

End User License and Service Agreement (“EULA”)

PRé Consultants

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1. Licensor

This license agreement is entered into by licensee (“End-User”) and PRé Consultants B.V., a company organized under the laws of the Netherlands, or, If End-User is located in the United States or Canada, PRé Software Solutions B.V., a company organized under the laws of the Netherlands.

In this EULA, PRé refers to either PRé Consultants B.V. or PRé Software Solutions B.V., individually, and not jointly and severally, or collectively, depending on the location of the End-User.

2. License

The software provided, under which name whatsoever, and, as long as the End-User has a right to Service (as defined under section 13) any product release or service release related to such software, and documentation (the “Software”) are licensed to End-User by PRé and are provided for use solely under the terms of this EULA. PRé reserves all rights not expressly granted under this EULA. PRé hereby grants to End-User a nonexclusive, non-transferable, limited license to install and use the rightfully obtained version of the Software, solely in object code format for End-User’s own internal business use and without the right to sublicense (“License”). The Software may only be used for the purpose for which it is designed as described in the documentation. End-User is not entitled to split or separate, a bundle of Licenses in any way whatsoever.

3. Standalone version

If PRé identifies the Software as a standalone version the End-User may install and use one (1) copy of the Software within its organization. The End-User can appoint any person within the organization as a user, and can change this at any time, provided that no more than one user is appointed at the same time for every License obtained by the End-User and provided that the user is employed by or working on the basis of an assignment of the legal entity of the End-User. If hardware is replaced by other hardware, a new activation code might be needed, and a new code may be requested. PRé may refuse delivery of a new code, if it has reasons to suspect misuse of the License or breach of the EULA.

4. Network version

If PRé identifies the Software as a network version End-User may install and use one (1) copy of the Software on its network server. The maximum number of concurrent users shall be specified in the order form or an attachment to this EULA. The End-User can only appoint users that are employed by or working on the basis of an assignment of the legal entity of the End-User.

5. SimaPro SaaS

PRé offers a standard online software application by the name of SimaPro SaaS, which consists of various modules. The use of these modules may be included in the License or purchased in addition to the License. The 'SimaPro SaaS Terms and Conditions' apply to the provision of any of the SimaPro SaaS modules.

6. Education version

If PRé identifies the Software as an education version one (1) copy of the Software (either the standalone version (see clause 3) or the network version (see clause 4)) may be installed, for educational purposes only. Licenses for educational versions will only be provided if the organization ordering the License is an educational institute declaring in writing that the sole application of the License is educational and that the Software will not be used for commercial purposes. PRé may refuse the delivery of an educational License such at its own discretion.

7. Faculty License

If PRé identifies the Software as a faculty License, the License for which shall be limited to a fixed term of one year, unlimited copies of the Software as a Temporary License (as defined in section 8 of this EULA) may be installed on (student) computers for educational purposes only. This License is only available for faculties or departments of educational institutes, which allows distributing single user Licenses to employees of the faculty and faculty students that are officially registered as actively taking part in one or more curricula. Students, who have finished these curricula, may no longer use the Software.

8. License term

The term of a License to use the Software is indefinite ("Perpetual License") unless indicated otherwise in the order form or in this EULA. The term of use of a temporary license ("Temporary License"), is limited to the specific subscription term agreed to and will terminate automatically after expiry of such term, unless extended by a one (1) year term upon (tacit) acceptance of the End-User of a renewal notice of PRé. After expiration of a Temporary License, the Software will only run in demo mode.

9. Right to use data

The End-User has the right to use the databases, datasets or specific parts of such datasets (jointly: “Data Libraries”), that are provided by PRé to the End-User that has obtained a License. Such Data Libraries are owned by third party suppliers of PRé and are protected by intellectual property rights. The use of Data Libraries may be subject to the terms of use of such third party suppliers, which are published on www.pre-sustainability.com. In no event shall the End-User reproduce, disseminate or publicly display the Data Libraries as a whole or any substantial part thereof, as determined by their nature and quantity even in case of insignificant portions.

10. Restrictions

(1) End-User may not distribute, rent, loan, lease, sell, sublicense, assign or transfer all or any portion of the Software or Data Libraries, or any rights granted in this EULA, to any other person or entity without the prior written authorization of PRé;

(2) End-User is not entitled to modify, translate, adapt, arrange or create derivative works based on the Software or Data Libraries for any purpose.

(3) The Software and Data Libraries enclosed may not be copied to be distributed in any electronic form and may not be published on the Internet. It is specifically prohibited to copy the Data Libraries into databases of other software packages without the prior written consent of PRé. End-User is free to print the Data Libraries in his/her own reports as long as it is expressly stated that (parts of) the Data Libraries are supplied by PRé, and these may not be published in any form.

11. Ownership

PRé Consultants B.V. and/or its licensors hold all intellectual property rights pertaining to the Software and Data Libraries. This EULA does not grant to End-User any ownership in the Software or Data Libraries. End-User shall not remove any proprietary notice of PRé or its licensors from any copy of the Software or Data Libraries. Any copy of the Software made by End-User in accordance with this EULA shall contain PRé’s copyright notices.

12. Registration

PRé will send End-User a registration code after acceptance of a valid and duly signed order form and (if required) advance payment. This code enables End-User to install and use the Software and Data Libraries. End-User is responsible for the proper installation and registration. During installation an additional activation code may be required. This code is generated by an internet application maintained and operated by PRé, and is based only on certain computer hardware characteristics collected by the Software. No other information is collected.

13. Service

Service (“Service”) consists of: (1) access to all relevant Software updates and to Data Libraries that are released, within the term of this agreement and as far as reasonably possible, and (2) free access to the helpdesk of PRé. Helpdesk service means that the End-User can, during business hours, ask questions concerning the working of the Software and the contents of the Data Libraries. Service is available to a designated contact person of the End-User only. PRé reserves the rights to have its helpdesk refusing to answer a question.

All Temporary Licenses include a Service contract for the term of such License. From the moment of expiration or termination of the Temporary License PRé will give no further Service in whatever form.

In the event of a Perpetual License, the right to Service is included at no additional cost during the first year of such License, which right will expire automatically after such first year, or, if the End-User has ordered Service for a longer term, after such longer term, save if (i) it is renewed for a new period by (tacit) acceptance by the End-User of a renewal notice of PRé or a partner at the prices and period specified in the order form or the price and period stated in the renewal notice (whichever is applicable) and (ii) payment of the fee related to the renewal. If Service is not renewed by the procedure described in the previous sentence, further Software and Data Libraries updates can only be obtained by purchasing a newer version of the Software and Data Libraries.

PRé reserves the right to adjust its prices for Service. The price of Service will be established by PRé once per year. End-User accepts that software specifications can change with each update. If End-User sends data to PRé, PRé will keep all data and information strictly confidential.

14. Partner terms and conditions

Notwithstanding the terms of this EULA, the End-User acknowledges that if the Software is provided by a partner of PRé to the End-User, such partner is responsible for the provision of the (Temporary or Perpetual) License or any Service and that PRé cannot be held liable by the End-User for the provision of the Software or Service. A contractual relationship between the partner and the End-User with respect to the provision of the Software and Service exists. Partner might use its own (sales) terms and conditions. PRé cannot accept any responsibility for any commitment whatsoever made by the partner. Partner will send invoices to End-User. If End-User does not pay the amount due to the partner, PRé is entitled to terminate the right to Service. End-User will hold PRé harmless for any claim, any compensation of damages relating in any way directly or indirectly to the partner and any product provided by a partner, and hereby indemnifies PRé for any such liability or damages.

In such event:

- a. the sole obligation of PRé towards such End-User is to permit the use of the Software and Data Libraries, provided that the Software and Data Libraries are used in accordance with the terms of (i) the agreement between the End-User and the partner and (ii) this EULA; and
- b. the End-User is bound towards PRé by the limitations regarding the use of the Software, Data Libraries and Services as described in this EULA; and
- c. PRé has the right to invoke the limitations, referred to under b. against the End-User.

In the event that the agreement between the End-User and the partner terminates and such termination is not caused by a breach of the End-User, this section 14 will cease to apply and the EULA will apply fully between PRé and the End-User, subject to the provision in the next sentence. If PRé notifies the End-User within one (1) month from the termination of the agreement between the partner and the End-User, stating that PRé does not accept such full applicability: (i) PRé has the right to terminate the use of the Software and Services by the End-User immediately and (ii) PRé has the right to claim any amounts, due by the End-User to the partner and the End-User is obliged to pay for the use of the Software and the Services after termination of the agreement between the partner and the End-User to PRé.

15. Payments

End-User will receive invoices from PRé if PRé delivers the Software directly to End-User. Invoices from PRé, must be paid within 30 days after invoice date at latest. If End-User does not pay the sum due in time PRé is entitled to terminate the right to Service and the End-User owes statutory interest on the unpaid amount, without any notice of default being necessary. If End-User still fails to pay the claim after being put in default, the claim may be passed on for collection. In this case End-User is obliged to pay additional extrajudicial and judicial costs, the sum of which shall be established at a minimum of 15% of the total outstanding amount. PRé is, such at its discretion, entitled to request

advance payment. PRé may appoint a third party to send invoices and collect payments and/or credit card payments on its behalf. Payments made to such partners will be considered as payments made to PRé.

16. Termination

PRé shall have the right to terminate the EULA if End-User, after being given proper written notice of default and setting a reasonable term in which the breach can be remedied, is in breach of any of its obligations under the EULA.

PRé may terminate the EULA by written notice having immediate effect, without any notice of default and without judicial intervention, wholly or in part, if End-User is granted a moratorium on payment, whether or not provisional, if the involuntary winding-up of the End-User is requested or if its enterprise is liquidated or terminated in any other manner than through restructuring or a merger of enterprises.

PRé shall never be liable for damages because of termination. The provisions regarding intellectual property, ownership, limitation of liability and choice of law and competent court shall survive the expiration or termination of this EULA.

17. Limited warranty (“garantie”)

Any and all Data Libraries are provided AS IS without any responsibility or liability of PRé or its licensor and the End-User explicitly waives any right to claim damages from PRé that are caused by incorrect, incomplete or otherwise non-conforming Data Libraries. PRé warrants that the Software shall be free from material defects in materials and workmanship, and shall conform in all material aspects to the specification as described in the documentation for a period of ninety (90) days from the date of delivery of the activation code of the Software provided that the Software is used in accordance with the description and/or ordinary practices and conditions. PRé does not warrant that the functionality of the Software will meet End-User requirements or that the software or the Data Libraries are fit for any particular purpose.

PRé does not warrant that the Software will run without interruption, or error free, virus free or that defects will be corrected, that the Data Libraries does not contain any inaccuracies, or that advice, support or other information given by PRé or its partners does not contain errors. It is the responsibility of the End-User to make back-ups and to take all steps to ensure the Software or Data Libraries does not damage End-User’s information or system. In the event that the Software does not comply with the warranty set out above and PRé is notified of such non-conformity within the warranty period, PRé, at its sole discretion, either will replace such non-conforming Software or will refund the total amount paid for the non-conforming Software as the End-User’s sole remedy. PRé grants no other warranty, either express or implied.

18. Liability

PRé shall in no event be liable to End-User or any third party for any indirect damages and/or loss, incidental, special or consequential damages and/or loss or similar damages, including without limitation, indirect, special, punitive, or exemplary damages for loss of business, loss of profit, missed savings, loss due to business stagnation, loss of data, or loss of business information, arising out of this EULA or connected in any way with the use of or the inability to use the Software or the Data Libraries, or the provision of service, or for any claim by any other party, even if PRé has been advised of the possibility of such damages.

PRé’s total liability to End-User for all damages, and losses of any kind (“schade”) notwithstanding the cause of action (whether in contract, tort – including negligence –, or otherwise) shall be limited to compensation of direct damage NOT GREATER THAN THE AMOUNT OF THE PAID LICENSE PRICE (EXCLUSIVE OF VAT). Liability of PRé will only arise if End-User informs PRé in writing of any default (“toerekenbare tekortkoming in de nakoming”) and the damages

resulting there from as soon as possible setting a reasonable term in which the default can be remedied. Any notice of default (“ingebrekestelling”) must specify the failure as detailed as possible, so that PRé will be able to respond adequately. The total liability of PRé for loss due to death or bodily injury or for damage and/or loss due to the intention or gross negligence of PRé, shall under no circumstances amount to more than the amount received from the insurance company in the respective case. Except for the cases referred to above, PRé shall not be liable in any way whatsoever for damages, irrespective of the grounds on which an action for damages might be based. A condition for the existence of any right to damages shall always be that End-User reports the damage and/or loss to PRé as quickly as possible after it arises.

19. Compensation

PRé shall defend End-User against any action brought against End-User to the extent that such action is based on the claim that any Software, when used in accordance with this EULA, infringes a copyright of a third party. The End-User must promptly notify PRé in writing of any claim and give PRé sole control of the defence and settlement thereof. The End-User shall provide all assistance in connection therewith. If the Software is finally adjudged to infringe, or in PRé’s option is likely to become the subject of an infringement claim. PRé shall, at its sole discretion, either: (1) procure for End-User the right to continue to use the Software, (2) modify or replace the Software to make in non-infringing, or (3) refund the price paid by End-User for the Software, minus a reasonable usage fee as the End-User’s sole remedy.

20. Compliance with laws

End-User must comply with all domestic and international (export) laws and regulations regarding the Software and the use of Data Libraries and with any end-user, end-use and destination restrictions issued by governments. End-User must at its own expense obtain and arrange for the maintenance of any government approval and comply with all applicable laws and regulations necessary for End-User’s performance of the EULA. End-User will defend, indemnify and hold harmless PRé from and against all fines, penalties, liabilities, damages, costs and expenses incurred by PRé as a result of any violation of (export) laws or regulations by the End-User or any of its agents or employees.

21. Modification EULA

PRé reserves the right to modify this EULA for any new product or service release. By installing the new release End-User accepts the new or revised version of the EULA.

22. Choice of Law and competent court

This agreement and any disputes arising out of or in connection with this agreement shall be governed by Dutch law excluding its articles regarding conflict of laws. Any and all disputes which might arise between PRé and End-User shall be exclusively submitted to the competent court in Utrecht, the Netherlands.

