

Terms and Conditions

The following terms and conditions (the "Terms") apply to the purchase of software ("Software"), goods and/or hardware (including any embedded Software) ("Hardware"), services ("Services"), collectively referred to herein as ("Product(s)") by Pramerica Systems Ireland Ltd., its parent companies and any of its and their associated companies within the meaning of s.432 of the Taxes Consolidation Act 1997 (together referred to as "Pramerica"), from you (the "Vendor") pursuant to the purchase order form ("Purchase Order"), with which these Terms are included or referenced. These Terms will supplement and amend any terms and conditions associated with Vendor's Product(s) ("Vendor Terms"). In the event and to the extent of a conflict of these Terms and the Vendor Terms (including future amendments to the Vendor Terms), these Terms will prevail. Notwithstanding the foregoing, if Pramerica has entered into a written agreement with Vendor, which has been signed by both parties, to acquire the Product(s) then said agreement will prevail and these Terms will have no force or effect.

1. License Grant: The license to any Software (including Software accompanying or embedded in the Product(s)) shall be perpetual, worldwide and irrevocable and includes, at no additional charge: (a) the right for customers and potential customers, agents, independent contractors, outsourcing companies, and third parties performing services for Pramerica to use, install and/or access the Product(s) for the benefit of Pramerica and for Pramerica to provide access to and/or use the Product(s) to process the work and data of subsidiaries and/or business units and former associated companies; and (b) the right to use the Software on any machine (irrespective of the level, model, size, power, number of processors, or class of computer) and to transfer the Software (if such Software is not embedded in Hardware) to another machine provided that Pramerica removes the Software from the initial machine within ninety (90) days of such transfer. Pramerica has the right to copy, use and run in place of any Software it acquires (such as the software version currently marketed by Vendor and purchased by Pramerica) the purchased version or prior versions of the same Software, provided that Pramerica does not exceed any limit on the maximum number of copies. Pramerica's use of each Software version is governed by the relevant agreement that applies to such version; as such agreement is amended by these Terms.

2. Warranties: Vendor hereby represents and warrants to Pramerica that, without prejudice and in addition to any conditions and warranties implied by law: (a) the Product(s) do not and will not infringe upon or violate any patent, copyright, or trade secret or other proprietary right of any third party; (b) the Product(s) will be in good working order and will perform in accordance with the Product(s)' specifications and/or documentation for as long as the Product(s) are under maintenance; (c) the Product(s) do not contain, and will not have introduced to them, any virus or any other contaminant, or disabling devices including, but not limited to, codes, commands or instructions that may have the effect or be used to access, alter, delete, damage or disable the Product(s), other software, Pramerica information or other Pramerica property; and (d) that Vendor has no right to audit Pramerica's use of the Software.

3. Confidentiality: "Confidential Information" includes, but is not limited to, all information related to the business of the Pramerica and third parties with whom it does business, which may be obtained by Vendor from any source as a result of the Purchase Order and these Terms, as well as any and all financial data; customer information or data; lists; statistics; programs; research; developments; employee and personnel data, information and records; information relating to products offered by Pramerica; planned or existing computer systems architecture and/or software, data and/or other information and materials of Pramerica and/or third parties with whom it does business; and information about Pramerica's premises. Vendor will regard and preserve as confidential all Confidential Information that may be obtained by Vendor from any source as a result of the Purchase Order and these Terms. Unless Pramerica consents in writing, Vendor will not use Confidential Information for any purpose other than performing the Services and will not disclose any information about the Purchase Order and these Terms to any person, firm or enterprise. After the Services are completed, Vendor will destroy all materials containing such information or return them to Pramerica. If Vendor is required to disclose Confidential Information by law or any court or other legal authority, or by subpoena or discovery in a lawsuit, Vendor may make those disclosures that its lawyers conclude are necessary to comply with the disclosure requirement. However, Vendor will give prompt written notice to Pramerica so that Pramerica may seek an appropriate remedy to prevent or limit the disclosure. Vendor acknowledges and agrees that the Purchase Order and these Terms do not authorize it to receive, access or use personal information related to Pramerica's customers or employees. In the event that Pramerica hereafter wishes to permit such access or use by Vendor, Vendor agrees to enter into an additional agreement governing the use of such personal information. In the event that Vendor is in material breach of these confidentiality provisions, it shall immediately advise Pramerica and take steps to remedy such breach, including but not limited to protecting customers and employees of Pramerica against the consequences of any disclosure or use of Confidential Information in violation of the Purchase Order and these Terms.

4. Electronic Delivery of Software: Vendor shall endeavor, at no additional charge and provided that there is no adverse effect on the service, as often as practicable to deliver any Software, including Software updates and documentation, by electronic means only.

5. Title: If Hardware is purchased pursuant to these Terms, Vendor shall arrange for and prepay transportation and insurance for such Hardware and any accompanying Product(s). All risk of loss or damage to the Hardware will be borne by Vendor until delivery to Pramerica's premises, F.O.B., and signed acknowledgment of its receipt by Pramerica. Title to the Hardware shall pass to Pramerica upon Pramerica's payment for the Hardware and the Purchase Order will operate as a bill of sale.

6. Fees: Pramerica agrees to pay any amounts owing for Services, Hardware or Software under a Purchase Order within forty-five (45) days following receipt of a correct invoice. Vendor must send all invoices to the "Bill To" address identified on the Purchase Order. Pramerica will pay Vendor reasonable and necessary, pre-approved out-of-pocket expenses incurred in connection with the Services. If travel is involved in connection with Services, Vendor must obtain Pramerica's prior written consent for Vendor's travel and entertainment expenses and comply with Pramerica's travel policies. Pramerica agrees to pay, in addition to the above described fees and expenses, any taxes levied by any government taxing authority as applicable to this transaction, other than (i) value added tax, (ii) any income tax liabilities, levies and Pay Related Social Insurance (PRSI) or (iii) other similar taxes and payments that are the responsibility of Vendor or third parties, including those arising under Part 2 and Part 5 of the Taxes Consolidation Act 1997. Vendor shall specifically state and bill all taxes as they occur on each invoice. This obligation becomes null and void upon receipt of tax-exempt organization documentation from Pramerica. Under no circumstances shall Pramerica be obligated to pay late fees.

7. Maintenance: Vendor agrees to provide maintenance and support services for the Product(s) at no cost during the Product(s) published manufacturer's warranty period, if any, and thereafter at the fee specified on the Purchase Order. Vendor agrees to offer to renew and Pramerica shall have the option to renew maintenance and support for each Product for as long as Vendor is offering such services to its other customers. Vendor further agrees that upon any renewal it will not increase maintenance and support fees greater than 4% above the fee charged Pramerica for the preceding year. In addition to Vendor's maintenance and support terms, maintenance and support services will include: (i) the correction of all errors, bugs, deviations or failures in the performance of the Product(s) to ensure that the Product(s) continue to perform in accordance with the specifications and/or documentation; (ii) reasonable telephone assistance by trained representative(s) as soon as possible after Pramerica's placement of a call, but in no event more than three (3) business hours after Pramerica's notification of the Product(s)' failure to conform to the specifications and/or documentation in a material manner; (iii) all enhancements, upgrades, updates, improvements, modifications, extensions and other changes to the Product(s) ("Product Change"), so that the Product(s) remain current and continue to operate in accordance with the specifications and/or documentation, provided that Vendor makes such Product Changes available to its other customers; (iv) the continued provision of maintenance and support services for prior releases and versions of the Product(s) for at least two (2) years after issuance to Pramerica of a new Product Change, release or version of the Product(s).

8. Vendor Indemnification: Notwithstanding any limitations of liability and without prejudice to any other remedies which Pramerica may have under these terms or otherwise, Vendor shall and hereby agrees to indemnify, defend, save and hold Pramerica, its officers, employees and agents harmless from and against any and all claims, actions, damages, losses, liabilities, costs and expenses (including, but not limited to, reasonable legal fees) arising in any way out of a claim or allegation (whether proven or not) (i) that the Product(s) (including open source software) infringe upon or violate any patent, copyright, trade secret or other proprietary right of a third party; and (ii) of personal injury or property damage caused by the fault or negligence of Vendor. These indemnities shall continue in full force and effect notwithstanding the termination of the Purchase Order, whether by expiration of time, operation of law or otherwise.

9. Limitation on Liability: IN NO EVENT SHALL PRAMERICA BE LIABLE UNDER CONTRACT, TORT (INCLUDING NEGLIGENCE), STATUTE, EQUITY OR OTHERWISE, FOR ANY SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES OR FOR ANY DAMAGES, NO MATTER HOW CATEGORIZED, IN EXCESS OF FEES PAID HEREUNDER.

10. Return of Product, Termination: Pramerica may return any Product for any reason within thirty (30) days of its receipt and receive a full refund. Pramerica may terminate the Purchase Order in whole or in part at any time, for any reason and without liability upon five (5) days notice. Vendor will promptly provide a prorated refund of any pre-paid fees paid within thirty (30) days of the effective date of the termination. All Sections of these Terms (including the License Grant in Section 1 hereof if the Software is not returned and Section 3), which by their nature should logically survive termination or expiration of the Purchase Order shall survive notwithstanding termination or expiration of the Purchase Order.

11. United States Foreign Corrupt Practices Act ("FCPA"): The scope of services to be provided by Vendor under this Purchase Order does not include any express need for Vendor or any of its agents, employees, officers, directors, shareholders, partners, and representatives (collectively, the "Representatives") or sub-contractors to interact with any Government Official on behalf of Pramerica without the prior written permission of Pramerica. In any event, Vendor agrees that it will not, and will cause its Representatives and sub-contractors, if any, not to, directly or indirectly through a third-party intermediary, in connection with this engagement and the business resulting therefrom, interact in any improper manner with any Government Official for the purpose of obtaining or retaining business for, directing business to, or securing any business advantage for Pramerica. For purposes of this covenant, the term "Government Official" includes any employee, agent or representative of a non-U.S. government, and any non-U.S. political party, party official or candidate. Government Official may also include royalty, non-U.S. legislators, representatives of non-U.S. state-owned enterprises, and employees of public international organizations (including but not limited to the United Nations, International Monetary Fund, World Bank and other international agencies and organizations), regardless of rank or position, and any individuals acting on behalf of a Government Official.

12. Services: Vendor will perform all Services in a timely manner to Pramerica's reasonable satisfaction and will be provided in a workmanlike and professional manner. Vendor represents and warrants that: (a) it has all consents, permissions or licenses necessary to perform the Services; (b) it will comply in all respect with all rules, laws and regulations applicable to the Services it is providing to Pramerica; (c) all personnel providing services under this Purchase Order and these Terms are eligible to legally work and accept employment in the Ireland, and are free from any legal or contractual restraints prohibiting working or the exercise of skills, including employment or non-competition agreements with other or former employers; (d) prior to assigning any individual to provide Services pursuant to these Terms, Vendor shall, at its own expense and in accordance with applicable law, conduct an investigation regarding the individual's criminal background; (e) it shall not, without prior written authorization from Pramerica, assign any person to Pramerica who has been convicted of, pled guilty or nolo contendere to a crime involving breach of trust, dishonesty, injury or attempted injury to any property or person; and (f) it will comply with and shall inform its personnel that they must abide by Pramerica policies, procedures and standards, including, without limitation, Pramerica's privacy and/or security policies, rules and practices, as Pramerica may issue, amend, or otherwise make available from time to time. In addition, Pramerica may, in its sole discretion, require that Vendor provide to Pramerica a written certification from an authorized officer of Vendor (in a form acceptable to Pramerica) indicating that such background checks have been successfully performed. Vendor shall not subcontract the Services, or any part thereof, without the prior written consent of Pramerica. Notwithstanding any consent to subcontract all or a portion of Services that Pramerica may have provided to Vendor, under no circumstances shall Vendor perform or cause to be performed, directly, indirectly or by agents or subcontractors, any of the Services outside of Ireland unless it obtains the prior express, specific, written consent of Pramerica with respect to performance of the Services offshore and with respect to the specific offshore location from which the Services may be performed, if any. With respect to any Services which are subcontracted or provided by any third party: (i) Vendor hereby assumes all liability and responsibility for such subcontractors' and third parties' compliance with and breach of the terms of the Purchase Order and these Terms, and for all acts and omissions of such subcontractors and third parties; and (ii) Vendor shall include a provision in all of its agreements with subcontractors stating that such subcontractors shall look to Vendor for payment and shall under no circumstances look to any other party, including Pramerica, for payment.

13. General: Nothing contained in these Terms shall be construed as conferring on Vendor any right to use or refer to in advertising, publicity, promotion, marketing or other activities, any name, trade name, trade or service mark, or any other designation of Pramerica (including any contraction, abbreviation or simulation of any kind of the foregoing) or to disclose that it has furnished or contracted to furnish to Pramerica the Product(s) hereunder without the prior express written consent of Pramerica. These Terms are binding upon the parties' respective successors and permitted assigns. Vendor shall not assign any of its rights or delegate any performance under these Terms except with the prior written consent of Pramerica. Any purported assignment of rights or delegation of performance without Pramerica's prior written consent is void and Pramerica is entitled to terminate the Purchase Order effective as of the occurrence of such assignment or delegation, without prejudice to Pramerica's claims for damages. Pramerica may assign the Purchase Order in whole or in part and/or any of Pramerica's rights, licenses or title to any Product(s), duties and/or obligations, without notice and without Vendor's consent, (i) to any Pramerica subsidiary, associated company or divested entity; (ii) in connection with a reorganization, demutualization or change of control; (iii) to third parties retained to provide services for the benefit of Pramerica; or (iv) to entities to whom the machines on which the Product(s) are being used are sold. Upon assignment, Pramerica shall have no further liability for any Products assigned. The parties hereto are and shall remain independent contractors. Nothing herein shall be deemed to establish a partnership, joint venture, or agency relationship between the parties. Neither party has the right to obligate or bind the other party in any manner to any third party. A waiver by Pramerica of any breach by Vendor of any of the terms, provisions or conditions of these Terms or the acquiescence of Vendor and any act (whether of commission or omission) which but for such acquiescence would be a breach as aforesaid, does not constitute a general waiver of such term, provision or condition or of any subsequent act contrary thereto. If a court of competent jurisdiction determines that any provision of these Terms is invalid, illegal or unenforceable under any applicable statute or rule of law, such provision is to that extent deemed omitted, and the balance of the Terms remain valid, binding and enforceable. Each party shall deliver any notices required or desired to be given under these Terms in writing, via one of the following methods, and such notices are deemed to have been received: (i) on the day given delivered by hand (securing a receipt evidencing such delivery); or (ii) on the second day after such notice is sent by a nationally recognized overnight or two (2) day air courier service, full delivery cost paid; or (iii) on the fifth day after such notice was sent by pre-paid registered post and addressed to the party to be notified at the addresses indicated on the Purchase Order, or to such other addresses as the parties may indicate in writing from time to time. The Purchase Order and these Terms are governed by Irish law (without regard to principles of conflicts of laws and subject to the exclusive jurisdiction of the Irish courts). Vendor will carry out of its obligations under a Purchase Order in accordance with all applicable local laws, including without limitation, where employees are engaged for the carrying out of services, in accordance with the Employment Equality Acts 1998 – 2004. These Terms and all matters relating to their formation or validity shall be governed by, and construed in accordance with, Irish law and the parties hereby submit to the exclusive jurisdiction of the Irish Courts in respect of all disputes arising out of or in connection with these Terms, their formation and validity.