

## ENGAGEONE COMMUNICATE SERVICE LICENSE AGREEMENT

(October, 2021)

IMPORTANT: DO NOT USE THIS SERVICE UNTIL YOU HAVE READ AND AGREED TO THIS SERVICE LICENSE AGREEMENT. This is an agreement between you (“You” or “Client”) and Precisely Software Incorporated or its Affiliate operating in your geography (“Precisely”). If You are accessing the Service on behalf of a company or organization, You certify that you are authorized to agree to this Agreement on behalf of such organization, and “You” as used in this Agreement will mean all authorized users within your organization. By clicking next to “BUY NOW” prior to accessing the Service or by registering in the Client Portal, You are agreeing to the terms of this Service License Agreement (the “Agreement”). IF YOU ARE NOT WILLING TO BE BOUND BY THE AGREEMENT, terminate Your access to the Service. If You are licensing these products for evaluation only purposes, the Service is being provided to you under a Trial License as defined in Section 2d, below. During the Trial License the Service is provided to you “AS IS” and Precisely disclaims all warranties, express or implied, including, but not limited to, accuracy, reliability, noninfringement, merchantability or fitness for a particular purpose. Any infringement indemnity obligations set forth herein are expressly disclaimed for Trial Licenses. If You subsequently convert the Trial License of the Service to a productive use license, you agree to the terms set forth in this Agreement. If You and Precisely signed a separate Service License Agreement for the same Service, the terms of the signed agreement supersede the terms of this Agreement.

1. Definitions. For the purposes of this Agreement, the following terms will have the corresponding definitions:
  - a. **“Acceptable Use Policy”** means the terms under which You may access and use the Service;
  - b. **“Affiliate”** means an entity that Controls, is Controlled by or is under common Control with a party, where control means ownership of more than fifty percent (50%) of stock or power to direct management of an entity;
  - c. **“Allotment”** means the number of Recipients purchased by You to be used during a given Billing Period;
  - d. **“Available Hours of Operation”** means twenty-four (24) hours per day, seven (7) days per week exclusive of Scheduled Downtime, described in Section 9(b), (Precisely Responsibilities; Support), and downtime arising from causes beyond the reasonable direct control of Precisely, such as the interruption or failure of telecommunications or digital transmission links, hostile network attacks or a Force Majeure event, as set out in Section 12;
  - e. **“Available Hours of Support”** means the hours set out in the Documentation during which time You may obtain technical support for the Services;
  - f. **“Billing Period”** means a calendar month minus one day;
  - g. **“Client Data”** means any data, such as an address record, geographic data, telephone number, individual or business record or user query, or other material submitted by You to the Service or provided by You to Precisely for the performance of the Service;
  - h. **“Client Portal”** means <https://communicate.engageone.co/> where You may purchase a license for and access the Service and analytics regarding Your use of the Service including Communications designed and exchanged using the Services, number of Recipients used and other pertinent information regarding Your access and use of the Service;
  - i. **“Communication”** means an email, short message service (“SMS”), chatbot, video, or PDF message created and exchanged using the Service;
  - j. **“Content”** means any sample content or templates, whether provided by Precisely or its third party licensors, including photographic images, text, emails, SMS, chatbot responses, PDF messages or videos.

- k. **“Documentation”** means the current technical and user documentation for the Service provided on the Client Portal;
- l. **“Effective Date”** means the earliest date You (i) clicked “BUY NOW”, (ii) first accessed the Service or (iii) registered in the Client Portal;
- m. **“Messaging Channel”** means a third party technology-supported method for You to communicate directly with a Recipient including, but not limited to, a website, Messaging app such as Facebook Messenger, WhatsApp, etc, SMS, or an internet connected device such as Amazon Alexa, Nest Mini, etc;
- n. **“Plan”** means a purchase option selected by You, identifying a Term of service and number of Recipients;
- o. **“Recipient”** means (i) an individual who is sent a Communication delivered through the Service through one or more distribution channels; (ii) an individual who engages a chatbot delivered through the Service on a given Messaging Channel; (iii) a specific individual for whom a personalized interactive video is created or (iv) an unnamed individual who views an interactive video embedded on a web page and not otherwise assigned for viewing by a specific recipient.
- p. **“Service”** means the services offered by Precisely under the terms of this Agreement, further described in the Client Portal;
- q. **“Term”** means the period of time during which You may access and use the Service under the terms of this Agreement as set forth in the Plan selected by You; and

## 2. License Grants

- a. Service License. Subject to the terms of this Agreement and the payment of applicable fees, Precisely hereby grants You a non-exclusive, non-transferable, non-assignable, royalty-free, worldwide right and license to use the Service to create and exchange Communications with one or more Recipients during the Term..
- b. Content License. Subject to the terms of this Agreement and the payment of applicable fees, Precisely hereby grants You a non-exclusive, non-transferable license to use, copy and modify the Content for use in a Communication exchanged through the Service during the Term.
- c. Third Party Content. Certain Content is provided under license from third parties and is subject to copyright and other intellectual property rights owned by or licensed to such third parties. Your use of such third party Content is governed by the additional terms set forth below, and You may be held liable for any unauthorized copying or disclosure of this Content.
- d. Trial License. If the Service was provided on a no-charge basis, the Service may be used solely for evaluation purposes (a “Trial License”) and only for the duration of the trial designated at the time of download (the “Trial Period”). If no time period has been specified, the Trial Period will be fourteen (14) days. A Trial License may not be used for any development, commercial or production purpose, or any purpose other than solely to evaluate a potential future purchase of a license of the Service.

## 3. General Use Restrictions. In using the Service, You will not:

- a. Other than providing access to the Service through the Communications, You will not provide Recipients with direct access to the Service;
- b. Provide Recipients with the Service functionality as a “service bureau” or “service provider”, You may only provide Recipients with Communications;

- c. Remove, distort, cover or change any attribution, ownership or other proprietary rights statements, policies or notices contained in the Service or the Content, including copyright and trademark notices or terms of use links;
  - d. Use or access (or permit Recipients to use or access) the Service or any Content through technology or means other than those provided by the Service;
  - e. Attempt to reverse engineer or decompile the Service or any component of the Service;
  - f. Attempt to create a substitute or similar service through use of or access to the Service.
4. Prohibited Actions. You may not:
- a. Send spam;
  - b. defame, abuse, harass, stalk, threaten or otherwise violate the legal rights (such as rights of privacy and publicity) of others;
  - c. upload, post, transmit or otherwise make available any inappropriate, defamatory, obscene, or unlawful content;
  - d. Permit any Communications exchanged through the Service to contain or display adult content, promote illegal activities, send or store infringing, obscene, threatening or unlawful or tortious material or disrupt other users of the Service, network services or network equipment. Disruptions include, but are not limited to, denial of service attempts, distribution of unsolicited advertising or chain letters, propagation of computer worms and viruses, or use of the Service to make unauthorized entry to any other device accessible via the network or the Service;
  - e. upload, post, transmit or otherwise make available any content that infringes any patent, trademark, copyright, trade secret or other proprietary right of any party, unless You are the owner of the rights, or have the permission of the owner or other legal justification to use such content;
  - f. upload, post, transmit or otherwise make available messages that promote pyramid schemes, chain letters, or disruptive commercial messages or advertisements;
  - g. upload, post, email, transmit or otherwise make available any other content, message, or communication prohibited by applicable law, the Agreement or any applicable APIs Service policies or guidelines;
  - h. download any file posted by another that You know, or reasonably should know, cannot legally be distributed in such manner;
  - i. impersonate another person or entity, or falsify or delete any author attributions or labels of the origin or source of Content, or other material;
  - j. restrict or inhibit any other user from using and enjoying the Service or any other PSI services;
  - k. display content in Your Communication that falsely expresses or implies that such content is sponsored or endorsed by PSI;
  - l. create user accounts by automated means or under false or fraudulent pretenses, to obtain multiple keys for the same URL on our Portal unless approved by PSI;
  - m. promote or provide instructional information about illegal activities;
  - n. promote physical harm or injury against any group or individual; or

- o. transmit any malicious code (including but not limited to viruses, worms, defects, and Trojan horses), or any other items of a destructive nature.

5. Fees; Payment Terms.

- a. You will pay Precisely the fees for the Allotment associated with the selected Plan via the Client Portal. Unless otherwise identified in the Client Portal, all fees are stated in and will be paid in United States currency. If You fail to pay any fees due by the due date, Precisely may suspend performance of the Services upon ten (10) days written notice to You. Precisely may change the monthly fees upon thirty (30) days notice. Any increase in fees will not be effective until the commencement of the subsequent Term for the specific Plan for which the increase applies.
- b. The fees do not include any amount for taxes. You will pay all federal, state and local sales, use, property, excise, privilege, ad valorem, Internet-related, and other taxes imposed on or with respect to this Agreement for the Services provided hereunder. If any sales, use, excise or other taxes (except for taxes based on Precisely's net income) are assessed against or required to be collected in connection with this Agreement it will be set forth at the point of purchase in the Client Portal.
- c. Allotments purchased may be used during the Billing Period. Unused Allotments may not be carried over into subsequent Billing Periods. If You exhaust an Allotment during the Billing Period, You will be billed for the overage at the per-Recipient rate of the Plan selected by You. You may access the Client Portal to view Allotment usage and history.
- d. Precisely reserves the right, at Precisely's discretion, to promptly terminate any free trial or require You to purchase a paid Plan.

6. Your Responsibilities.

- a. Use of the Service is contingent on Your compliance with this Agreement.
- b. Failure to comply with this Agreement may result in immediate suspension or termination of Your access to the Service.
- c. You must use all reasonable efforts to prevent unauthorized use of the Service and the Content and terminate any such unauthorized use.
- d. You are solely responsible for (and Precisely has no responsibility to You or to any third party for) any breach of Your obligations under this Agreement and for the consequences of any such breach (including any loss or damage that Precisely may suffer).

7. Client Data. Precisely will hold Client Data in accordance with the Data Processing Addendum attached as Schedule A.

8. License Grants by You.

- a. You retain all right, title and interest in and to all Client Data and hereby grant Precisely a right to use Client Data to the extent required to deliver the Service as provided hereunder.
- b. You grant Precisely a royalty-free, worldwide, irrevocable, perpetual license to use or incorporate into the Service any suggestions, enhancement requests, recommendations or other feedback provided by You relating to the operation of the Service.
- c. You grant Precisely a perpetual, irrevocable, worldwide, royalty-free, and non-exclusive license to use data derived from You or Your Recipients use of the Service for the limited purposes of performing analytics on the Service's performance, or for the purpose of improving or enhancing the Service or other products or services offered by Precisely to its customers.

- d. You represent and warrant to Precisely that You have all the rights, power and authority necessary to grant the above licenses.

9. Indemnification.

- a. Precisely will (i) defend You against any third party claim or action that alleges that the Service, when used by You in accordance with the Documentation and in compliance with the terms of this Agreement, infringes a United States patent, copyright, trademark, trade secret and (ii) indemnify You by paying (a) the resulting damages and costs finally awarded by a court of competent jurisdiction to the extent that such are the result of the third party claim or (b) amounts due by You pursuant to a settlement agreement entered into by Precisely.
- b. Precisely's obligations in Section 8a above, are contingent upon You: (i) sending prompt written notice of the claim to Precisely and taking reasonable steps to mitigate damages, (ii) granting Precisely the sole right to control the defense and resolution of the claim, and (iii) cooperating with Precisely in the defense and resolution of the claim and in mitigating any damages.
- c. Notwithstanding the foregoing, Precisely will have no obligation under Section 9a or otherwise with respect to any infringement claim based on (a) any use of the Service not in accordance with this Agreement, the Acceptable Use Policy, or use in any manner or for any purpose for which it was neither designed nor contemplated by Precisely; (b) any use of the Service in combination with other content, products, equipment, software, or data not supplied by Precisely; or (c) any modification of the Service by any person other than Precisely or its authorized agents or subcontractors authorized by Precisely to make such modification as evidenced in writing.
- d. If the Service is subject to a claim of infringement, or if Precisely reasonably believes that the Service may be subject to such a claim, Precisely reserves the right, at its sole option, to: (a) procure for Client the right to continue using the Service; or (b) replace the Service with another equivalent, non-infringing service; or (c) modify the Service to make it non-infringing; or (d) if the foregoing are not commercially reasonable, direct You to terminate use of Service. If Precisely directs You to terminate use of the Service (or a permanent injunction is issued against such use), You will immediately terminate such use and Your remedies, in addition to the indemnification set out herein, will be limited to termination of this Agreement.
- e. Section 9a-9d state Precisely's entire liability and Your sole and exclusive remedy for infringement claims and actions.
- f. You will defend Precisely against any third party claim arising from: (i) Your use of the Service in a manner not permitted under this Agreement; (ii) a third party claim that the Client Data or any other content, data, files or other materials provided by You to Precisely infringes any patent, copyright or trademark or misappropriates any trade secret; (iii) a violation of any law, rule or regulation regarding the protection of personal data or the use or access to the Service; or (iv) acts of gross negligence or willful misconduct. You will have control of the defense and will defend at Your own expense, any claim or litigation to which this indemnity relates including the right to settle any such claim. Precisely must notify You promptly of any such claim and will provide reasonable cooperation to You, upon Your request and at Your cost, to defend such claim. You will not agree to any settlement which requires acknowledgment of fault or an incurred liability on the part of an indemnified party not otherwise covered by this indemnification without indemnified party's prior consent. Precisely

10. Precisely Responsibilities; Support.

- a. Precisely will use best efforts to make the Services available during the Available Hours of Operation in accordance with the Service Availability Statement located at <https://www.precisely.com/legal/licensing/service-availability-statement>. Support for the Service will be available during the Available Hours of Support. Support will consist of online chat, forum, and email technical support to assist You with the use of the Service and will be provided in accordance with the Documentation.
- b. The Service may be inaccessible or inoperable during certain periods to permit Precisely to perform maintenance support services ("Scheduled Downtime"). Precisely will use reasonable commercial efforts to

minimize any disruption, inaccessibility or inoperability of the Services in connection with the Scheduled Downtime or other disruption of Service.

11. Confidentiality. During the term of this Agreement, 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 Service), tests, benchmarking, scripting languages or routines; (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, 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 Agreement.
- 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. 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 10; 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 10.
- f. Disclosing Party may be irreparably damaged if the obligations under this Section 10 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 10 or any other appropriate equitable order or decree.

12. Warranties; Disclaimers.

- a. Precisely represents and warrants that it has the right to grant You the rights granted hereunder
- b. Precisely represents and warrants to You that the Service will materially conform to the Documentation. Precisely does not warrant the operability or accuracy of any Client Data processed by Precisely.
- c. PRECISELY DOES NOT WARRANT THAT THE SERVICE WILL OPERATE ERROR FREE OR THAT PRECISELY WILL CORRECT ALL ERRORS IN THE SERVICE. EXCEPT AS EXPRESSLY STATED IN THIS

AGREEMENT, AND FOR ALL TRIAL LICENSES, THE LICENSED PRODUCTS ARE PROVIDED "AS IS" AND, THE SERVICE IS PROVIDED "AS IS" AND PRECISELY ON BEHALF OF ITSELF AND ITS THIRD PARTY SUPPLIERS, DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE USE OF THE SERVICE, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, RELIABILITY, NONINFRINGEMENT, COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE IN TRADE.

- d. PRECISELY WILL NOT BE LIABLE FOR ANY CLAIMS OR DAMAGES CAUSED BY THE UNAUTHORIZED USE OF THE SERVICE OR ACTS OF ABUSE OR MISUSE OF THE SERVICE BY YOU. IN ADDITION, PRECISELY WILL NOT BE LIABLE FOR ANY: (I) LOSS OR CORRUPTION OF CLIENT DATA USED IN THE SERVICE; OR (II) LOSS OR DAMAGE IN CONNECTION WITH OR ARISING OUT OF THE INTERRUPTION OR LOSS OF USE OF THE SERVICE.

13. Limitation of Liability.

- a. DISCLAIMER. NEITHER PARTY NOR PRECISELY'S THIRD PARTY SUPPLERS WILL BE LIABLE FOR ANY PUNITIVE, SPECIAL, CONSEQUENTIAL, INCIDENTAL OR INDIRECT DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUE, BUSINESS INTERRUPTION, OR LOST DATA, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE.
- b. MAXIMUM LIABILITY. IN ANY EVENT, EITHER PARTY'S (AND PRECISELY'S THIRD PARTY SUPPLIER'S) MAXIMUM LIABILITY FOR ANY CLAIM ARISING IN CONNECTION WITH THIS AGREEMENT (IN TORT, CONTRACT OR OTHERWISE) WILL BE LIMITED TO THE AMOUNT OF FEES PAID BY YOU TO PRECISELY DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRIOR TO THE DATE OF SUCH CLAIM.
- c. EXCLUSIONS. THE FOREGOING DISCLAIMER SET FORTH IN SECTION 13(A) DOES NOT APPLY TO YOUR BREACH OF SECTION 3 (GENERAL USE RESTRICTIONS), OR EITHER PARTY'S LIABILITY UNDER SECTION 9 (INDEMNIFICATION). THE FOREGOING MAXIMUM LIABILITY SET FORTH IN SECTION 13(B) DOES NOT APPLY TO YOUR BREACH OF SECTION 3 (GENERAL USE RESTRICTIONS), YOUR OBLIGATIONS TO PAY AMOUNTS DUE UNDER A PLAN, EITHER PARTY'S LIABILITY UNDER SECTION 9 (INDEMNIFICATION) OR EITHER PARTY'S BREACH OF SECTION 19 (COMPLIANCE WITH LAWS).

14. Term; Termination.

- a. This Agreement is effective on the Effective Date and will remain in effect for an initial Term as set forth in the Plan selected by You. Upon expiration of the Plan Term, such Plan will automatically renew for successive Terms unless either party cancels the Plan [in the Client Portal] within thirty (30) days of receipt of notification of Term expiration.
- b. Either party may terminate this Agreement and Your access to the Service by written notice if the other party commits a material breach of this Agreement and fails to cure such breach within thirty (30) days after receipt of such notice, or an additional period of time as agreed in writing by the parties.
- c. Upon termination of this Agreement or expiration or termination of a Plan for any reason, You will immediately cease use of the Service and each party will promptly return all Confidential Information of the other party.
- d. Sections 5 (Fees, Payment Terms), 7 (Client Data), 8 (License Grants by You), 9 (Indemnification), 11 (Confidentiality) 12 (Warranties; Disclaimers), 13 (Limitation of Liability), 14 (Term, Termination) 19 (Compliance with Laws) 20 (Governing Law) and 21 (Verification) and other sections that by their nature are intended to survive will survive termination of this Agreement indefinitely or to the extent set out therein.

15. Force Majeure. Except for Your payment obligations, neither party is responsible from any delay or failure to perform resulting from causes beyond its reasonable control.

16. Assignment. You are not permitted to transfer or assign (by operation of law or otherwise) any of Your rights or obligations under this Agreement without the prior written consent of Precisely, which consent will not be unreasonably withheld, delayed or denied. Any such transfer or assignment without Precisely's written consent will be void and of no force and effect.
17. Publicity. Except as otherwise set forth in the Acceptable Use Policy, neither party will use the name of the other party in any publicity, press releases or similar activity without the consent of the other party.
18. General.
  - a. No waiver of or failure to act regarding any breach of this Agreement by either party or the failure of either party to insist on the exact performance of any provision of this Agreement will constitute a waiver of any prior, concurrent or subsequent breach 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 will be in writing and will be sent by overnight courier or delivered in person to the party's address set forth in the Client Portal. Notices to Precisely will include a copy to: Precisely Software Incorporated 1700 District Avenue, #300, Burlington, MA 01803, Attn: Legal Department cc: legal@precisely.com. Any other notice required to be provided by Precisely under this Agreement may be sent by postal mail or e-mail to the individual designated by You in the Client Portal, and to Precisely at the e-mail addresses designated in the Client Portal.
  - c. If any provision of this Agreement 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 will remain in full force and effect.
  - d. 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.
19. Compliance with Laws. Each party will, at all times, exercise its rights and perform its obligations under this Agreement in compliance with all applicable laws, rules, and regulations ("Applicable Laws"), including all Applicable Laws related to the use, disclosure, processing and transmission of personal information, and export control laws. You represent and warrant that (i) You are not a citizen of, or located within, a country or territory that is subject to a U.S. Government embargo or designated by the U.S. Government as a state sponsor of terrorism, including without limitation, Cuba, Iran, North Korea, Sudan, Syria, and the Crimea Region of the Ukraine, ("Embargoed Countries"); and (ii) You are not identified on any prohibited party list maintained by the U.S. Government, including the Specially Designated Nationals and Blocked Persons List, Foreign Sanctions Evaders List, and Sectoral Sanctions Identification List maintained by the Office of Foreign Assets Control of the U.S. Treasury Department, and the Denied Persons List, Entity List, and Unverified List maintained by the Bureau of Industry and Security of the U.S. Commerce Department (collectively, the "Prohibited Party Lists"). In addition, You agree not to export, re-export, or provide the Service to: (i) an Embargoed Country; (ii) any individual on the Prohibited Party Lists; or (iv) any person or entity where such export, re-export or provision violates any U.S. Export control or regulation.
20. Governing Law. This Agreement is governed by the laws of the State of New York without regard to its principles 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 is governed by the laws of the Province of Ontario. Ontario's principals of conflict of laws or the United Nations Convention on contracts for the international sale of good 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.
21. Verification. At any time during the term of this Agreement and for up to one (1) year after expiration or termination, upon ten (10) days written notice, Precisely or its designated third party may verify Your compliance with the terms of the Agreement at all locations from which You access the Service, including a review of records, reports, and scripts. Such



verification will take place no more than one (1) time per twelve (12) month period during normal business hours in a manner which minimizes disruption to Your work environment. Precisely may use an independent third party under obligations of confidentiality to provide assistance. Precisely will notify You in writing if any such verification indicates that You have used the Service in excess of the use authorized by this Agreement or the applicable Plan. You agree to pay all associated fees directly to Precisely for the charges that Precisely specifies for such excess use.

22. **U.S. Government Restricted Rights.** If the Service is acquired for or on behalf of the United States of America, its agencies and/or instrumentalities ("U.S. Government"), it is provided with restricted rights. The software and accompanying documentation are "commercial computer software" and "commercial computer software documentation," respectively, pursuant to 48 C.F.R. 12.212 and 227.7202, and "restricted computer software" pursuant to 48 C.F.R. 52.227-19(a), as applicable. Use, modification, reproduction, release, performance, display or disclosure of Service and accompanying documentation by the U.S. Government are subject to restrictions as set forth in this Agreement and pursuant to subparagraph (c)(1) of the Commercial Computer Software-Restricted Rights Clause at FAR 52.227-19; subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013, subparagraph (d) of the Commercial Computer Software--Licensing clause at NASA FAR supplement 16-52.227-86; or their equivalent.
23. **Entire Agreement.** This Agreement and all appendices, exhibits, schedules and attachments thereto, including those incorporated by reference, constitutes the entire agreement between the parties with regard to Your access to and use of the Service, may not be modified or amended except by a writing signed by both parties except as otherwise indicated herein, and supersedes all proposals, purchase orders, understandings, representations, prior agreements or communications relating to Your use of the Service. This Agreement also supersedes any preprinted terms contained on a purchase order or similar document issued by You and any such terms will have no force or effect. You certify that You have not been induced to enter into this Agreement by any representations or promises not specifically stated herein. The language of this Agreement will not be interpreted in favor of or against any party as the drafter of this Agreement.

## Schedule A (Data Processing Addendum)

THIS DATA PROCESSING ADDENDUM is entered into as of the Effective Date by and between Precisely and (2) You or “Customer”.

### 1. INTERPRETATION

1.1. In this Data Processing Addendum the following terms shall have the meanings set out in this Paragraph 1.1, unless expressly stated otherwise:

- (a) **“Adequate Country”** means a country or territory outside the European Economic Area that the European Commission has deemed to provide an adequate level of protection for Personal Data pursuant to a decision made in accordance Article 45(1) of the GDPR.
- (b) **“Agreement”** means the ENGAGEONE COMMUNICATE SERVICE LICENSE AGREEMENT entered into herewith.
- (c) **“Anonymised Data”** means any Personal Data (including Customer Personal Data), which has been anonymised such that the Data Subject to whom it relates cannot be identified, directly or indirectly, by Precisely or any other party reasonably likely to receive or access that Anonymised Data.
- (d) **“Business Day”** means any day which is not a Saturday, Sunday or public holiday, and on which the banks are open for business, in the United States.
- (e) **“Cessation Date”** has the meaning given in Paragraph 9.1.
- (f) **“Controller Data”** means any Personal Data relating to Customer’s Personnel (including such individual’s name, contact information, and associated usage and technical data (e.g., IP address and browser/device information) etc), which may be Processed for the purposes of administering maintenance and support, performing or enforcing applicable terms of the Agreement, and otherwise managing customer relations (including marketing), in each case in a fashion and using means that Precisely itself determines.
- (g) **“Customer Personal Data”** means any Personal Data Processed by or on behalf of Precisely on behalf of Customer under the Agreement (excluding Controller Data).
- (h) **“Data Protection Laws”** mean laws that regulate the Processing of Personal Data, including, not by way of limitation, the (i) EU General Data Protection Regulation 2016/679 (the “GDPR”) and to the extent the GDPR is no longer applicable in the United Kingdom, any implementing legislation or legislation having equivalent effect in the United Kingdom (references to “Articles” or “Chapters” of the GDPR shall be construed accordingly),(ii) the California Consumer Privacy Act of 2018, Cal. Civil Code § 1798.100 et seq. (the “CCPA”) and (iii) any federal, state, or national data protection laws made under, pursuant to, replacing or succeeding (i), or (ii)), related or applicable to Precisely and/or Customer; and successors of the foregoing, as they may be supplemented, revised or amended from time to time.
- (i) **“Data Subject Request”** means the exercise by Data Subjects of their rights under, and in accordance with Data Protection Laws.
- (j) **“Data Subject”** means the identified or identifiable natural person to whom Customer Personal Data relates.

- (k) **"Delete"** means to remove or obliterate Personal Data such that it cannot be recovered or reconstructed, and **"Deletion"** shall be construed accordingly.
- (l) **"Personnel"** means a person's employees, agents, consultants or contractors.
- (m) **"Restricted Country"** means a country or territory outside the European Economic Area that is not an Adequate Country.
- (n) **"Restricted Transfer"** means a transfer of Customer Personal Data from Customer to Precisely in a Restricted Country, where such transfer would be prohibited by Data Protection Laws without a legal basis therefor under Chapter V of the GDPR.
- (o) **"Services"** means those services and activities to be supplied to or carried out by or on behalf of Precisely for Customer pursuant to the Agreement.
- (p) **"Standard Contractual Clauses"** means the standard contractual clauses issued by the European Commission (from time-to-time) for the transfer of Personal Data from Data Controllers established inside the European Economic Area to Data Processors established in Restricted Countries.
- (q) **"Subprocessor"** means any third party appointed by or on behalf of Precisely to Process Customer Personal Data.

1.2. In this Data Processing Addendum:

- (a) the terms, **"Attorney General," "Business," "Consumer," "Data Controller," "Data Processor," "Personal Data," "Personal Information," "Personal Data Breach," "Process"** (and its derivatives), **"Sell," "Service Provider"** and **"Supervisory Authority"** shall have the meaning ascribed to the corresponding terms in the Data Protection Laws;
- (b) As applicable, any references to: (i) Supervisory Authority shall include Attorney General, (ii) Data Processor shall include Service Provider; (iii) Data Controller shall include Business; and (iv) Personal Data shall include Personal Information.
- (c) unless otherwise defined in this Data Processing Addendum, all capitalised terms shall have the meaning given to them in the Agreement.

## 2. PROCESSING OF CUSTOMER PERSONAL DATA

2.1. In respect of Customer Personal Data, the Parties acknowledge that:

- (a) Precisely acts as a Data Processor; and
- (b) Customer acts as the Data Controller.

2.2. Precisely shall:

- (a) comply with all applicable Data Protection Laws in Processing Customer Personal Data;
- (b) not Sell Customer Personal Data;
- (c) not Process Customer Personal Data other than:
  - (i) for the specific business purpose of providing the Services;

- (ii) on Customer's instructions (subject always to Paragraph 2.8); and
- (iii) as required by applicable laws.

- 2.3. Customer instructs Precisely to Process Customer Personal Data as necessary:
- (a) to provide the Services to Customer; and
  - (b) to perform Precisely's obligations and exercise Precisely's rights under the Agreement.
- 2.4. Annex 1 (*Data Processing Details*) sets out certain information regarding Precisely's Processing of Customer Personal Data as required by Article 28(3) of the GDPR.
- 2.5. Customer may amend Annex 1 (*Data Processing Details*) on written notice to Precisely from time to time as Customer reasonably considers necessary to meet any applicable requirements of Data Protection Laws.
- 2.6. Nothing in Annex 1 (*Data Processing Details*) (including as amended pursuant to Paragraph 2.5) confers any right or imposes any obligation on any Party to this Data Processing Addendum.
- 2.7. Where Precisely receives an instruction from Customer that, in its reasonable opinion, infringes the Data Protection Laws, Precisely shall inform Customer.
- 2.8. Customer acknowledges and agrees that any instructions issued by Customer with regards to any Processing by or on behalf of Precisely of Customer Personal Data pursuant to or in connection with the Agreement:
- (a) shall be strictly required for the sole purpose of ensuring compliance with Data Protection Laws; and
  - (b) (without limitation to the generality of Paragraph 2.6) shall not relate to the scope of, or otherwise materially change, the Services to be provided by Precisely under the Agreement.
- 2.9. Notwithstanding anything to the contrary herein, Precisely may terminate the Agreement in its entirety upon written notice to Customer with immediate effect if Precisely considers (in its reasonable discretion) that:
- (a) it is unable to adhere to, perform or implement any instructions issued by Customer due to the technical limitations of its systems, equipment and/or facilities; and/or
  - (b) to adhere to, perform or implement any such instructions would require disproportionate effort (whether in terms of time, cost, available technology, manpower or otherwise).

For the avoidance of doubt, this Paragraph 2.9 does not refer to the instructions set out in Paragraph 2.3.

- 2.10. Customer represents and warrants on an ongoing basis that, for the purposes of Article 6 of the GDPR, there is, and will be throughout the term of the Agreement, a valid legal basis for the Processing by Precisely of Customer Personal Data in accordance with this Data Processing Addendum and the Agreement (including, any and all instructions issued by Customer from time to time in respect of such Processing).

### **3. PRECISELY PERSONNEL**

Precisely shall take reasonable steps to ensure the reliability of any Precisely Personnel who may Process Customer Personal Data, ensuring:

- (a) that access is strictly limited to those individuals who need to know or access the relevant Customer Personal Data for the purposes described in this Data Processing Addendum; and
- (b) that all such individuals are subject to confidentiality undertakings or professional or statutory obligations of confidentiality.

#### **4. SECURITY**

- 4.1. Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk (which may be of varying likelihood and severity) for the rights and freedoms of natural persons, Precisely shall in relation to Customer Personal Data implement appropriate technical and organisational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1) of the GDPR.
- 4.2. In assessing the appropriate level of security, Precisely shall take account in particular of the risks presented by the Processing, in particular from a Personal Data Breach.

#### **5. SUBPROCESSING**

- 5.1. Customer authorises Precisely to appoint Subprocessors in accordance with this Paragraph 5.
- 5.2. Precisely may continue to use those Subprocessors already engaged by Precisely as at the date of this Data Processing Addendum, subject to Precisely meeting within a reasonable timeframe (or having already met) the obligations set out in Paragraph 5.4.
- 5.3. Precisely shall give Customer prior written notice of the appointment of any new Subprocessor, including reasonable details of the Processing to be undertaken by the Subprocessor. If, within five (5) Business Days of receipt of that notice, Customer notifies Precisely in writing of any objections (on reasonable grounds) to the proposed appointment:
  - (a) Precisely shall use reasonable efforts to make available a commercially reasonable change in the provision of the Services which avoids the use of that proposed Subprocessor; and
  - (b) where:
    - (i) such a change cannot be made within thirty (30) Business Days from Precisely receipt of Customer's notice;
    - (ii) no commercially reasonable change is available; and/or
    - (iii) Customer declines to bear the cost of the proposed change,

notwithstanding anything in the Agreement, either Party may by written notice to the other Party with immediate effect terminate the Agreement either in whole or to the extent that it relates to the Services which require the use of the proposed Subprocessor.

- 5.4. With respect to each Subprocessor, Precisely shall:
  - (a) before the Subprocessor first Processes Customer Personal Data (or, as soon as reasonably practicable, in accordance with Paragraph 5.2), carry out adequate due diligence to ensure that the Subprocessor is capable of providing the level of protection for Customer Personal Data required by this Data Processing Addendum; and

- (b) ensure that the arrangement between Precisely and the Subprocessor is governed by a written contract including terms which offer at least an equivalent level of protection for Customer Personal Data as those set out in this Data Processing Addendum (including those set out in Paragraph 4).

## **6. DATA SUBJECT RIGHTS**

- 6.1. Taking into account the nature of the Processing, Precisely shall provide Customer with such assistance as may be reasonably necessary and technically possible in the circumstances, to assist Customer in fulfilling its obligation to respond to Data Subject Requests.
- 6.2. Precisely shall:
  - (a) promptly notify Customer if Precisely receives a Data Subject Request; and
  - (b) ensure that Precisely does not respond to any Data Subject Request except on the documented instructions of Customer (and in such circumstances, at Customer's cost) or as required by applicable laws.

## **7. PERSONAL DATA BREACH**

- 7.1. Precisely shall notify Customer without undue delay upon Precisely becoming aware of a Personal Data Breach affecting Customer Personal Data, providing Customer with sufficient information (insofar as such information is, at such time, within Precisely's possession) to allow Customer to meet any obligations under Data Protection Laws to report or inform the Personal Data Breach to:
  - (a) affected Data Subjects; or
  - (b) the relevant Supervisory Authority(ies) (as may be determined in accordance with the Data Protection Laws).
- 7.2. Precisely shall at Customer's sole cost and expense co-operate with Customer and take such reasonable commercial steps as may be directed by Customer to assist in the investigation, mitigation and remediation of each such Personal Data Breach.

## **8. DATA PROTECTION IMPACT ASSESSMENT AND PRIOR CONSULTATION**

Precisely shall provide reasonable assistance to Customer, at Customer's cost, with any data protection impact assessments, and prior consultations with Supervisory Authorities, which Customer reasonably considers to be required of Customer by Data Protection Laws, in each case solely in relation to Processing of Customer Personal Data by, and taking into account the nature of the Processing by, and information available to, Precisely.

## **9. DELETION**

- 9.1. Subject to Paragraph 9.2 and 9.4, upon the date of cessation of any Services involving the Processing of Customer Personal Data (the "**Cessation Date**"), Precisely shall immediately cease all Processing of the Customer Personal Data for any purpose other than for storage.
- 9.2. Customer hereby acknowledges and agrees that, due to the nature of the Customer Personal Data Processed by Precisely, return (as opposed to Deletion) of Customer Personal Data is not a reasonably practicable option in the circumstances. Having regard to the foregoing, Customer agrees that (for the purposes of Article 28(3)(g) of the GDPR) it is hereby deemed (at the Cessation Date) to have irrevocably selected Deletion, in preference of return, of the Customer Personal Data.

- 9.3. To the fullest extent technically possible in the circumstances, within thirty (30) Business Days after the Cessation Date, Precisely shall either (at its option):
- (a) Delete; or
- irreversibly render into Anonymised Data all Customer Personal Data then within Precisely's possession.
- 9.4. Precisely and any Subprocessor may retain Customer Personal Data where required by applicable law, for such period as may be required by such applicable law, provided that Precisely and any such Subprocessor shall ensure:
- (a) the confidentiality of all such Customer Personal Data; and
  - (b) that such Customer Personal Data is only Processed as necessary for the purpose(s) specified in the applicable law requiring its storage and for no other purpose.
- 9.5. Precisely shall provide written certification to Customer that it has fully complied with its obligations under this Paragraph 9 within thirty (30) Business Days of the date of Customer's request for such certification **provided that** such request may only be made during the period falling between:
- (a) thirty (30) Business Days after the Cessation Date; and
  - (b) three (3) months after the Cessation Date.

## 10. **AUDIT RIGHTS**

- 10.1. Precisely shall make available to Customer on request such information as Precisely considers reasonably appropriate in the circumstances to demonstrate its compliance with this Data Processing Addendum (including any general data protection compliance and/or security audits Precisely may cause to be conducted).
- 10.2. Subject to Paragraphs 10.3 and 10.4, in the event that Customer (acting reasonably) is able to provide documentary evidence that the information made available by Precisely pursuant to Paragraph 10.1 is not sufficient in the circumstances to demonstrate Precisely's compliance with this Data Processing Addendum, Precisely shall allow for and contribute to audits, including (only where strictly and demonstrably necessary in the circumstances) on-premise inspections, by Customer or an auditor mandated by Customer in relation to the Processing of the Customer Personal Data by Precisely.
- 10.3. Customer shall:
- (a) give Precisely reasonable notice of any audit or inspection to be conducted under Paragraph 10.1 (which shall in no event be less than one (1) month's notice); and
  - (b) use its best efforts (and shall ensure that each of its mandated auditors uses its best efforts) to avoid causing, and hereby indemnifies Precisely in respect of, any damage, injury or disruption to Precisely's premises, equipment, Personnel, data, and business (including any interference with the confidentiality or security of the data of Precisely's other customers or the availability of Precisely's services to such other customers) while its Personnel and/or its auditor's Personnel (if applicable) are on those premises in the course of any on-premise inspection.

- 10.4. Precisely need not give access to its premises for the purposes of such an audit or inspection:
- (a) to any individual unless he or she produces reasonable evidence of their identity and authority;
  - (b) to any auditor whom Precisely has not given its prior written approval (not to be unreasonably withheld);
  - (c) unless the auditor enters into a non-disclosure agreement with Precisely on terms acceptable to Precisely;
  - (d) where, and to the extent that, Precisely considers, acting reasonably, that to do so would result in interference with the confidentiality or security of the data of Precisely's other customers or the availability of Precisely's services to such other customers;
  - (e) outside normal business hours at those premises; or
  - (f) on more than one occasion in any calendar year during the term of the Agreement, except for any additional audits or inspections which Customer is required to carry out by Data Protection Law or a Supervisory Authority **provided that** Customer has identified the relevant requirement in its notice to Precisely of the audit or inspection.
- 10.5. The Parties shall discuss and agree the costs of any inspection or audit to be carried out by or on behalf of Customer pursuant to this Paragraph 10 in advance of such inspection or audit and, unless otherwise agreed in writing between the Parties, Customer shall bear any third party costs in connection with such inspection or audit and reimburse Precisely for all costs incurred by Precisely and time spent by Precisely (at Precisely's then-current professional services rates) in connection with any such inspection or audit.

## 11. RESTRICTED TRANSFERS

- 11.1. Subject to Paragraph 11.3, to the extent that any Processing by either Precisely or any Subprocessor of Customer Personal Data involves a Restricted Transfer, the Parties agree that:
- (a) Customer – as “data exporter”; and
  - (b) Precisely – as “data importer”,
- shall enter into the Standard Contractual Clauses in respect of that Restricted Transfer and the associated Processing in accordance with Paragraph 11.3
- 11.2. In respect of any Standard Contractual Clauses entered into pursuant to Paragraph 11.1:
- (a) Clause 9 of such Standard Contractual Clauses shall be populated as follows:  
*“The Clauses shall be governed by the law of the Member State in which the data exporter is established.”*
  - (b) Clause 11(3) of such Standard Contractual Clauses shall be populated as follows:  
*“The provisions relating to data protection aspects for sub-processing of the contract referred to in paragraph 1 shall be governed by the law of the Member State in which the data exporter is established.”*
  - (c) Appendix 1 to such Standard Contractual Clauses shall be populated with the corresponding information set out in Annex 1 (*Data Processing Details*); and



(d) Appendix 2 to such Standard Contractual Clauses shall be populated as follows:

*“The technical and organisational security measures implemented by the data importer in accordance with Clauses 4(d) and 5(c) are those established and maintained under Paragraph 4 of the Data Processing Addendum.”*

11.3. The Standard Contractual Clauses shall be deemed to come into effect under Paragraph 11.1 automatically upon the commencement of the relevant Restricted Transfer **provided that** Paragraph 11.1 shall not apply to a Restricted Transfer unless its effect is to allow the relevant Restricted Transfer and the associated Processing to take place without breach of applicable Data Protection Laws.

11.4. In respect of any Standard Contractual Clauses entered into pursuant to Paragraph 11.1, Appendix 1 to those Standard Contractual Clauses shall be populated with the corresponding information (or subset thereof) from Annex 1 (*Data Processing Details*).

## **12. CHANGE IN LAWS**

12.1. In the event that there is a change in the Data Protection Laws that Precisely considers (acting reasonably) would mean that Precisely is no longer able to provide the Services (including any Processing and/or Restricted Transfer(s) of Customer Personal Data) in accordance with its obligations under Data Protection Laws, Precisely reserves the right to make such changes to the Services and to amend any part of this Data Processing Addendum as it considers reasonably necessary to ensure that Precisely is able to provide the Services in accordance with Data Protection Laws.

12.2. In the event that Customer considers (acting reasonably) that any required changes made either to the Services and/or this Data Processing Addendum pursuant to Paragraph 12.1 will cause material and irreparable harm to Customer may terminate the Agreement in its entirety upon written notice to Customer with immediate effect.

## **13. ANONYMOUS DATA**

Customer acknowledges and agrees that Precisely shall be freely able to use and disclose Anonymised Data for Precisely's own business purposes without restriction.

## **14. NO SPECIAL CATEGORIES OF PERSONAL DATA**

14.1. Customer warrants and represents on an ongoing basis, and further undertakes, that it shall not (and shall ensure that its Personnel shall not) cause Precisely to Process any:

- (a) Special Categories of Personal Data referred to in Article 9(1) of the GDPR; or
- (b) any Personal Data relating to relating to criminal convictions or offences.

14.2. Customer will indemnify and hold harmless Precisely and its employees, officers, directors and agents from and against any and all liabilities, losses, damages, costs, fines and other expenses (including legal costs and fees) arising from or relating to any breach by Customer of this Paragraph 14.

14.3. Any and all limitations on liability set out in the Agreement shall apply to liability arising under or in connection with this Data Processing Addendum, including without limitation the indemnity set out in Paragraph 14.2 and any Standard Contractual Clauses entered into pursuant to Paragraph 11.

**15. CONTROLLER DATA**

- 15.1. Customer acknowledges and agrees that (as between the Parties) Precisely shall be freely able to use and disclose (without restriction) the Controller Data for any such purposes as Precisely may in its sole discretion determine.
- 15.2. To the extent that any Controller Data constitutes Personal Data for the purposes of the Data Protection Laws, Precisely:
- (a) shall be an independent Data Controller in respect of such Controller Data;
  - (b) may independently determine the purposes and means of its Processing of such Controller Data.

**16. ORDER OF PRECEDENCE**

- 16.1. This Data Processing Addendum shall be incorporated into and form part of the Agreement.
- 16.2. In the event of any conflict or inconsistency between:
- (a) this Data Processing Addendum and the Agreement, this Data Processing Addendum shall prevail; or
  - (b) any Standard Contractual Clauses entered into pursuant to Paragraph 11 and this Data Processing Addendum, those Standard Contractual Clauses shall prevail.