

Proof of Concept Professional Service Agreement – Americas
(04-2021)

IMPORTANT: DO NOT EXECUTE THE PROOF OF CONCEPT PROFESSIONAL SERVICES ORDER FORM UNTIL YOU HAVE READ THIS PROOF OF CONCEPT PROFESSIONAL SERVICES AGREEMENT. This is an agreement between you (“Client”) and Precisely Software Inc. or the Affiliate indicated in the Proof of Concept Professional Services Order Form (“PRECISELY”). By executing the Proof of Concept Professional Service Order Form, you are agreeing to the terms set forth herein (the “Agreement”). IF YOU ARE NOT WILLING TO BE BOUND BY THIS AGREEMENT, DO NOT EXECUTE THE PROOF OF CONCEPT PROFESSIONAL SERVICES ORDER FORM.

1. Definitions. As used in this Agreement, the following terms have the meanings set forth below:

“Affiliate” means an entity that Controls, is Controlled by or is under common Control with Client or PRECISELY;

“Control” means the ownership of more than fifty percent (50%) of an entity’s stock or other voting interest;

“Deliverable(s)” means any computer software, written documentation, reports or materials developed by PRECISELY specifically for Client pursuant to a PSOF;

“PSOF” means the Proof of Concept Professional Services Order Form executed by the parties that references this Agreement and describes the Services and Deliverables;

“Services” means the proof of concept services to be performed by PRECISELY as described in the PSOF; and

2. Services.

a) PRECISELY will perform the Services in accordance with this Agreement and the PSOF. PRECISELY is not obligated to provide any Services unless set out in the PSOF. Unless otherwise set out in the PSOF or as agreed to by the parties, PRECISELY will commence performance of the Services fifteen (15) business days following execution of the PSOF and the Services will be performed at PRECISELY’s offices.

b) Any Deliverables provided to Client as part of the PSOF will be for Client’s evaluation purposes only during the term of the PSOF. In no event may Client use the Deliverable in production or any other purpose not otherwise set out herein or the PSOF. Except for the Client’s data provided to PRECISELY in the creation of the Deliverable, PRECISELY retains all right, title and interest to the Deliverables and reserves all rights not otherwise expressly granted herein.

c) Any modifications to the Services must be in writing and signed by authorized representatives of each party. The modifications may be set forth in a project change request or other document agreed to by the parties in writing. PRECISELY personnel performing Services at Client’s offices will comply with Client’s policies and procedures in effect at such location.

3. Fees; Expenses.

a) Fees. Client will pay PRECISELY the fees set out in the PSOF, if applicable, for all Services performed by PRECISELY, and all taxes related thereto. All fees will be billed upon delivery of the Deliverable and are due within thirty (30) days of receipt of an invoice from PRECISELY. Client will pay a late payment charge of 1.5% per month on any fees not paid by the due date.

c) If set out in the PSOF as applicable, Client will also pay for all reasonable travel-related and out-of-pocket expenses incurred by PRECISELY in the performance of the Services in accordance with Client's travel and expense policy which will be provided to PRECISELY in writing and will be billed monthly in arrears.

4. Client Obligations.

a) Client will provide any assistance reasonably required by PRECISELY to perform the Services, including timely review of plans, delivery of Client data and schedules for the Services and reasonable access to Client's offices for Services performed onsite, if applicable.

b) Client will designate a project manager for the Services. The project manager will have the authority to make decisions on behalf of Client with respect to changes in the Services, resource allocation, expenditures (if applicable), resolution of issues, scope changes and other matters involving the Services.

c) Client will maintain a back-up of any Client data or data files provided to PRECISELY.

d) Client will be responsible for securing all licenses for third party technology necessary for PRECISELY to perform the Services (including the right for PRECISELY to use such technology), and will be responsible for the performance of any third party providing goods or services to Client related to the Services, including such third party's cooperation with PRECISELY.

5. **Warranty; Limitation of Liability.** THE SERVICES AND DELIVERABLES ARE PROVIDED "AS IS" AND PRECISELY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES AND DELIVERABLES, INCLUDING BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, COURSE OF DEALING OR COURSE OF PERFORMANCE. UNDER NO CIRCUMSTANCES WILL PRECISELY BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL OR INDIRECT DAMAGES, COSTS, LOSSES AND/OR EXPENSES ARISING OUT OF OR RELATED TO CLIENTS USE OF THE DELIVERABLE, AND IN NO EVENT WILL PRECISELY'S LIABILITY FOR DIRECT DAMAGES EXCEED THE GREATER OF FEES PAID UNDER A PSOF OR \$25,000.

6. **Confidentiality.** During performance of the Services, each party may receive Confidential Information of the other party.

a) "Confidential Information" means all confidential and proprietary information of either party ("Disclosing Party"), including but not limited to, each party's and its Affiliates: (i) customer and prospect lists, names or addresses, existing agreements with Disclosing Party and business partners; (ii) pricing proposals, financial and other business information, data processes and plans; (iii) research and development information, analytical methods and procedures, hardware design, technology (including the Deliverables); (iv) financial information or personnel data; (v) information concerning the customers and potential customers of either party; (vi) business practices, know-how, marketing or business plans; (vii) this Agreement and the PSOF, technical documentation, user manuals, and training materials; and (viii) any other information identified in writing as confidential or information that the receiving party knew or reasonably should have known was confidential, in each case that is disclosed to the other party ("Receiving Party") or to which the Receiving Party gains access in connection with performance of the Services.

b) The Receiving Party agrees: (i) to hold the Disclosing Party's Confidential Information in strict confidence, apply at least the standard of care used by the Receiving Party in protecting its own Confidential Information, but not less than a reasonable standard of care, and not to disclose such Confidential Information to any third party; and (ii) without the written permission of the Disclosing Party, not to use any Confidential Information of the Disclosing Party except as reasonably required to exercise its rights or perform its obligations under this Agreement and the PSOF. Each party agrees to cause its employees, subcontractors, agents and, if permitted, Affiliates, who require access to such information to abide by such obligations.

c) The foregoing obligations do not apply to information that: (i) is already public or becomes available to the public through no breach of this Section 6; or (ii) was in the Receiving Party's lawful possession before receipt from the Disclosing Party; or (iii) is lawfully received independently from a third party who is not bound by a confidentiality obligation; or (iv) is independently developed by or on behalf of the Receiving Party without use of any Confidential Information.

d) If a Receiving Party is compelled to disclose the Confidential Information by a governmental agency or a court of law having proper jurisdiction, the Receiving Party will give the Disclosing Party reasonable notice as permitted by law to enable such party to try to protect the confidentiality of the Confidential Information.

e) Upon written request of the Disclosing Party, the Receiving Party agrees to promptly return or destroy all Confidential Information in its possession, and certify its destruction in writing, provided, however, that the Receiving Party may retain one copy of the returned or destroyed items for archival purposes in accordance with its records retention policies and subject to this Section 6.

f) Disclosing Party may be irreparably damaged if the obligations under this Section 6 are not enforced and as such may not have an adequate remedy in the event of a breach by Receiving Party of its obligations hereunder. The parties agree, therefore, that Disclosing Party is entitled to seek, in addition to other available remedies, an injunction restraining any actual, threatened or further breaches of the Receiving Party's obligations under this Section 6 or any other appropriate equitable order or decree.

7. Term of Agreement; Termination.

a) This Agreement and the PSOF will be effective as of the effective date of the PSOF and will remain in effect during the term set out in the PSOF (the "Termination Date"). Either party may terminate this Agreement and a PSOF for any or no reason upon ten (10) days written notice to the other party.

b) Upon the effective date of termination of the PSOF, PRECISELY will cease performance of the Services. Client will pay PRECISELY any fees for Services performed or as otherwise due under the PSOF (as applicable). Client will immediately uninstall, delete or destroy any Deliverables provided by PRECISELY under the PSOF.

c) Sections 3 (Fees, Expenses), 5 (Warranty; Limitation of Liability), 6 (Confidentiality), 7 (Term of Agreement; Termination), 10 (General) and 11 (Applicable Law) will survive termination of this Agreement indefinitely or to the extent set out therein.

8. Independent Contractor. Each party will act as an independent contractor and employees of each party will not be considered to be employees of the other party. No agency, partnership, joint venture or other joint relationship is created by this Agreement. Neither party may make any commitments binding on the other, nor may either party make any representation that they are acting for, or on behalf of, the other. Each party assumes full responsibility for the actions of its personnel while performing the Services and such party will be solely responsible for the supervision, daily direction, control of its personnel, and for the payment of all of their compensation.

9. Publicity. Neither party will use the name of the other party in publicity releases or similar activity without the consent of the other party, except PRECISELY may include Client's name in any PRECISELY client list.

10. General.

a) No waiver of any breach of any provision of this Agreement or the PSOF by either party or the failure of either party to insist on the exact performance of any provision of this Agreement or the PSOF will constitute a waiver of any

prior, concurrent or subsequent breach of performance of the same or any other provisions hereof, and no waiver will be effective unless made in writing.

b) Any notice alleging a breach of this Agreement must be in writing and be sent by overnight courier or delivered in person to the party's address set forth in the PSOF. Any other notice required to be provided by PRECISELY under this Agreement may be sent by postal mail service or e-mail to the individual designated by Client. Any notice delivered to PRECISELY hereunder must be sent to the attention of "Contract Administration" at 1700 District Avenue, #300, Burlington, Massachusetts 01803 with a copy to legal@precisely.com.

c) If any provision of this Agreement or the PSOF, or portion thereof, is held to be invalid, illegal or unenforceable by a court of competent jurisdiction, such provision will be severed and the remaining provisions of the Agreement or PSOF will remain in full force and effect.

d) Client agrees not to export, re-export, or provide the Deliverables to: (i) any country to which the United States has embargoed goods; (ii) any person on the U.S. Treasury Department's list of Specially Designated Nationals; (iii) any person or entity on the U.S. Commerce Department's Denied Persons List; or (iv) any person or entity where such export, re-export or provision violates any U.S. Export control or regulation.

11. **Applicable Law.** This Agreement will be governed by, and construed in accordance with, the laws of the State of New York without regard to its principals of conflict of laws. In the event of any dispute arising out of or relating to this Agreement, a suit will be brought only in a federal or state court of competent jurisdiction located in New York County in the State of New York. If Client is located in Canada, this Agreement will be governed by the laws of the Province of Ontario. Ontario's principles of conflict of laws or the United Nations Convention on contracts for the international sale of goods will not apply to this Agreement. In the event of any dispute arising out of or relating to this Agreement, a suit will be brought only in the General Division of the Ontario Court of Justice.

12. **Entire Agreement.** This Agreement constitutes the entire agreement between PRECISELY and Client, and supersedes all prior agreements, proposals, understandings, representations or correspondence relevant to the subject matter hereof. Client has not been induced to enter into this Agreement or the PSOF by any representations or promises not specifically stated herein. The PSOF will be signed by authorized representatives of PRECISELY and Client. This Agreement supersedes any pre-printed terms contained on any purchase order or similar document issued by Client and any such terms will have no force or effect.