



PRIME PMG Pty Ltd (ACN 155 485 779)

Software as a service agreement

**End-to-End
Business Improvement Software**

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BACKGROUND

- A. PRIME provides the Services through the Software to corporations and individuals.
- B. You (Customer) have requested PRIME, and PRIME has agreed, to provide the Services through the Software on the terms and conditions of this Agreement.

AGREED TERMS

1. Interpretation

1.1 Definitions

In this document:

Agreement has the meaning given in clause 1.4.

Business Day means a day which is not a Saturday, Sunday or bank or public holiday in Brisbane.

Commencement Date means the date when proposal was signed by both parties

Confidential Information of a Party (**disclosing Party**) means any information which is disclosed by or on behalf of the disclosing Party to the other Party (**receiving Party**):

- (a) which is by its nature confidential;
- (b) which is designated by the disclosing Party as confidential; or
- (c) which the receiving Party knows or ought to know is confidential;
- (d) and includes:
 - (i) in the case of the Customer, the Customer Data, Contract Personal Information and information in relation to the Customer Systems, policies, strategies, practices and procedures of the Customer;
 - (ii) the terms of this Agreement;
 - (iii) information relating to the disclosing Party's or any of its Related Bodies Corporate's business, affairs or financial position;
 - (iv) information relating to the disclosing Party's internal management, structure, personnel, policies and strategies; and
 - (v) information relating to the disclosing Party's employees, contractors, customers or suppliers, including any Personal Information of individuals.

Consequential Loss includes, without limitation:

- (a) loss of profits or revenue;
- (b) loss of production;
- (c) loss associated with re-input of data;

- (d) loss or denial of business or commercial opportunity;
- (e) loss of goodwill, business reputation, future reputation or publicity; or
- (f) indirect, remote, abnormal or unforeseeable loss, or any similar loss whether or not in the reasonable contemplation of the parties at the date of this Agreement.

Contract Personal Information has the meaning given in clause 12.1.

Customer Data means all data and information of any kind of the Customer or a customer or supplier of the Customer that PRIME accesses, stores or handles in the course of providing the Services, whether or not confidential and including data and information that is:

- (a) Confidential Information and Personal Information of the Customer;
- (b) stored in, processed by or retrievable from, Customer Systems, or intended to be stored in, processed by or retrieved from, Customer Systems; or
- (c) otherwise made available to PRIME by or on behalf of the Customer in connection with this Agreement,

and includes any results of the use or manipulation of any such data and information.

Customer Systems means the computing, information technology, communications, data and data processing environment of the Customer, whether operated, maintained or utilised by or on behalf of the Customer, and includes:

- (a) all hardware, printers, peripherals, cables, communications devices and all other equipment whether owned or leased by the Customer;
- (b) all software, firmware and all other computer programs owned, licensed or used by or on behalf of the Customer including third party software;
- (c) any hardware, software and other information technology items owned or operated by third parties for the benefit or use of the Customer (such as applications service provider systems); and
- (d) any other information technology, computing or data processing items notified by the Customer to PRIME from time to time.

Defect means any error, problem or deficiency, but does not include a failure, error, problem or deficiency caused by:

- (a) the modification of the Services in a manner not permitted by PRIME;
- (b) any defect, error or malfunction in any item of hardware or software not supplied or recommended by PRIME;
- (c) any defect, error or malfunction in any telecommunications carriage service; or
- (d) the Customer's use of the Services other than in accordance with this Agreement.

Fees means the fees payable by the Customer for the licence to the Software and the provision of the Services, as specified in **the proposal**

Force Majeure Event means:

- (a) fire, flood, earthquake or acts of God; or

- (b) strikes, industrial disputes, acts of war, terrorism, riots, civil disorders, rebellions or revolutions, quarantines, embargos and other similar governmental action.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Implementation means the installation, customisation and deployment of the Services in accordance with Schedule 3.

Implementation Date means the date on which the Services are fully Implemented in accordance with this Agreement and accepted by the Customer.

Implementation Period means the period commencing on the Commencement Date and continuing until the Implementation Date.

Implementation Plan means the document set out in Schedule 3 containing plans and timetable for the supply and Implementation of the Services.

Infringement Claim means any dispute, claim, demand, suit or action or proceeding (actual, threatened or potential) alleging that the whole or a part of the Services or their use, infringes (or would infringe) another person's Intellectual Property Rights.

Insolvency Event means any of the following:

- (a) a person is or states that the person is unable to pay from the person's own money all the person's debts as and when they become due and payable;
- (b) a person is taken or must be presumed to be insolvent or unable to pay the person's debts under any applicable legislation;
- (c) an application or order is made for the winding up or dissolution or a resolution is passed or any steps are taken to pass a resolution for the winding up or dissolution of a corporation;
- (d) an administrator, provisional liquidator, liquidator or person having a similar or analogous function under the laws of any relevant jurisdiction is appointed in respect of a corporation or any action is taken to appoint any such person and the action is not stayed, withdrawn or dismissed within seven days;
- (e) a controller is appointed in respect of any property of a corporation;
- (f) a corporation is deregistered under the *Corporations Act 2001* (Cth) or notice of its proposed deregistration is given to the corporation;
- (g) a distress, attachment or execution is levied or becomes enforceable against any property of a person;
- (h) a person enters into or takes any action to enter into an arrangement (including a scheme of arrangement or deed of company arrangement), composition or compromise with, or assignment for the benefit of, all or any class of the person's creditors or members or a moratorium involving any of them;
- (i) a petition for the making of a sequestration order against the estate of a person is presented and the petition is not stayed, withdrawn or dismissed within seven days or a person presents a petition against himself or herself;
- (j) a person presents a declaration of intention under section 54A of the *Bankruptcy Act 1966* (Cth); or

- (k) anything analogous to or of a similar effect to anything described above under the law of any relevant jurisdiction occurs in respect of a person.

Intellectual Property Rights includes all right, title and interest wherever subsisting (now or in the future) throughout the world and whether registered or not, in and to:

- (a) copyright, databases, circuit layouts, topographies and designs;
- (b) methods, inventions, patents, utility models, trade secrets, confidential information, technical and product information; and
- (c) trade marks, business and company names and get ups,

and includes the right to apply for the registration, grant or other issuance of the rights described in paragraphs (a), (b) and (c) above and any other right generally falling within this term.

Laws means all laws including rules of common law and equity, statutes, regulations, by-laws, ordinances, mandatory codes of conduct, writs, orders, injunctions and judgements.

Loss means loss, damage, liability, charge, expense, outgoing payment or cost (including all legal and other professional costs on a full indemnity basis) of any nature or kind but excludes Consequential Loss.

Moral Right has the meaning given in the *Copyright Act 1968* (Cth).

Parties means PRIME or the Customer and Party means either PRIME or the Customer.

Personal Information has the meaning given in the *Privacy Act 1988* (Cth).

Personnel means, in relation to a Party, that Party's directors, officers, employees, agents and individual contractors and includes directors, officers, employees, agents and individual contractors of that Party's subcontractors.

Privacy Law means the *Privacy Act 1988* (Cth) and any other applicable privacy legislation, common law privacy obligations and any industry code (whether voluntary or not) by which a Party is bound.

Related Body Corporate has the meaning in section 50 of the *Corporations Act 2001* (Cth).

Release means an update to or version of the Software which has been produced primarily to provide an extension, alteration, improvement or additional functionality to the Services.

Services means the services which PRIME is required to provide to the Customer under this Agreement as specified in Schedule 2.

Software means the computer programs referred including all Updates and Releases which is or are utilised to provide the Services.

Subscription means the Customer's subscription to the Services for the period stated in Schedule 1 on the terms of this Agreement.

Support Service Hours means the hours from 08.00 to 18.00 Australian Eastern Standard Time on each Business Day.

Support Services means the services set out in item 2 of Schedule 3.

Term has the meaning in clause 3.1.

Update means an update to or version of the Software which has been produced primarily to overcome Defects (even if it also extends or improves the functionality of the Services).

Users means those individuals authorised by the Customer or on the Customer's behalf to use the Services.

Virus means any file, program or program code designed to attach itself to, hide itself within or send instructions to, other files, computers, programs or program code in order to cause malfunctions, errors or loss or corruption of data.

1.2 Construction

Unless expressed to the contrary, in this document:

- (a) words in the singular include the plural and vice versa;
- (b) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (c) "includes" means includes without limitation;
- (d) no rule of construction will apply to a clause to the disadvantage of a Party merely because that Party drafted or put forward the clause or would otherwise benefit from it;
- (e) a reference to:
 - (i) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
 - (ii) a person includes the person's legal personal representatives, successors, assigns and persons substituted by novation;
 - (iii) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;
 - (iv) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;
 - (v) a right includes a benefit, remedy, discretion or power;
 - (vi) time is to local time in Brisbane;
 - (vii) "\$" or "dollars" is a reference to Australian currency;
 - (viii) this or any other document includes the document as novated, varied or replaced and despite any change in the identity of the Parties;
 - (ix) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes electronic mail and fax transmissions;
 - (x) this document includes all schedules and annexures to it; and
 - (xi) a clause, schedule or annexure is a reference to a clause, schedule or annexure, as the case may be, of this document;
- (f) except for Services and other obligations which are required to be performed by PRIME outside Business Days, if the date on or by which any act must be done under this Agreement is not a Business Day, the act must be done on or by the next Business Day; and

- (g) where time is to be calculated by reference to a day or event, that day or the day of that event is excluded.

1.3 Headings

Headings do not affect the interpretation of this document.

1.4 Structure and priority

- (a) The agreement evidenced by this document consists of:
 - (i) the terms and conditions in the body of this document;
 - (ii) the schedules to this document;
 - (iii) any attachments to the schedules; and
 - (iv) any other documents referred to in, or incorporated by reference into, the documents referenced in clause 1.4(a) above,

(this **Agreement**).
- (b) If there is any inconsistency between the parts of this Agreement, the part listed earlier prevails to the extent of the inconsistency.

2. Provision of Services

2.1 Licence

- (a) PRIME grants to the Customer for the Term an irrevocable, non-exclusive licence for the Customer to access and use, and for its Personnel and Users to access and use, the Services for the Customer's internal business purposes.
- (b) The number of Users capable of being granted access and use of the Services will be limited to the number of licence has been purchased by the Customer, as set out in item 6 of Schedule 1.
- (c) Except as otherwise permitted by this Agreement or by Law, the Customer must not:
 - (i) make the programs or materials resulting from the Services available in any manner to any third party for use in the third party's business operations (unless such access is expressly permitted for the specific program license or materials from the Services);
 - (ii) modify, make derivative works of, disassemble, reverse compile, or reverse engineer any part of the Services; or
 - (iii) license, sell, rent, lease, transfer, assign, distribute, display, host, outsource, disclose, or otherwise commercially exploit or make the Services available to any third party other than as expressly permitted under the terms of this Agreement.

2.2 No Warranty - Limitations of Services

The Customer acknowledges that the nature of the Services and its outputs relies on the quality and accuracy of the Customer Data. As a result PRIME does not warrant that the Services and any analysis

output produced by the Services, including any results or outcomes produced by the Quality Assurance function, will be suitable for the purpose intended by the Customer.

For example if the Customer inputs a process which does not reflect the actual process or the Customer Data input by the Customer contains errors, then the Services will not be able provide accurate analysis of that process.

2.3 Availability

PRIME will use commercially reasonable efforts to make the Services available in accordance with PRIME's commercial proposal to the Customer and per the service levels of PRIME's cloud provider, being Microsoft – AZURE as at the date of this Agreement.

2.4 Maintenance

- (a) PRIME may perform scheduled maintenance on the Services from time to time.
- (b) In addition, PRIME may in its sole discretion perform emergency or unscheduled maintenance. These maintenance activities may cause interruptions to access to the Services.
- (c) PRIME will use reasonable efforts to inform the Customer in advance of any such Service.

3. Term

3.1 Agreement Term

This Agreement commences on the Commencement Date and continues for the Implementation Period, Initial Term and any Further Terms (if any) elected pursuant to clause 3.2 ("**Term**"), unless terminated earlier in accordance with the terms and conditions of this Agreement.

3.2 Extending the Term

The Customer may extend the Agreement by one or more Further Terms on written notice to PRIME, such notice to be given at least 30 days prior to the end of the Initial Term or the then current Further Term (as applicable).

4. Service Trial

4.1 Free Trial Period

- (a) PRIME may offer the Services to the Customer as a trial at no charge for a period of time ("**Free Trial Period**").
- (b) Subject to clause 4.1(d), the parties acknowledge that the terms and conditions of this Agreement fully apply to the parties and the Services provided during the Free Trial Period.
- (c) PRIME may modify or terminate the Customer's right to use the Services during the Free Trial Period at any time and for any reason in its sole discretion, without liability to PRIME.
- (d) To the maximum extent permitted by law, PRIME disclaims all obligations or liabilities with respect to the Services provided during any Free Trial Period, including any support, warranty and indemnity obligations.

4.2 Trial Conditions

PRIME may include such conditions to the Customer's use of the Services during the Free Trial Period including:

- (a) the Customer demonstrating it has a legitimate interest in using the Services to the satisfaction of PRIME, in its sole discretion;
- (b) the Customer attending training provided by PRIME in relation to use of the Software; and
- (c) the Customer completing the demonstration for the Services provided by PRIME.

5. Implementation

5.1 Implementation

PRIME will Implement the Services in accordance with Item 1 of Schedule 3.

5.2 Transitional obligations

During the Implementation Period:

- (a) PRIME must perform its obligations in a manner which minimises any disruption to the Customer's business; and
- (b) if PRIME anticipates that any part of the Customer's Systems might not be available for use by the Customer as reasonably required by the Customer, then PRIME must provide reasonable notice to the Customer prior to that unavailability.

6. Support services

6.1 Services

During the Term, PRIME must:

- (a) remedy any Defects; and
- (b) provide the Support Services.

6.2 Updates and Releases

- (a) During the Term, PRIME will make available to the Customer:
 - (i) any Updates which become available relevant to the edition purchased, at no additional charge; and
 - (ii) any Releases relevant to the edition purchased at no additional charge unless otherwise specified in Schedule 4.
- (b) If requested by the Customer, PRIME will implement or assist in the implementation of any Update or Release on the Customer Systems.

7. Other PRIME obligations

7.1 Compliance

- (a) PRIME must (and must ensure that PRIME Personnel) at all times in the performance of its obligations under this Agreement comply, and must ensure the Services comply, with all applicable Laws.
- (b) PRIME must obtain and maintain any licences, authorisations, consents, approvals and permits required by applicable Laws to perform its obligations under this Agreement.

8. Customer obligations

8.1 General Obligations

- (a) The Customer will cooperate fully and act reasonably and in good faith to assist in the timely progress and fulfilment of PRIME's obligations pursuant to this Agreement including, but not limited to:
 - (i) not unreasonably withholding or delaying the provision of any agreement, acceptance, information, assistance or other resource required by PRIME;
 - (ii) providing PRIME, in a timely manner, with all Customer Data and co-operation by its personnel reasonably required by PRIME to deliver the Services;
 - (iii) assigning specific managerial, technical and user personnel as reasonably requested by PRIME to participate in essential activities. The Customer will ensure that all such personnel have the appropriate skills and experience to perform their functions.

8.2 Customer Systems

- (a) The Customer must use the necessary systems, as nominated by PRIME from time to time, in order to access and use the Software.
- (b) The Customer will permit PRIME access to and use of the Customer Systems to the extent required for PRIME to perform its obligations under this Agreement. PRIME must only access and use the Customer Systems as necessary to perform its obligations under this Agreement and for no other purpose.

8.3 Customer's Responsibility for its Users

- (a) The Customer is responsible for:
 - (i) each of its User's compliance with this Agreement;
 - (ii) identifying and authenticating all Users, for approving access by such Users to the Services, for controlling against unauthorised access by Users, and for maintaining the confidentiality of usernames, passwords and account information;
 - (iii) all activities that occur under the Customer's and the Customer's User's usernames, passwords or accounts or as a result of the Customer or the Customer's Users access to the Services, and agrees to notify PRIME immediately of any unauthorised use;
 - (iv) granting to its Users permissions to access various functionality of the Services; and

- (v) all of the Customer's Data inputted into the Service by Users as though it were uploaded by the Customer.
- (b) PRIME is not responsible for any harm caused by Users, including individuals who were not authorised to have access to the Services or permission to access certain functionality of the Services but who were able to gain access because usernames, passwords or accounts were not terminated on a timely basis in the Customer's local identity management infrastructure or the Customer's local computers.

8.4 Service Access Conditions

The Customer will not:

- (a) attempt to undermine the security or integrity of PRIME's computing systems or networks or, where the Services are hosted by a third party, that third party's computing systems and networks;
- (b) use, or misuse, the Services in any way which may impair the functionality of the Services, or other systems used to deliver the Services or impair the ability of any other User to use the Services;
- (c) attempt to gain unauthorised access to any materials other than those to which the Customer has been given express permission to access or to the computer system on which the Services are hosted; and
- (d) transmit any files that may damage any other person's computing devices or software, content that may be offensive, or material or Customer Data in violation of any law.

9. Intellectual Property

9.1 General

Except as expressly set out in this clause 9, the Parties agree that nothing in this Agreement transfers ownership in any Intellectual Property Rights of a Party. For clarity, as between the Parties:

- (a) the Customer will own all Intellectual Property Rights in and to any materials provided by or on behalf of the Customer to PRIME in connection with this Agreement, including the Customer Data, as well as any modifications to such materials (**the Customer Materials**); and
- (b) PRIME will own all Intellectual Property Rights in the Services and to any materials provided by PRIME as part of the Services under this Agreement (excluding third party software and materials), as well as any modifications or improvements to such materials (**PRIME Materials**).

9.2 Derived Data

PRIME has the right to collect and analyse data and other information relating to the provision, use and performance of various aspects of the Services and related systems and technologies (including, without limitation, information concerning Customer Data and data derived therefrom), and PRIME will be free (during and after the Term) to:

- (a) use such information and data to improve and enhance the Services and for other development, diagnostic and corrective purposes in connection with the Services and other PRIME offerings; and

- (b) disclose, use, exploit and/or commercialise such data solely in aggregate or other de-identified form in connection with its business.

9.3 Assignment and licences

- (a) Without limiting the licence under this clause 9.3:
 - (i) PRIME assigns to the Customer all Intellectual Property Rights in and to any of the Customer Materials, and any modifications or enhancements to the Customer Materials, immediately from creation;
 - (ii) the Customer assigns to PRIME all Intellectual Property Rights in and to any PRIME Materials, and any modifications or enhancements to PRIME Materials, immediately from creation;
 - (iii) the Customer grants PRIME a non-exclusive, irrevocable, non-transferable, royalty-free licence during the Term to use the Intellectual Property Rights in the Customer Materials solely to the extent directly necessary for the purpose of performing its obligations under this Agreement; and
 - (iv) PRIME grants the Customer a non-exclusive, irrevocable, non-transferable, royalty-free licence during the Term to use and exploit the PRIME Materials in order to receive, use and otherwise enjoy the full benefit of the Services.
- (b) Each Party undertakes to do all acts at its cost as may be necessary to give effect to the assignments in this clause 9.3 including by executing any required documents or effecting any required registrations.

10. Customer Data

10.1 Security of the Customer Data

- (a) PRIME must use reasonable security measures to protect the Customer Data against unauthorised access, use or disclosure.
- (b) PRIME must:
 - (i) establish and maintain safeguards against the destruction, loss, alteration or misuse of the Customer Data in the possession of PRIME which are no less rigorous than the most stringent of:
 - (A) those maintained by PRIME for its own information of a similar nature (as updated from time to time); and
 - (B) security measures adopted under ISO 27001; and
 - (C) any systems or data security requirements required by applicable law;
 - (ii) provide and maintain up-to-date security, utilising security technologies, and techniques in accordance with industry best practices, with respect to the Services and PRIME's systems, networks and facilities, to prevent unauthorised access or 'hacking' of its databases, systems and networks and the Customer Data.

10.2 Return or destruction

- (a) Subject to clause 21.2, PRIME must promptly return the Customer Data to the Customer (or destroy it so that it is irretrievable, if requested by the Customer):
 - (i) if required by the Customer; or
 - (ii) in accordance with the Customer's data retention and destruction requirements notified to PRIME in writing from time to time.
- (b) Unless otherwise agreed between the parties, PRIME is under no obligation to retain or hold the Customer Data for any period of time after termination of this Agreement.

10.3 Customer Systems

If PRIME has access to the Customer Systems under this Agreement, PRIME must take all reasonable measures in accordance with currently accepted commercial practice and applicable legislation to protect against a Virus entering the Customer Systems.

10.4 Disclaimer and Back-ups

- (a) PRIME adheres to its best practice policies and procedures to prevent data loss, including a data back-up regime, but does not make any guarantees that there will be no loss of Customer Data.
- (b) PRIME expressly excludes liability for any loss or corruption of Customer Data, including circumstances where Customer Data has been over-written by a User.

11. Confidentiality

11.1 Obligation to keep information confidential

- (a) Each Party agrees to keep confidential, and not to use or disclose, other than as permitted in this Agreement, any Confidential Information of the other Party.
- (b) Each Party agrees to take all prudent steps, including maintaining effective security measures, to protect the Confidential Information of the other Party from unauthorised access, use, copying or disclosure.

11.2 Exceptions

The obligations and undertakings under this clause 11 do not apply to any Confidential Information which is:

- (a) in the public domain otherwise than as a result of a breach of this Agreement or any other obligation of confidence;
- (b) independently developed by the recipient; or
- (c) already known by the recipient, independently of its involvement in this Agreement or its interaction with the other Party and free of any obligation of confidence.

11.3 Permitted Disclosures

- (a) Each Party may disclose the Confidential Information of the other Party only on a "need-to-know" and confidential basis:

- (i) if it is required to make such a disclosure by applicable Law or the rules of any stock exchange upon which the recipient's securities are listed, provided that the recipient:
 - (A) discloses only the minimum amount of Confidential Information required to satisfy the relevant Law or stock exchange rules; and
 - (B) prior to such a disclosure, provides a reasonable amount of written notice to the other Party;
 - (ii) to those of its Personnel who have a need to know the Confidential Information to enable the Party to exercise its rights and comply with its obligations under this Agreement;
 - (iii) to the recipient's financial, legal or other professional advisors for the purpose of obtaining advice in relation to the performance of its obligations under this Agreement; or
 - (iv) with prior written consent of the other Party.
- (b) Each Party who discloses Confidential Information of the other Party under clause 11.3 must ensure that the information is kept confidential by the recipients.

11.4 Remedies for breach

- (a) Each Party acknowledges that the value of the other Party's Confidential Information is such that an award of damages or an account of profits may not be adequate compensation for breach of this clause 11.
- (b) Each Party acknowledges that, without compromising its rights to seek damages or receive any other form of relief in the event of a breach of this clause 11, a Party may seek and obtain an ex-parte interlocutory injunction or final injunction to prohibit or restrain the other Party or its Personnel from any breach or threatened breach of this clause 11.

12. Privacy

12.1 Privacy Laws

PRIME must comply with all Privacy Laws in relation to any Personal Information disclosed to or collected by PRIME in the course of performing this Agreement (**Contract Personal Information**) and must only use and disclose the Contract Personal Information for the purposes of and in accordance with this Agreement.

12.2 PRIME Privacy Obligations

- (a) PRIME agrees:
 - (i) not do any act or engage in any practice that would breach a Privacy Law;
 - (ii) not do any act or engage in any practice, which if done or engaged in by the Customer, would cause the Customer to breach a Privacy Law;
 - (iii) to take all reasonable steps to keep Contract Personal Information in PRIME's possession, custody or control secure against loss, destruction and unauthorised access, use, modification or disclosure;

- (iv) to immediately notify the Customer if PRIME becomes aware of a breach or possible breach of any Privacy Law in relation to the Contract Personal Information or the obligations contained in, or referred to in, this clause 12 by PRIME or any of its Personnel;
 - (v) to comply with any reasonable directions, guidelines, determinations or recommendations of the Customer in relation to security, use or disclosure of Contract Personal Information, to the extent that they are not inconsistent with the requirements of a Privacy Law; and
 - (vi) to ensure that any of its Personnel who are required to deal with Contract Personal Information for the purposes of this Agreement are made aware of the obligations of PRIME.
- (b) PRIME must, if it receives a request from an individual for access to, alteration, correction or deletion of Contact Personal Information, promptly inform the Customer in writing of the request. PRIME must comply with any reasonable and lawful direction issued by the Customer in respect of any such request.

13. Fees and payment

13.1 Fees

In consideration for the provision of the Services to the Customer in accordance with this Agreement, the Customer must pay PRIME the Fees specified in **the proposal** in accordance with this clause 13.

13.2 Issue of invoices

- (a) If Schedule 4 sets out a timetable for payment of the Fees or specifies payment milestones, PRIME may invoice the Customer for the Fees at the times specified in that timetable or upon the achievement of the specified payment milestones.
- (b) Subject to clause 13.2(a), if Schedule 4 specifies Fees for a particular Service, PRIME may invoice the Customer for the Fees when PRIME has completed the performance of that Service.
- (c) If Schedule 4 does not do any of the things described in clauses 13.2(a) or (b), PRIME may invoice the Customer for the Fees monthly in advance.

13.3 Payment

Unless otherwise agreed by the Parties, the Customer must pay all invoices within 30 days of the date of the invoice.

14. Taxes

14.1 GST Definitions

Terms used in this clause not defined elsewhere in this Agreement have the meanings given to them in the GST Act.

14.2 Monetary amounts are GST inclusive

Unless otherwise expressly stated, all monetary consideration to be provided under or in accordance with this Agreement is inclusive of GST.

14.3 GST exclusive and non-monetary supplies

To the extent that the consideration to be provided for any supply made under or in accordance with this Agreement is:

- (a) expressly stated to be exclusive of GST; or
- (b) non-monetary,

the recipient of the taxable supply must pay to PRIME (at the same time as payment for the taxable supply is required to be made in accordance with this Agreement) an additional amount equal to the GST payable in respect of the consideration to be provided under (a) or (b), as appropriate, for the taxable supply.

14.4 Reimbursable expenses

If this Agreement requires a Party to pay for, reimburse or contribute to any expense, loss or outgoing (**reimbursable expense**) suffered or incurred by another Party, the amount required to be paid, reimbursed or contributed by the first Party will be the sum of the amount of the reimbursable expense net of input tax credits (if any) to which the other Party is entitled in respect of the reimbursable expense and any GST payable by the other Party.

14.5 Other taxes, duties and charges

Except as set out in this clause 14 in respect of GST, all taxes, duties and charges imposed or levied in Australia or overseas in connection with this Agreement will be borne by the Customer and will not cause any increase to the Fees.

15. Warranties

15.1 General warranties of Parties

Each Party warrants at the Commencement Date and throughout the Term that:

- (a) it has the legal right and power to enter into this Agreement and to perform its obligations under the terms of this Agreement;
- (b) the execution, delivery and performance of this Agreement by it has been duly and validly authorised by all necessary corporate action on its part;
- (c) this Agreement is a valid and binding agreement of it, enforceable in accordance with its terms;
- (d) the execution and performance of this Agreement by it does not, and the other transactions contemplated by this Agreement do not, violate or conflict with or result in a breach of or constitute a default under its constitution; and
- (e) it has all necessary rights, licences, permits and consents to enter into and to perform this Agreement.
- (f) the use or other exploitation by either Party of the other Party's materials, goods or services under this Agreement will not infringe the rights of any third party (including Intellectual Property Rights and Moral Rights) or breach any Law;
- (g) prior to the Commencement Date, it has advised the other Party in writing of any third party consents and licences to third party software and materials which either PRIME or the

Customer must obtain in order to complete their respective obligations under this Agreement.

15.2 PRIME warranties

- (a) PRIME represents and warrants to the Customer as at the date of this Agreement and at all times during the Term that:
 - (i) it is entitled to, and has the right and power to, supply the Services to the Customer;
 - (ii) it and each of its Personnel will at all times be suitably qualified and experienced and have the level of skill, knowledge, experience and ability required to perform this Agreement, and will perform the Services with due care and skill and in a professional manner;
 - (iii) it has and will make available to the Customer the necessary resources to provide or perform the Services in accordance with this Agreement;
 - (iv) it will provide all Services in accordance with all applicable Laws;
 - (v) it has the right to grant the licenses and effect the assignments as set out in this Agreement;
- (b) Except as otherwise set out in this Agreement, PRIME does not warrant that the Services will be error-free or will operate without interruption or will perform in the manner intended by the Customer or will meet the Customer's requirements.
- (c) Before claiming a breach of a warranty provided by PRIME, the Customer must first notify PRIME in writing about the breach and provide PRIME with all the information it has, in written or electronic form, about the breach, so that PRIME can attempt to rectify the breach.

16. Changes

16.1 Change in Scope - Variations

- (a) If the Customer directs a variation to the Services which PRIME considers changes the scope of the Services, PRIME shall advise the Customer, stating whether PRIME agrees to comply with the direction and, if so, a fee proposal for carrying out the variation, including details of any varied Fees.
- (b) If the Customer accepts PRIME's proposal, PRIME shall effect the variation in accordance with that proposal.

17. Liability

17.1 Limitation of liability

Subject to 17.2, and to the extent permitted by Law, the Parties agree that:

- (a) the maximum cumulative liability of a Party for Loss sustained by the other Party under or in connection with this Agreement, whether for breach of contract, in tort (including negligence), under statute or on any other basis, is limited to the amount of Fees paid by the Customer for the Services in the 12 month period up to the date of the Loss.

- (b) neither Party will be liable to the other Party for any Consequential Loss.

17.2 No limitation

Nothing in this Agreement limits or excludes the liability of a Party for:

- (a) repudiation or wilful breach of this Agreement;
- (b) personal injury or death, or damage to or loss of real or personal property;
- (c) breach of clause 11 (Confidentiality) or clause 12 (Privacy);
- (d) acts of fraud or wilful misconduct;
- (e) acts in breach of an applicable Law related to the provision or acquisition of the Services; or
- (f) any Loss which is covered by an indemnity given by a Party under this Agreement.

18. Indemnities

18.1 Mutual Indemnity

- (a) If use by PRIME of Intellectual Property Rights received from the Customer or the Customer's agents results in PRIME being subject to a claim for infringement of any Intellectual Property Right of a third party, the Customer agrees to indemnify PRIME against any claims, demands, damages, costs and expenses made against or suffered by PRIME as a result of any such claim or action.
- (b) If use by the Customer of the Services, results in the Customer being subject to a claim for infringement of any Intellectual Property Right of a third party, PRIME agrees to indemnify the Customer against any claims, demands, damages, costs and expenses made against or suffered by the Customer as a result of any such claim or action.

18.2 Proportionate reduction

Each party's liability to indemnify the other party under clause 18.1 will be reduced proportionally to the extent that any negligent act or omission of the indemnified party contributed to the Loss.

19. Termination

19.1 Expiry of Term

The Agreement will automatically terminate when the Subscription expires.

19.2 Termination without cause

- (a) The Customer may terminate this Agreement at any time without cause and without liability (except as provided under clause 19.2(b)) by giving the other party 60 days written notice.
- (b) If the Customer terminates this Agreement under clause 19.2(a), the Customer will pay PRIME all amounts outstanding up to the date of termination. The Customer acknowledges that termination under this clause will not entitle it to any refund of Fees paid in advance.

19.3 Termination for breach

If:

- (a) a Party commits a material breach of this agreement and fails to remedy that breach within 30 days of receiving notice from the other party requiring it to do so;
- (b) clause 19.4(b) applies; or
- (c) an Insolvency Event occurs in relation to a Party,

then the other party may terminate this Agreement by written notice to that party, in which case this Agreement will terminate immediately.

19.4 Suspension

- (a) If the Customer does not make payment of the Fees as set out in this Agreement then PRIME may suspend the Customer and the Customer's Users' access to the Services until payment in full has been made to PRIME.
- (b) If any Fees are more than 60 days overdue, without limiting PRIME's rights under clause 19.4(a), PRIME is entitled to terminate this Agreement.

19.5 Consequences of termination

- (a) Upon termination or expiry of this Agreement, each Party (**receiving Party**) must, if requested by the other Party, promptly return to the other Party (or if requested, permanently destroy and certify that it has done so) all copies of the other Party's Confidential Information in the power, possession or control of the receiving Party or its Personnel.
- (b) Clauses 2.1, 9, 11, 12, 15, 17, 19.5 and 24 survive the termination or expiry of this Agreement.

20. Transition Out of the Services

20.1 Data Retrieval Methods

- (a) The Customer may retrieve or remove its Customer Data from the Services at any time by using tools available within the Services. PRIME does not warrant that the format of the Customer Data will be compatible with any software.
- (b) If the Customer wishes to retrieve or remove Customer Data in a format other than what is available in the Services, then the Customer may submit a written request to PRIME setting out the Customer's preferences and requirements. PRIME will endeavour to provide the Customer with a "Transition Out Plan" or similar proposal together with a fee proposal promptly after receipt of your request.

20.2 Retrieval After Term or Termination

- (a) At the end of Term or upon Termination, the Customer has 14 days from that date (the "**Retrieval Period**") to:
 - (i) remove or export Customer Data from the Services by using the available tools within the Services; or

- (ii) if the Customer elects, appoint PRIME to remove Customer Data in accordance with the process set out in clause 20.1(b).
- (b) At the expiry of the Retrieval Period, PRIME may delete Customer Data from the Services.
- (c) Access to Customer Data will be subject to the terms and conditions of this Agreement, notwithstanding the fact that the Agreement has been terminated.

21. Force Majeure

21.1 Force Majeure Event

- (a) PRIME must immediately notify the Customer if its performance of its obligations under this Agreement is affected by a Force Majeure Event.
- (b) PRIME will be relieved from performance of its obligations under this Agreement to the extent that it is unable to so perform due to a Force Majeure Event provided that:
 - (i) such failure to perform could not have been prevented by reasonable precautions or could not have been reasonably circumvented by the use of alternative sources, workarounds or other means; and
 - (ii) PRIME otherwise complies with its obligations under this clause 21.

21.2 Obligations on Party claiming Force Majeure

If PRIME is prevented from performing any of its obligations under this Agreement by a Force Majeure Event, it must:

- (a) continue to perform all other unaffected obligations in accordance with this Agreement;
- (b) use best endeavours to continue to perform the affected obligations, whether by way of a workaround or other methods agreed with the Customer;
- (c) use best endeavours to overcome the effects of the Force Majeure Event as soon as possible; and
- (d) notify the Customer as soon as it is no longer affected by the Force Majeure Event.

21.3 No obligation to pay Fees

If PRIME is unable to supply any Services in accordance with this Agreement as a result of a Force Majeure Event, the Customer has no obligation to pay the Fees applicable to the affected Services until PRIME supplies them in accordance with this Agreement.

22. Notices

22.1 Giving a notice

- (a) In addition to any other lawful means, a notice, demand, certification, process or other communication relating to this document may be given by being:
 - (i) personally delivered;
 - (ii) left at the Party's current address for notices;

- (iii) sent to the Party's current address for notices by pre-paid ordinary mail or, if the address is outside Australia, by pre-paid airmail; or
 - (iv) sent by email to the Party's current email address for notices,
- (b) All such notices or communications shall be deemed to have been duly given or made:
- (i) when delivered by hand; or
 - (ii) 3 Business Days after being deposited in the mail with postage prepaid; or
 - (iii) if sent by email, on receipt of a delivery confirmation report by the sender, which records the time that the email was delivered to the addressee's email address.

22.2 Particulars for delivery of notices

- (a) The particulars for delivery of notices are initially as set out in Schedule 1.
- (b) Each Party may change its particulars for delivery of notices by notice to the other Party.

23. Dispute Resolution

- (a) Before resorting to external dispute resolution mechanisms the Parties will use their best endeavours to resolve any dispute, arising under or in connection with this Agreement, between themselves (including by referring the matter to any person who may have authority to intervene and direct some form of resolution).
- (b) If a dispute has not been resolved by the Parties within 5 Business Days of the dispute arising, a Party may give written notice to the other Party that they are in dispute. At the expiration of 5 Business Days from the date of service of the notice, unless the dispute has otherwise settled, the dispute must be submitted to the dispute resolution process described below in clause 23(c).
- (c) Any dispute submitted to the dispute resolution process will be dealt with in the following manner:
 - (i) the dispute will be referred initially to the Parties' respective representatives who are responsible for the management of this Agreement. These representatives will attempt to settle the dispute within 5 Business Days of the referral;
 - (ii) if the Parties' representatives are unable to resolve the dispute within those 5 Business Days, or other such period as is agreed, the dispute will be referred to the Parties' respective senior management; and
 - (iii) if the dispute remains unresolved after a further 5 Business Days, or other such period as is agreed, the dispute will be referred to arbitration in accordance with the procedure described below in clause 23(d).
- (d) Any dispute which cannot be settled by negotiation between the Parties or their representatives within the time period specified (or other period as agreed) will be submitted to final and binding arbitration in Brisbane, Queensland to be administered by the Australian Commercial Disputes Centre (ACDC). The arbitration will be conducted in accordance with the ACDC Rules for Arbitration which are operating at the time the dispute is referred to ACDC and which terms are hereby deemed incorporated into this Agreement.

- (e) Nothing in this clause 23 will preclude a Party from taking immediate steps to seek injunctive relief, specific performance and/or declaratory relief before the appropriate court within the State of Queensland.
- (f) Notwithstanding the existence of a dispute, each Party will continue to perform its obligations under this Agreement (except where the dispute relates to payment of an invoice in which case the Customer will be entitled to withhold payment of the disputed component of that invoice until after such time as the dispute has been resolved).
- (g) The Parties will hold confidential, unless otherwise required by Law or at the direction of a court of competent jurisdiction, all information relating to the subject matter of the dispute as disclosed during or for the purposes of dispute resolution. All information disclosed during or for the purposes of the dispute resolution process is provided on a “without prejudice” basis unless the Parties otherwise agree.

24. General Provisions

24.1 Legal costs

Except as expressly stated otherwise in this Agreement, each Party must pay its own legal and other costs and expenses of negotiating, preparing, executing and performing its obligations under this Agreement.

24.2 Amendment

This Agreement may only be varied or replaced by a document executed by the Parties.

24.3 Waiver and exercise of rights

- (a) A single or partial exercise or waiver by a Party of a right relating to this Agreement does not prevent any other exercise of that right or the exercise of any other right.
- (b) A Party is not liable for any loss of the other Party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.
- (c) The rights of a party are cumulative and are in addition to any other rights of that Party.

24.4 Consents

Except as expressly stated otherwise in this Agreement, a Party may conditionally or unconditionally give or withhold any consent to be given under this Agreement and is not obliged to give its reasons for doing so.

24.5 Further steps

Each Party must promptly do whatever the other Party reasonably requires of it to give effect to this Agreement and to perform its obligations under it.

24.6 Customer Reference

The Customer agrees:

- (a) that PRIME may identify the Customer as a recipient of services and use the Customer’s logo in sales presentations, marketing materials, press releases and other similar activities; and

- (b) to develop a customer profile for use by PRIME to help future PRIME clients better understand PRIME's solutions.

24.7 Governing law and jurisdiction

- (a) This document is governed by and is to be construed in accordance with the laws applicable in Queensland.
- (b) Each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in Queensland and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

24.8 Assignment

A Party must not assign or novate this Agreement (in whole or part) or any other right or obligation under it to any other person without the other Party's prior written consent. Any purported dealing in breach of this clause is of no effect.

24.9 Liability

An obligation of two or more persons binds them separately and together.

24.10 Counterparts

This document may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.

24.11 Entire understanding

- (a) This document and any proposal cross referred to in this Agreement contain the entire understanding between the Parties as to the subject matter of this Agreement.
- (b) All previous negotiations, understandings, representations, warranties, memoranda or commitments concerning the subject matter of this Agreement are merged in and superseded by this Agreement and are of no effect. No Party is liable to any other Party in respect of those matters.
- (c) No oral explanation or information provided by any Party to another affects the meaning or interpretation of this Agreement or constitutes any collateral agreement, warranty or understanding between any of the Parties.

24.12 Relationship of Parties

This Agreement is not intended to create a partnership, joint venture or agency relationship between the Parties.

24.13 Time

Time is of the essence in relation to PRIME's obligations under this Agreement.

24.14 Severability

- (a) Subject to clause 24.14(b), if a provision of this document is illegal or unenforceable in any relevant jurisdiction, it may be severed for the purposes of that jurisdiction without affecting the enforceability of the other provisions of this document.

- (b) Clause 24.14(a) does not apply if severing the provision:
 - (i) materially alters the:
 - (A) scope and nature of this document; or
 - (B) the relative commercial or financial positions of the Parties; or
 - (ii) would be contrary to public policy.

SCHEDULE 1 - AGREEMENT DETAILS

Item	Details
1. PRIME notice details	Mark Khabe Co-Founder PRIME BPM mkhabe@primebpm.com
2. Commencement Date	Proposal Signature Date
3. Initial Term	As per the signed proposal
4. Expiry of Subscription	At the end of the initial term
5. License Edition	As per the signed proposal
6. No. of Licences	As per the signed proposal

SCHEDULE 2 - SERVICES

1. Services

Detail the Services which PRIME is required to provide to the Customer under this Agreement, except for the Implementation services and support services, which are described in greater particularity below.

1.1 Business Process Mapping

This service assists the Customer with documenting its business processes by considering the tasks completed by individuals, company documents and systems used by the Customer and assessing decisions made by executing these processes.

The Customer can also capture information such as daily tasks, value provided by each task to the Customer or its clients, business rules and key performance indicators. Tracking this information creates a recognised procedure and identifies compliance requirements and any issues or opportunities for the Customer.

1.2 Business process analysis

This service assesses captured information to undertake a performance analysis and understand any bottlenecks. Based on this information, an analysis is conducted into the ways the Customer may improve its business processes.

The value of this aspect of the Service is dependent on the quality of data inputted by the Customer.

PRIME has built in a statistical calculation engine that will give the Customer an approximation of the annual time wasted by performing non value added activities. This function will provide the Customer with further information about how much time and money the Customer spends in performing non-value added activities.

1.3 Business process Improvement

This service tracks any improvements identified through the analysis process. The tool will help create tasks against each improvement and track the progress to ensure the improvements are addressed and implemented within the organisation to realise the benefits.

1.4 Services NOT included:

The following services are specifically excluded from the Services offered by PRIME under this Agreement:

- (a) Solving of problems which are caused by inappropriate or improper usage of the Services;
- (b) User support outside of the Support Service Hours;
- (c) Customised programming;
- (d) On-site services;
- (e) User-Support regarding the interaction/integration of the Service with software of third parties that is not the object of this Agreement;
- (f) Development of the Customer's specific scripts; and

- (g) Assistance regarding modelling questions.

2. Software

The Software provides the Services through the following editions (which may be updated or amended from time to time by PRIME in its sole discretion).

2.1 PRIME Modeller

This edition allows Customer to undertake Business Process Mapping as defined in Schedule 2 section 1.1

2.2 PRIME Analyser

This edition allows Customer to undertake Business Process Mapping and Analysis as defined in Schedule 2 Section 1.1 and 1.2

2.3 PRIME Improver

This edition allows Customer to undertake Business Process Mapping, Analysis and Improvement as defined in Schedule 2 Section 1.1, 1.2 and 1.3

3. User Authorisations

3.1 User Permission

The Customer is responsible for allocating authorisation and permissions within the Services in respect of the Licences purchased.

3.2 User Types

The User access levels are classified as follows:

- (a) Users with administration access (**Administrators**) have full and complete access to the Software and can make any administrative changes they consider necessary.
- (b) Users with editing access (**Editors**) have limited access to the Software, and may edit any information, processes or Customer Data through the Software. Any edits made by the Editors are to be approved by Approvers.
- (c) Users with approval access (**Approvers**) have authority to approve any edits or changes made to any information, processes or Customer Data through the Software.
- (d) Users with view access (**Viewers**) have authority to view, through the Software, any changes to any information, processes or Customer Data.

SCHEDULE 3 - IMPLEMENTATION & SUPPORT

1. Implementation services and Implementation Plan

PRIME will provide Product Training, Coaching, Consulting, Product Set up services as set out in the proposal

2. Support services

The support is provided to Customer through below media

(a) Online chat

(b) Email – prime@primebpm.com

(c) Telephone

Every single request chat/ email is automatically pushed in to our Ticketing system – which then follows through a cycle starting with allocation of priorities all the way to closing these tickets.

(d) PRIME will address the functional product related queries with maximum 24 hours turnaround time

(e) PRIME will address any technical or data backup related queries with maximum 48 hours turnaround time

PRIME endeavours to address any product maintenance related activities out of business hours. However, for any reason if the maintenance requires more time, PRIME will ensure that the maximum downtime will be 1 business day.

2.2 Support Services to be provided by PRIME during 08.00 to 18.00 hours.

2.3 In order for the Customer to receive Support Services, the Customer must:

(a) appoint a qualified contact person to interface with PRIME regarding the Support Services, and identify such person to PRIME in advance;

(b) ensure the qualified contact appointed by the Customer is trained in the use of the Services;

(c) provide PRIME with access to the information and system facilities reasonably necessary to provide the Support Services;

(d) follow the directions provided by the PRIME Support Centre to resolve technical problems;

(e) follow the operating instructions and procedures for the Services as provided by PRIME from time to time; and

(f) notify PRIME of any error or other problem in the Services using PRIME's problem reporting procedure (as advised to the Customer from time to time).

2.4 PRIME is under no obligation to provide Support Services for any problems caused by the Customer's negligence, abuse, misuse, or by any causes beyond PRIME's reasonable control.

SCHEDULE 4 - FEES

Customer is required to process the fees as per the proposal