obligated to defend and indemnify you, then Prime may, at its option, do any of the following:
- a) obtain for you (at no cost to you) the right for you to continue using the Licensed Product as permitted by this agreement;
  - b) replace or modify the Licensed Product to avoid the infringement problem, as long as there is no material loss of functionality;
  - or
  - c) if Prime reasonably concludes that it will not be feasible to do either of the above, terminate your license for the Licensed

Product and give you a prorated refund (based on how much of the License Term has elapsed) of the Fees you paid for that license.

22.4 Exclusions: Prime will have no obligation to defend or indemnify you (notwithstanding the first paragraph of this clause) with respect to any claim that is based on or attributable to any of the following:

- a) any modification made to the Licensed Product by anyone other than Prime;
- b) the combination or use of the Licensed Product with other products, processes, or materials not supplied by Prime or specified in the Documentation as being necessary to use the Licensed Product;
- c) your continued engagement in infringing activities after you were notified of the infringement or after Prime informed you of a modification or workaround that would have avoided the infringement; and
- d) your use of the Licensed Product in a manner not permitted by this agreement.

22.5 Burden of Proof: You will have the burden of showing that indemnification is required pursuant to this clause 9 and that the exclusions in clause 9.4 are not applicable.

22.6 No Other Obligations: Except as expressly stated in this clause 9, Prime has no obligation or liability to you for any actual or alleged infringement related to the Licensed Products, Documentation, or Design Techniques.

### 23. Rights of use for the APPLICATION and SERVICE; Rights of Prime in the event of the authorizations for use being exceeded

23.1 Rights of use for the APPLICATION and SERVICE and Documentation

23.2 YOU receive, with the full payment of the fee as indicated in the prime tool a non-exclusive, non-perpetual, non-sublicensable and non-transferable right of use for the APPLICATION and the Documentation, limited to the term of this Agreement, in accordance with the following provisions.

23.3 No conveyance of the APPLICATION to YOU take place. The YOU may only use the APPLICATION for its own commercial activities.

23.4 The YOU shall be entitled to use the APPLICATION and SERVICE itself and through its employees or authorized agents in so far as these have been registered by it as authorized USERS. For the right of use the USER definition from the definition clause applies. The authorized USERS shall be uniquely named via the corresponding function within the APPLICATION. A replacement of authorized USERS with other USERS is possible at any time. The licensee vis-à-vis Prime is exclusively YOU. Authorized USERS are not allowed to share their user name or passwords (or other login credentials) with others, either in the employment of YOU or otherwise.

23.5 For an additional fee USER licenses for the APPLICATION and the SERVICE may optionally, and if available for the particular software product, be agreed upon between the Parties according to a "Monthly Concurrent" mechanism. This mechanism makes it possible to create more USER accounts in the workspace of the APPLICATION and the SERVICE, than licenses are available. As part of the "Monthly Concurrent" mechanism, the available licenses are allocated to USERS from the first calendar day of a month based on a "first come first serve" principle, unless specific USERS are configured to obtain a license independently from this mechanism. Such preference is always setup for the members of the Administrators USER group.

23.6 YOU shall not be entitled to make any changes to the APPLICATION or SERVICE. In particular, you shall not be entitled to investigate its mode of operation by way of so-called reverse engineering, to decompile or dismantle it in its parts and/or to use it as a basis for your own software programs. This shall not apply for changes which are necessary for the rectification of faults where Prime is unable to correct the fault, refuses to remedy the fault or is not in a position to remedy the fault due to insolvency proceedings. For the purpose of integration with an independently developed computer program, the required application programming interface (API) may be licensed from Prime for an additional license fee.

23.7 If, during the term of the Agreement, Prime either voluntarily or due to an additional contractual agreement issues and delivers new versions, updates, upgrades or other new releases of the APPLICATION or SERVICE to YOU, the above rights shall also apply.

23.8 YOU shall not be entitled to any additional rights which have not been expressly granted under this Agreement. This Agreement grants no ownership or intellectual property rights or any other comparable right for the APPLICATION. All intellectual property rights remain with Prime also in case of the rights granted according to this Agreement. YOU shall not be entitled to use the APPLICATION and SERVICE beyond the agreed scope or to make the APPLICATION or SERVICE accessible to third parties without the written approval of Prime and shall not be permitted to replicate or sell the SERVICE or convey the use of the same temporarily, in particular to hire it out or to lend it.

23.9 All documents delivered to YOU (the "Documentation") are to be kept confidential unless otherwise publicly available. Their contents may not be disclosed to third parties without the prior written consent of Prime.

#### **24. Obligation of the YOU concerning secure use**

24.1 YOU shall be liable for ensuring that the APPLICATION or SERVICE is not used for illegal purposes according to the laws within legal jurisdictions under which the YOU operates and that no such illegal data, in particular CLIENT DATA, is stored on the SERVER.

24.2 Breach of the provisions under paras. (1) and (2) by YOU

a) Should YOU breach the provisions of paras. (1) or (2) for reasons for which it is responsible, Prime may block your the APPLICATION, SERVICE or to the CLIENT DATA with prior notice in writing if the breach can be reasonably stopped by these means. In serious cases, this access restriction may also take place without any prior notification to YOU.

b) Should YOU breach para. (2), Prime shall be entitled to delete the CLIENT DATA.

c) Should YOU breach the provisions of paras. (1) or (2) for reasons for which it is responsible, and should YOU continue to breach or repeatedly breach the provisions in paras. (1) or (2) for a period of two (2) weeks after written notice is sent to YOU by Prime, and if YOU are responsible for the same, Prime may terminate the Agreement for cause without any period of notice.

d) For each case in which YOU culpably enable the APPLICATION to be used by third parties YOU shall pay a penalty fee, immediately due, in the amount of two (2) times of the License fee per each unauthorized USER. The right to assert claims for damages remains reserved; in this case, the penalty shall be set off against the claim to damages.

## 25. Term; Termination

- 25.1 YOU may at any time terminate the Agreement for the evaluation version of the SERVICE and APPLICATION. Unless otherwise agreed in writing between YOU and Prime, the free trial period ends automatically after 30 days, without the requirement of a termination request from YOU.
- 25.2 Agreements subject to charge which have been concluded for a fixed period or for which a minimum Agreement term has been agreed shall be extended by the agreed period or minimum term, at the most, however, by one (1) year, unless they have been terminated by one of the Parties providing a written notice ninety (90) calendar days in advance of the expiration date of the current minimum Agreement term. Agreements with an agreed minimum term of three (3) months may be terminated by one of the Parties providing a written notice thirty (30) working days in advance of the expiration date of the current minimum Agreement term. This applies subject to any deviating agreements with YOU.
- 25.3 The right of both Parties to terminate the Agreement summarily for cogent reasons remains unaffected. A cogent reason for Prime in particular exists if YOU (i) have deliberately provided false contact data, (ii) have deliberately provided false or invalid e-mail addresses, (iii) have deliberately provided false bank account details, (iv) failed to pay under the agreed terms, (v) have transferred its USER account to a third party or (vi) tolerate the usage by a third party not previously authorized by Prime. Except for the described above (i) to (vi) cogent reasons, are considered agreed for all other cogent reasons, that the immediate termination must be preceded by a written reminder to the defaulting party with a deadline of thirty (30) working days.
- 25.4 Notwithstanding the provisions in para. (3), Prime may terminate the Agreement without complying with any period of notice if YOU are in default for two (2) consecutive periods or of a substantial part of the fee or, in a period of time covering more than two months, are in default with payment of the fee in an amount equivalent to two months or period of fees. Prime may in this case additionally demand liquidated damages, payable immediately in one sum, in the amount of one quarter of the remaining monthly lump sum fees calculated until the expiration of the Agreement term. The right is reserved to YOU to prove that a lower amount of damage has been incurred.
- 25.5 Notices of termination must be given in written form.

## 26 Duties upon and following termination of the Agreement

- 26.1 Following the ending of the contractual relationship and following your request, Prime shall be obliged to provide YOU with the CLIENT DATA stored by it in formats in accordance with clause 15.2 in the form of data transmission.
- 26.2 Within fourteen (14) calendar days following termination without receiving your request to deliver the CLIENT DATA to YOU, Prime is entitled to delete the CLIENT DATA and your account information.

## 27. General Terms

- 27.1 Prime reserves the right to change this Agreement, unless this change results in (i) a significant reduction in the scope of services provided; or (ii) a significant increase of the remuneration to be paid. Prime will notify YOU of such change by e-mail at least thirty (30) calendar days before coming into effect. The change requires your approval. The approval is given automatically if YOU does not object the change within thirty (30) calendar days of the receipt. If YOU object, the contractual relationship continues to be governed by the original Agreement terms. Prime will inform YOU about the consequences of an objection not being given by YOU as part of the change notification.
- 27.2 The Parties specifically disclaim the UN Convention on Contracts for the International Sale of Goods.
- 27.3 Any changes to this Agreement require either (i) a mutually accepted amendment containing specific references to the clauses and paragraphs which they replace entirely; or (ii) a quotation containing specific references to the clauses and paragraphs which they replace entirely provided in writing by Prime and the corresponding Purchase Order Form signed by YOU.
- 27.4 Failure by either party to enforce any provision of this Agreement will not be deemed a waiver of future enforcement of that or any other provision. Any waiver of any provision of this Agreement will be effective only if in writing and signed by waiving party.
- 27.5 Prime is allowed to transfer this Agreement including all rights and obligations to a corporation of its choice. The transfer will come into effect thirty (30) calendar days after the receipt of the transfer notification sent by e-mail to YOU. In case of a transfer of the Agreement, YOU have the right for extraordinary termination of the Agreement, which needs to be exercised within seven (7) calendar days after receipt of the notification.
- 27.6 Should individual provisions of this Agreement be adjudicated to be unenforceable, the effectiveness of the remainder of this Agreement shall remain unaffected thereby.
- 27.7 Except as expressly provided herein, this Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof, and supersedes and replaces all prior and contemporaneous understandings or agreements, written or oral, regarding such subject matter.

## 28. Other Terms

28.1 Ownership of IP Rights: Prime and its licensors own all Intellectual Property Rights in the Licensed Products, Documentation, and Design Techniques. Your only rights in the Licensed Products, Documentation, and Design Techniques are the rights expressly granted in this agreement; all other rights are reserved by Prime. Prime's licensors are third-party beneficiaries of, and thus may enforce against you, the license restrictions and confidentiality obligations in this agreement with respect to their intellectual property and proprietary information. You will own all Intellectual Property Rights in the Designs you create using the Licensed Products, Documentation, and Design Techniques, subject to Prime's (and its licensors') ownership of the Intellectual Property Rights in the Licensed Products, Documentation, and Design Techniques. Prime may freely use and disseminate any Feedback you provide. You agree not to claim that Prime owes you any compensation for its use or dissemination of such Feedback.

28.2 Audit and Compliance: Prime may audit (using its own employees and those of an independent auditing firm that is subject to appropriate confidentiality obligations) your use of the Licensed Products and Documentation to verify your compliance with this agreement. You agree to give Prime (or the auditing firm) reasonable access to your facilities and records for purposes of conducting these audits. Prime will give you at least five days advance notice before conducting an audit. Audits will be conducted during normal business hours and no more than once per year, unless Prime has a good-faith basis for believing that more frequent audits are warranted. Prime will bear all the costs it incurs (including the fees and expenses of the auditing firm, if any) in conducting an audit, unless the audit reveals that you have failed to comply with this agreement in a material way, in which case you agree to reimburse Prime for these costs.

28.3 Automatic Updates: Licensed Products communicate with Prime servers for the purpose of providing Updates, detecting software piracy and verifying that customers are using Licensed Products in conformity with the applicable License Key for such Licensed Products. Prime will use information gathered in connection with this process to deliver software updates and pursue software pirates and infringers.

28.4 Limitation of Liability: For each product or service you license or purchase from Prime under this agreement, Prime's total, cumulative liability to you, including under clause 9, is limited to the amount of Fees you paid for that product or service (regardless of the nature of the liability or the nature or number of claims giving rise to the liability). Prime will not, under any circumstances or any theory of liability, be liable to you for any lost profits, loss of data, or consequential, incidental, or special damages arising from this agreement or the products and services provided to you under this agreement. However, this disclaimer of Prime's liability for consequential damages does not limit or reduce Prime's obligations to defend and indemnify you under clause 9. The limitations of liability in this clause are a fundamental part of this agreement and enable Prime to provide products and services to you at lower prices. These limitations of liability are intended to apply even if an exclusive remedy is found to have failed of its essential purpose.

28.5 Governing Law; Jurisdiction: Any dispute, controversy or claim arising out of, relating to or in connection with this agreement, including any question regarding its existence, validity or termination, shall be resolved by arbitration in accordance with the laws of Australia. The seat of arbitration shall be Brisbane Australia. The language of the arbitration shall be English. There shall be one arbitrator who will be mutually decided between the parties

- 28.6 Notices: Any notice, approval, consent, or other communication intended to have legal effect under this agreement must be given to the other party in writing, must be sent by first-class, registered, or overnight mail or private overnight courier (to the address for the other party stated on the signature page, unless the other party has given notice of a new address), and will be deemed given upon receipt or when delivery is refused.
- 28.7 Waivers: Either party's failure to enforce any provision of this agreement will not be deemed a waiver of the future enforcement of that provision or enforcement of any other provision. In order to be binding, a waiver must be in writing and signed by the party giving the waiver.
- 28.8 Independent Contractors: The parties to this agreement are independent contractors. Neither party is the agent or partner of the other party, or has any power or authority to act on behalf of the other party
- 28.9 Severability: If any provision in this agreement is found to be invalid or unenforceable as written, the remaining provisions will remain in full force and effect and the invalid or unenforceable provision is to be construed (and, if necessary, modified) so that it is valid and enforceable to the greatest extent possible.
- 28.10 Attorneys' Fees: The prevailing party in any action to enforce this agreement will be entitled to recover costs and expenses including reasonable attorneys' fees.
- 28.11 Remedies: Except where this agreement expressly provides exclusive remedies, all rights and remedies of either party (including termination rights) are cumulative. You agree that monetary damages alone would not be an adequate remedy, and therefore Prime will be entitled to injunctive relief if you materially breach the license restrictions or confidentiality provisions in this agreement.
- 28.12 Force Majeure: Each party will be excused from performance of its obligations under this agreement, except payment obligations, to the extent that performance is rendered impossible by earthquake, fire, flood, governmental action, labor disruptions, supplier failures, or any other event or circumstance beyond that party's reasonable control.
- 28.13 Construction: Clause headings in this agreement are for convenience only. The word "including" (and variations thereof) is not intended to be limiting. No rule of strict construction is to be used when interpreting this agreement.
- 28.14 Entire Agreement: This agreement and any applicable attachments and Purchasing Agreements are the entire agreement between the parties concerning its subject matter, and supersede any prior or contemporaneous agreements, communications, or understandings (whether written or oral). However, any confidentiality or nondisclosure agreements that Prime previously entered into with you will remain in effect (according to their terms) with respect to the confidential information disclosed thereunder.
- 28.15 Amendments: This agreement may be amended only by means of a written instrument signed by authorized representatives of both parties that specifically refers to this agreement and states the parties' intention to amend it. No additional or inconsistent terms on any purchase order or similar document you may submit to Prime will be binding on Prime or have any legal effect.

## 29. LIABILITY; LIMITATION OF LIABILITY

Prime shall not be liable for any breach of the rights of third parties by you in so far as and to the extent that this breach results from you having exceeded the rights of use granted under this agreement. In this case, you shall indemnify prime upon first demand from all claims of third parties.

### **30. Contact for questions or changes to personal data protection**

In case of any questions concerning the collection, processing or use of your personal data, or concerning information about the data, the correction, blocking or deletion of the same, and also in case of revocation of consent which has previously been given, please contact [prime@primebpm.com](mailto:prime@primebpm.com).

Questions or additional information: If you have any questions in respect of this contract or wish to have additional information, please send an e-mail to [prime@primebpm.com](mailto:prime@primebpm.com)