

# PRIMER-E END USER LICENCE AGREEMENT

## 1 APPLICATION OF AGREEMENT

- 1.1 Quest Research Limited, a New Zealand company, company number 3214606 and trading as PRIMER-e (**PRIMER-e**) makes analytical software, specifically, PRIMER 8, that may also be enhanced by one or more add-ons. PRIMER 8, including any Updates (as defined below) and/or any enhancements by way of add-on, are collectively referred to as the **Software**. The Software is used for performing calculations, data analysis, producing data summaries and/or graphics, visualising data, performing statistical analyses, generating statistical probabilities, testing statistical hypotheses, applying numerical methods, and generating quantitative and/or other analytical results for interpretation.
- 1.2 The Software is made available subject to this PRIMER-e end user licence agreement, including the Schedule (together, **Agreement**). PLEASE READ THIS AGREEMENT CAREFULLY BEFORE USING THE SOFTWARE. BY DOWNLOADING, INSTALLING, ACTIVATING, ACCESSING OR USING THE SOFTWARE, OR BY EXECUTING AN AGREEMENT THAT INCORPORATES THIS AGREEMENT, YOU ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT, UNDERSTAND IT AND AGREE TO BE BOUND BY ITS TERMS.
- 1.3 Where you download, install, activate, access and/or use the Software, or execute an agreement that incorporates this Agreement, on behalf of another person (e.g. a university or a company) you confirm that:
- a you are authorised to, and do in fact, agree to this Agreement on that person's behalf; and
  - b by agreeing to this Agreement on that person's behalf, that person is bound by this Agreement.
- 1.4 IF YOU DO NOT AGREE TO THIS AGREEMENT, YOU ARE NOT AUTHORISED TO DOWNLOAD, INSTALL, ACTIVATE, ACCESS OR USE THE SOFTWARE, AND YOU MUST NOT DO SO.

## 2 INTERPRETATION

- 2.1 In addition to the defined terms in clause 1, in this Agreement:

**Approved Purpose** means:

- ▲ where the entirety of the Software is Preview Software, solely the evaluation of the Software;
- ▲ where a feature of the Software is Preview Software, solely the evaluation of that feature; and
- ▲ in all other cases, your lawful internal business or personal purposes.

**Documentation** means the user and technical documentation for the Software set out at <https://learninghub.primer-e.com> or otherwise provided by PRIMER-e, and includes any update of the documentation.

**Fees** means the fees set out on the Website or as agreed otherwise in writing between you and PRIMER-e, as may be updated from time to time in accordance with clause 7.4.

**Intellectual Property Rights** includes copyright, and all worldwide rights conferred under statute, common law or equity in relation to inventions (including patents), registered and unregistered trade marks and designs, circuit layouts, data and databases, confidential information, know-how, and all other rights resulting from intellectual activity. *Intellectual Property* has a consistent meaning, and includes any enhancement, modification or derivative work of the Intellectual Property.

**Licence Key** means the unique key code provided by PRIMER-e that permits the Licensee (and, where applicable, Users) to access the Software (other than in preview mode, as described in paragraph 2.4 of the Schedule).

**Licensee** means:

- (a) where clause 1.3 applies, the person on whose behalf the Software is downloaded, installed, activated, accessed and/or used, or
- (b) where clause 1.3 does not apply, you.

**Preview Software** has the meaning given in clause 5.1b.

**Start Date** means the date that the Licensee (or its personnel) first downloads, installs, activates, accesses or uses the Software or such other date as is agreed in writing between PRIMER-e and the Licensee.

**Subscription Period** means the subscription period selected by you when you purchase a licence or as otherwise agreed between the parties in writing.

**Trial Period** has the meaning given in clause 5.5.

**Update** means a new version of the existing Software released to you by PRIMER-e.

**Website** means PRIMER-e's website at <https://www.primer-e.com> or such other site notified to you by PRIMER-e.

**You or your** means you, or, if clause 1.3 applies, both you and the other person on whose behalf you are acting.

## 2.2 In this Agreement:

- a clauses and other headings are for ease of reference only and do not affect the interpretation of this Agreement;

- b words in the singular include the plural and vice versa;
- c a reference to:
  - i a **party** to this Agreement includes that party's permitted assigns;
  - ii **personnel** includes officers, employees, contractors and agents, but a reference to your personnel does not include PRIMER-e;
  - iii a **person** includes an individual, a body corporate, an association of persons (whether corporate or not), a trust, a government department, or any other entity;
  - iv **including** and similar words do not imply any limit; and
  - v a statute includes references to regulations, orders or notices made under or in connection with the statute or regulations and all amendments, replacements or other changes to any of them; and
- d no term of this Agreement is to be read against a party because the term was first proposed or drafted by that party.

### 3 LICENCE

- 3.1 PRIMER-e grants to you, and you accept, a non-exclusive, non-transferable licence for the duration of this Agreement to download, install, activate, access and use the Software and the Documentation:
  - a solely for the Approved Purpose;
  - b subject to the restrictions:
    - i set out in the Schedule; or
    - ii otherwise agreed in writing between you and PRIMER-e;
  - c on the terms and conditions of this Agreement; and
  - d within the Subscription Period or a Trial Period.
- 3.2 If your personnel use the Software, you must procure their compliance with this Agreement. A breach of this Agreement by any of your personnel is deemed to be a breach of this Agreement by you.

## 4 LICENCE CONDITIONS

You must:

- a use the Software and the Documentation:
  - i for the Approved Purpose; and
  - ii strictly in accordance with your specific Licence Type, as described in the Schedule;
- b not copy, reproduce, translate, decompile, reverse-engineer, attempt to decompile or reverse-engineer, resell, modify, vary, sub-licence or otherwise deal in the Software or the Documentation except:
  - i as otherwise expressly provided for in this Agreement; or
  - ii to the extent expressly permitted by law;
- c ensure the Software and the Documentation are protected at all times from misuse, damage, destruction or any form of unauthorised use, copying or disclosure;
- d maintain all proprietary notices on the Software and Documentation and any permitted copies of the Software and Documentation;
- e not transfer, assign or otherwise deal with or grant a security interest in the Software, the Documentation or your rights under this Agreement;
- f not challenge PRIMER-e's ownership of (including the Intellectual Property Rights in) the Software, the Documentation or any other item or material created or developed by or on behalf of PRIMER-e under or in connection with this Agreement; and
- g notify PRIMER-e in writing immediately after you become aware of any circumstance which may suggest that any person may have unauthorised knowledge, possession or use of the Software or the Documentation.

## 5 TRIAL VERSION

5.1 This clause 5 applies where you have elected to access, activate and use:

- a the Software for a trial period or under a complementary (no charge) licence (**Trial Version**); or
- b an early access, alpha, beta, private preview, public preview, non-production, experimental or similar version of the Software or a feature of

the Software that has not been fully tested (**Beta Version**, and together with Trial Versions, **Preview Software**).

- 5.2 Any Preview Software that is made available to you is provided on the terms of this clause 5 in addition to the terms of this Agreement. If there is any conflict between the terms of this clause 5 and the terms of this Agreement, the terms of this clause 5 prevails.
- 5.3 Unless otherwise agreed, Preview Software is provided to you on an *as is* basis, and, despite any other provision in this Agreement, all conditions, warranties, guarantees, indemnities and liability in relation to Preview Software are excluded by PRIMER-e to the fullest extent permitted by law.
- 5.4 During the period any Beta Version is made available to you, you may provide feedback and other relevant information to PRIMER-e regarding the Beta Version. To avoid doubt, any feedback provided by you to PRIMER-e under this clause is governed by clause 8.2.
- 5.5 If the entirety of the Software is being provided to you as a Trial Version, no Fees are payable for your access and use of the Software during the period for which PRIMER-e has agreed (in writing) to provide trial or complementary access (**Trial Period**). If part of the Software is being provided to you as a Beta Version, you must continue to pay the Fees for the remaining (non-Beta Version) part of the Software in accordance with this Agreement.

## **6 SUPPORT**

- 6.1 During the term of this Agreement, PRIMER-e will provide you with support for the Software as set out in clause 6.2, provided you have:
  - a paid all Fees due;
  - b maintained a proper operating environment for the use of the Software in accordance with any guidance from PRIMER-e, including in the Documentation; and
  - c complied with this Agreement and the Documentation.
- 6.2 Where you consider on reasonable grounds that there is a material failure of the Software to perform in accordance with the Documentation, PRIMER-e will:
  - a provide email support in the form of consultation, assistance and advice in relation to the issue; and
  - b use reasonable efforts to assist in the resolution of the issue (taking into account the nature and severity of the issue).

- 6.3 The provision of support by PRIMER-e under clause 6.2 is conditional on you:
- a first using reasonable efforts to resolve the issue by referring to the Documentation; and
  - b contacting PRIMER-e by email at [primer@primer-e.com](mailto:primer@primer-e.com).
- 6.4 PRIMER-e may, at its discretion, from time to time provide you with Updates, in which case the following applies:
- a where PRIMER-e provides an Update, you must promptly install the Update; and
  - b if you fail to install the Update, PRIMER-e may, at its option, cease providing support for the Software.
- 6.5 YOU ARE SOLELY RESPONSIBLE FOR ANY CLAIMS, DAMAGES, LIABILITIES, OR LOSSES ARISING FROM YOUR FAILURE TO INSTALL OR ACCEPT AN UPDATE.

## **7 FEES**

- 7.1 If you are the Licensee, you must pay the Fees to PRIMER-e in accordance with this clause 7.
- 7.2 The Licensee must pay the Fees (net of any applicable bank transfer and/or payment processing fees):
- a in advance of each Subscription Period, unless otherwise agreed by the parties in writing; and
  - b in accordance with the payment terms set out at [www.primer-e.com/terms-and-conditions](http://www.primer-e.com/terms-and-conditions), without any set off or deduction.
- 7.3 The Fees exclude sales, use, value-added, goods and services and similar taxes, which the Licensee must pay where applicable, subject to PRIMER-e providing the Licensee with a valid tax invoice (where required).
- 7.4 By giving 30 days' notice, PRIMER-e may increase the Fees with effect from the start of a Subscription Period (but not the first Subscription Period). If you do not wish to pay the increased Fees, you may terminate this Agreement in accordance with clause 12.3. If you do not terminate this Agreement in accordance with clause 12.3, you are deemed to have accepted the increased Fees.
- 7.5 If you opt to pay by debit or credit card:
- a you must provide PRIMER-e with complete and accurate debit or credit card information required to process the payment;
  - b you authorise PRIMER-e to collect the Fees from your debit or credit card;

- c at the end of a Subscription Period, if neither party has given notice, in accordance with clause 12.2aii, that it does not wish to renew your licence following the expiry of the Subscription Period, you authorise PRIMER-e to charge the Fees for the next Subscription Period to your debit or credit card; and
- d if PRIMER-e is unable to collect the Fees from your debit or credit card for any reason, including where your card has expired or there are insufficient funds:
  - i if the relevant Fees are Fees that are payable at the start of a Subscription Period, you will be deemed to have failed to pay those Fees; and
  - ii in all other cases:
    - A you remain responsible for the uncollected amounts; and
    - B PRIMER-e may terminate this Agreement in accordance with clause 12.4a.

7.6 PRIMER-e may charge interest on overdue amounts. Interest will be calculated from the due date to the date of payment (both inclusive) at an annual percentage rate equal to the corporate overdraft reference rate (monthly charging cycle) applied by PRIMER-e's primary trading bank as at the due date (or if PRIMER-e's primary trading bank ceases to quote such a rate, then the rate which in the opinion of the bank is equivalent to that rate in respect of similar overdraft accommodation expressed as a percentage) plus 2% per annum.

## 8 INTELLECTUAL PROPERTY

- 8.1 From the date of creation or development, PRIMER-e owns all Intellectual Property Rights in:
- a the Software and the Documentation; and
  - b any other item or material created, developed or provided by or on behalf of PRIMER-e under or in connection with this Agreement.
- 8.2 If you provide PRIMER-e with ideas, comments or suggestions relating to the Software or the Documentation (together **feedback**):
- a all Intellectual Property Rights in that feedback, and anything created as a result of that feedback (including new material enhancements, modifications or derivative works), are owned solely by PRIMER-e; and
  - b PRIMER-e may use or disclose any feedback for any purpose.

- 8.3 PRIMER-e indemnifies you against any claim or proceeding brought against you to the extent that claim or proceeding alleges that your use of the Software in accordance with this Agreement constitutes an infringement of a third party's Intellectual Property Rights (**IP Claim**). The indemnity is subject to you:
- a promptly notifying PRIMER-e in writing of any IP Claim;
  - b making no admission of liability and not otherwise prejudicing or settling the IP Claim, without PRIMER-e's prior written consent; and
  - c giving PRIMER-e complete authority and information required for PRIMER-e to conduct and/or settle the negotiations and litigation relating to the IP Claim. The costs incurred or recovered are for PRIMER-e's account.
- 8.4 The indemnity in clause 8.3 does not apply to the extent that an IP Claim arises from or in connection with:
- a your breach of this Agreement;
  - b the use of the Software in a manner or for a purpose not reasonably contemplated by this Agreement or otherwise not authorised in writing by PRIMER-e;
  - c any third party data or data owned by you;
  - d modification or alteration of the Software by a person other than PRIMER-e; or
  - e the use or incorporation of the Software in, or in combination with, other products or software not contemplated by the Documentation, where, but for such use or incorporation, the Software would not have given rise to a claim for infringement of such third party's rights.
- 8.5 If at any time an IP Claim is made, or in PRIMER-e's reasonable opinion is likely to be made, then in defence or settlement of the IP Claim, PRIMER-e may (at PRIMER-e's option):
- a obtain for you the right to continue using the items that are the subject of the IP Claim; or
  - b modify, re-perform or replace the items that are the subject of the IP Claim so they become non-infringing.

## 9 CONFIDENTIALITY

The Software, Documentation and any other item or material created, developed or provided by or on behalf of PRIMER-e under or in connection with this Agreement are PRIMER-e's confidential information (**Confidential Information**).

You must keep the Confidential Information confidential, and must not use or disclose that Confidential Information without the prior written consent of PRIMER-e.

## **10 WARRANTIES**

10.1 You acknowledge that the Software is of a technical nature and may not be error-free or bug-free.

10.2 TO THE MAXIMUM EXTENT PERMITTED BY LAW:

- a THE SOFTWARE IS PROVIDED AS *IS* AND AS *AVAILABLE* WITHOUT WARRANTY OF ANY KIND;
- b ALL CONDITIONS, GUARANTEES OR WARRANTIES WHETHER EXPRESSED OR IMPLIED BY STATUTE OR OTHERWISE (INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR PURPOSE) ARE EXPRESSLY EXCLUDED AND, TO THE EXTENT THAT THEY CANNOT BE EXCLUDED, LIABILITY FOR THEM MUST NOT EXCEED THE AMOUNT SET OUT IN CLAUSE 11.1; AND
- c WITHOUT LIMITING CLAUSES 10.2a AND 10.2b, PRIMER-E MAKES NO REPRESENTATION CONCERNING THE QUALITY OF THE SOFTWARE OR ANY SUPPORT PROVIDED FOR THE SOFTWARE, AND DOES NOT PROMISE THAT THE SOFTWARE WILL BE ERROR-FREE, BUG-FREE, OR WILL OPERATE WITHOUT INTERRUPTION.

10.3 WHERE YOU ARE ACQUIRING THE SOFTWARE AND SUPPORT FOR THE SOFTWARE, AND ENTERING THIS AGREEMENT, FOR THE PURPOSE OF A BUSINESS OR TRADE, YOU AGREE THAT:

- a TO THE MAXIMUM EXTENT PERMISSIBLE BY LAW, NO CONSUMER PROTECTION LAWS APPLY TO THE SUPPLY OF THE SOFTWARE OR SUPPORT FOR THE SOFTWARE, OR THIS AGREEMENT; AND
- b IT IS FAIR AND REASONABLE THAT THE PARTIES ARE BOUND BY THIS CLAUSE 10.3.

10.4 Except to the extent permitted by law, nothing in this Agreement has the effect of contracting out of any consumer protection laws or excluding any liability that cannot be excluded. To the extent PRIMER-e's liability cannot be excluded but can be limited, its liability will be limited to the amount set out in clause 11.1.

## **11 LIABILITY**

11.1 SUBJECT TO CLAUSE 5.3 (WHERE APPLICABLE), THE MAXIMUM AGGREGATE LIABILITY OF PRIMER-E UNDER OR IN CONNECTION WITH THIS AGREEMENT OR

RELATING TO THE SOFTWARE OR ANY SUPPORT FOR THE SOFTWARE, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF STATUTORY DUTY OR OTHERWISE, MUST NOT IN ANY YEAR EXCEED AN AMOUNT EQUAL TO THE FEES PAID BY YOU UNDER THIS AGREEMENT IN THE PREVIOUS YEAR (WHICH IN THE FIRST YEAR IS DEEMED TO BE THE TOTAL FEES PAID BY YOU FROM THE START DATE TO THE DATE OF THE FIRST EVENT GIVING RISE TO LIABILITY). IN THIS CLAUSE, **YEAR** MEANS A 12 MONTH PERIOD COMMENCING ON THE START DATE OR ANY ANNIVERSARY OF THE START DATE.

11.2 WITHOUT LIMITING CLAUSE 8.3, PRIMER-E IS NOT LIABLE TO YOU UNDER OR IN CONNECTION WITH THIS AGREEMENT FOR ANY:

- a LOSS OF PROFIT, REVENUE, SAVINGS, BUSINESS, DATA AND/OR GOODWILL; OR
- b CONSEQUENTIAL, INDIRECT, INCIDENTAL OR SPECIAL DAMAGE OR LOSS OF ANY KIND.

## **12 TERM AND TERMINATION**

12.1 If PRIMER-e has agreed (in writing) to provide trial or complementary access:

- a this Agreement commences on the Start Date; and
- b if you do not subscribe to the paid version of the Software on or before the expiry of the Trial Period, this Agreement will terminate on the expiry of the Trial Period, unless terminated earlier under clause 12.3 or 12.4.

12.2 If you have subscribed to a paid version of the Software:

- a this Agreement:
  - i commences on the Start Date; and
  - ii unless terminated under this clause 12, continues for successive Subscription Periods from the Start Date, unless either party gives the other party at least 7 days' notice that this Agreement will terminate on the expiry of the then-current Subscription Period;
- b if you do not pay the Fees that are payable for a Subscription Period in accordance with clause 7.2, this Agreement will terminate at the end of the then-current Subscription Period; and
- c if:
  - i this Agreement is terminated by you under clause 12.3, or by PRIMER-e under clause 12.4a, during or following a Subscription Period; and

- ii at the time of termination, there are Fees that relate to that Subscription Period that you have not paid,

those Fees will become immediately due and payable on termination.

- 12.3 You may terminate this Agreement at any time by notifying PRIMER-e in writing and returning to PRIMER-e or destroying all copies of the Software, Licence Key(s) and Documentation in your possession or control.
- 12.4 PRIMER-e may, by notice to you, immediately terminate this Agreement if:
  - a you are in breach of this Agreement; or
  - b the remedies in clause 8.5 are exhausted without remedying or settling the IP Claim.
- 12.5 On termination of this Agreement, you must return to PRIMER-e or destroy all copies of the Software and Documentation in your possession or control.
- 12.6 No compensation is payable by PRIMER-e to you as a result of termination of this Agreement for whatever reason, and you will not be entitled to a refund of any Fees that you have already paid.
- 12.7 Termination of this Agreement does not affect each party's rights and obligations accrued before the termination date, including your obligations to pay all Fees payable before termination or under clause 12.2c.

### 13 GENERAL

- 13.1 PRIMER-e is not liable to you for any failure to perform its obligations under this Agreement to the extent caused by events beyond PRIMER-e's reasonable control.
- 13.2 You may not assign or transfer any right or obligation under this Agreement without PRIMER-e's prior written approval. You remain liable for your obligations under this Agreement despite any approved assignment or transfer.
- 13.3 You must comply with all applicable export control laws and not export or re-export the Software or technical data you receive other than in compliance with the applicable export control laws. You are responsible for obtaining any required licences required by you to export, re-export or import the Software or technical data.
- 13.4 You agree that PRIMER-e may identify you as a user of the Software on PRIMER-e's website and in its marketing and other promotional materials. You grant PRIMER-e a non-exclusive, royalty-free licence to use, publish and display your name, trade marks, logos and designs (**Brands**) for these purposes. PRIMER-e will use the Brands only in accordance with any usage and marketing guidelines provided by you from time to time. You may withdraw PRIMER-e's rights under this clause at any time by written notice to PRIMER-e.

- 13.5 Any illegality, unenforceability or invalidity of a provision of this Agreement does not affect the legality, enforceability or validity of the remaining provisions of this Agreement.
- 13.6 Any variation to this Agreement must be in writing and signed by both parties.
- 13.7 This Agreement sets out everything agreed by the parties relating to the Software and supersedes and cancels anything discussed, exchanged or agreed prior. The parties have not relied on any representation, warranty or agreement relating to the Software that is not expressly set out in this Agreement, and no such representation, warranty or agreement has any effect. The parties agree that it is fair and reasonable that the parties are bound by this clause 13.7.
- 13.8 This Agreement is governed by, and must be interpreted in accordance with, the laws of New Zealand. Each party submits to the non-exclusive jurisdiction of the Courts of New Zealand in relation to any dispute connected with this Agreement.

# SCHEDULE

## LICENCE TYPES

### 1. Definitions and interpretation

#### 1.1. In this schedule:

**Activating the Software** is the process of validating an instance of the Software using a Licence Key. **Activate** and **Activated** have consistent meanings.

**Licensed Activation** means an instance of the Software that has been validated by PRIMER-e's authentication server.

**User** means:

- (a) if the Licensee is a natural person, the Licensee; or
- (b) if the Licensee is not a natural person, a single individual who is:
  - (i) an employee of the Licensee;
  - (ii) a student supervised by the Licensee;
  - (iii) a student enrolled in a course of study offered by the Licensee; or
  - (iv) a nominee of the Licensee.

### 2. Licence Types

- 2.1. The types of licences offered by PRIMER-e (**Licence Types**) are set out in the table below.
- 2.2. The Licence Type will be as selected by or on behalf of the Licensee when purchasing or otherwise acquiring a licence, or as otherwise agreed by the parties in writing.
- 2.3. The applicable Licence Type and other restrictions applicable to the Licence Type will be encoded to the Licence Key. If you believe that the Licence Key you have received does not reflect the Licence Type or other details of the licence you have purchased or otherwise acquired, please contact PRIMER-e.

Type of Licence	Licence Details
Individual Licence	<p>An individual licence is for a single User only (the Licensee).</p> <p>The Licensee may have no more than two Licensed Activations under the Licensee's supervision and control.</p> <p>The Licensee must ensure that the Licence Key issued to it is not used by anyone other than the Licensee.</p>

<b>Group Licence</b>	<p>A group licence allows a specific number of Licensed Activations permitted by the Licence Key.</p> <p>The Licensee may only Activate the Software, or allow the Software to be Activated, on computers under the Licensee's supervision and control.</p> <p>The Licensee must ensure that the Licence Key issued is not used by anyone other than the Licensee and its Users.</p>
<b>Floating Licence</b>	<p>The Licensee and Users may install the Software on an unlimited number of computers under the Licensee's supervision and control.</p> <p>The maximum number of end-users permitted to use the software simultaneously will be the number of seats authorised under the Licence Key.</p>
<b>Trial Licence</b>	<p>The Licensee and Users may use the Software under an individual, group or floating licence for a limited time (specified upon issue of the Licence Key) for the purposes of evaluating the Software.</p>

- 2.4. In addition to the licences above, PRIMER-e may allow you to use Preview Software for up to 30 days, or such other finite period of time as is specified by PRIMER-e in writing. Functionality of Preview Software may be limited and PRIMER-e makes no guarantee of availability of or continued availability of specific features. Subject to clause 5, the terms and conditions of this Agreement still apply to your use of the Preview Software.