

## AUTOMATE END USER LICENSE AGREEMENT

(Version 1.6-12Sept2025)

**IMPORTANT: DO NOT USE THE LICENSED PRODUCTS OR ANY SERVICE UNTIL YOU HAVE READ AND AGREED TO THESE TERMS.**

BY (A) SIGNING A DOCUMENT THAT REFERENCES THIS AGREEMENT, (B) ISSUING A PURCHASE ORDER AGAINST A QUOTATION THAT REFERENCES THIS AGREEMENT, OR (C) ACCEPTING THESE TERMS IN ANY MANNER, YOU ARE ACCEPTING ALL THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO THESE TERMS AND CONDITIONS, YOU MAY NOT USE ANY LICENSED PRODUCT OR PROFESSIONAL SERVICES THE PURCHASE OF WHICH REFERENCED THIS AGREEMENT.

IF YOU ARE USING ANY LICENSED PRODUCT AS AN EMPLOYEE, CONTRACTOR, OR AGENT OF A CORPORATION, PARTNERSHIP, OR OTHER ENTITY, THEN YOU MUST BE AUTHORIZED TO BIND SUCH ENTITY IN ORDER TO ACCEPT THE TERMS OF THIS AGREEMENT, AND YOU REPRESENT AND WARRANT THAT YOU HAVE THE AUTHORITY TO DO SO. THE RIGHTS GRANTED UNDER THIS AGREEMENT ARE EXPRESSLY CONDITIONED UPON ACCEPTANCE BY SUCH AUTHORIZED PERSONNEL.

IF YOU ARE NOT WILLING TO BE BOUND BY THIS AGREEMENT, DO NOT PLACE AN ORDER AND/OR TERMINATE YOUR ACCESS TO THE LICENSED PRODUCT (OR IN CONNECTION WITH AN INSTALLATION PROCESS DO NOT CLICK "I ACCEPT" AND TERMINATE THE INSTALLATION PROCESS). BY USING LICENSED PRODUCTS OR SERVICES THE PURCHASE OF WHICH IS GOVERNED BY THIS AGREEMENT, YOU ACKNOWLEDGE AND AGREE THAT THIS AGREEMENT IS LEGALLY ENFORCEABLE.

### **Modifications to this Agreement:**

- **Orders for Licensed Products and/or Services are governed by the version of this Agreement applicable on the Effective Date of the Order as indicated by the version date above.**
- **The terms of this Agreement may not be modified with respect to the Order to which they apply except by mutual agreement.**
- **New versions of this Agreement will only apply to subsequent Orders.**

This Automate End User License Agreement, together with the general terms and conditions attached hereto (the "**General Terms**") and all addenda, attachments, exhibits and schedules to the General Terms (collectively, this "**Agreement**"), **is an agreement between Customer and Precisely (both as defined below)**. Each of Precisely and Customer may be referred to as "**party**" or collectively as the "**parties**" to this Agreement.

### **General Terms and Conditions**

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the parties agree to the following terms and conditions, including all applicable Addenda.

Background. Customer desires to retain Precisely to provide, and Precisely desires to provide certain software and data products as well as services to Customer, as described in individual Orders governed by the Agreement. The below sets out the general terms and conditions applicable to each Order.

#### **1. DEFINITIONS**

For the purposes of this Agreement, the following terms will have the corresponding definitions:

**"Affiliate"** means an entity that Controls, is Controlled by or is under common Control with a party, where **"Control"** for purposes of this Agreement means the power to direct or cause the direction of the management and policies of an entity, whether through the ownership of voting securities, by contract or otherwise, with direct or indirect ownership of more than fifty percent (50%) of the voting securities or other equivalent interests of an entity.

**"Agreement"** means exclusively this Automate License and Services Agreement document, any applicable Addenda, the Support Terms, and the Documentation applicable to the Licensed Products to which Customer has been granted a license.

**“Allotment”** means the number of Transactions to which Customer is entitled to use or other agreed metric during a given Term as reflected in an Order.

**“Commencement Date”** means the date specified as the start of a Licensed Products subscription/license in the Order or if none is specified then the date on which Precisely first makes the Licensed Products available to Customer for access/download.

**“Confidential Information”** means all confidential and proprietary information of either party, including but not limited to, each party’s and its Affiliates: (a) customer and prospect lists, names or addresses, existing agreements with Discloser and business partners; (b) pricing proposals, financial and other business information, data processes and plans; (c) research and development information, analytical methods and procedures, hardware design, technology (including with regard to Precisely, any Licensed Product and its source code), tests, benchmarking, scripting languages or routines; (d) business practices, know-how, marketing or business plans; (e) this Agreement, Orders, and Documentation; and (f) any other information identified in writing as confidential or information that the Recipient knew or reasonably should have known was confidential, in each case that is disclosed to the Recipient or to which the Recipient gains access in connection with this Agreement.

**“Customer”** means, as the context requires, (a) the entity named as Customer in the preamble to this Agreement, and (b) the entity(ies) specifically named in the Order as the approved licensee(s) of the applicable Licensed Products.

**“Customer Data”** means information, data sets, or other content, in any form or medium, that is submitted, posted, or otherwise transmitted by Customer (or a third party on Customer’s behalf) to Precisely in connection with the proper use of Licensed Products or Services.

**“Customer Personal Data”** means Customer Data that is Personal Data Processed by Precisely on behalf of Customer in the performance of Services.

**“Customer Persons”** has the meaning given in Section 12.1.

**“Customer System”** means the software, hardware and communications infrastructure owned or controlled by Customer comprising Customer’s own information technology systems including both physical and virtual.

**“Data Protection Addendum”** means the privacy protections, if and to the extent applicable in accordance with its terms, as follows: [www.precisely.com/dpa](http://www.precisely.com/dpa).

**“Deliverables”** means the tangible work product and output of Services (excluding Customer Data) as set forth in a SOW.

**“Discloser”** means the party and/or its Affiliate entity whose Confidential Information is disclosed to the Recipient in accordance with Section 10 (Confidentiality).

**“Documentation”** means the current version of the document(s) describing the technical and functional capabilities of Licensed Products and containing any additional terms applicable to the use of Licensed Products by Customer, as updated by Precisely from time to time, including the product-specific terms in an Order or at [www.precisely.com/automate-restrictions](http://www.precisely.com/automate-restrictions).

**“Effective Date”** means (a) with respect to this Agreement, as defined in the preamble, and (b) with respect to an Order, the date specified as such in the Order, or if no date is specified, the earlier of (i) the date on which the Order is executed by Customer, (ii) the Commencement Date, or (iii) the date Precisely’s quotation has been accepted by Customer’s issuance of a purchase order referencing the quotation by number.

**“Evaluation”** of a Licensed Product means such Licensed Product is being made available by Precisely for a limited duration to Customer on a trial, evaluation, or proof of concept basis.

**“Evaluation Agreement”** means an Order for the Evaluation of one or more Licensed Products for the fees, if any, described in an Order.

**“Force Majeure Event”** means an event beyond the reasonable control of a party, including, but not limited to: acts of God; government actions; fire; labor difficulties; civil disturbances; transportation interruptions; interruptions or

failures of telecommunications, digital transmission links, or power; hostile network attacks; unforeseen pandemics; failure of a Hosting Service Provider; or other natural or supervening disasters.

**“Hosting Service Provider”** means a third-party infrastructure provider of the information technology systems upon which any Licensed Product is installed in a production environment.

**“Licensed Product”** means the applicable Software and associated Updates.

**“License Metrics”** means the basis under which Licensed Products may be used.

**“Order”** means the Precisely provided document referencing this Agreement pursuant to which Customer acquires a license to Licensed Products and/or purchases Services, as evidenced by (a) a written agreement signed by Customer and Precisely (including a SOW or Product Schedule), (b) Customer’s acceptance of applicable online ordering terms, or (c) Precisely’s quotation that has been accepted by Customer’s issuance of a purchase order referencing the quotation by number.

**“Personal Data”** means any information that is about, or can be related to, an identifiable individual, including any information that can be linked to an individual or used to directly or indirectly identify an individual, natural person. Personal Data includes, not by way of limitation, direct identifiers (such as names, addresses, email addresses, phone numbers and identification numbers) but also biometric data, any and all information about an individual’s computer or mobile device or technology usage, including (for example) IP address, MAC address, unique device identifiers, unique identifiers set in cookies, and any information passively captured about a person’s online activities, browsing, application or hotspot usage or device location.

**“Precisely”** means Precisely Software Incorporated or its Affiliate as identified on an Order.

**“Processing”** and its derivatives, means any operation or set of operations which is performed by Precisely on Customer Personal Data, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction. “Process”, “Processes”, and “Processed” shall be construed accordingly. Customer’s operation of On-Premises Software on a Customer System is not considered Processing by Precisely.

**“Recipient”** means the party and/or its Affiliate entity receiving Confidential Information of the Discloser in accordance with Section 10 (Confidentiality).

**“Security Addendum”** means the addendum attached to this Agreement and any other similar addendum signed by the parties and incorporated into this Agreement, if and to the extent applicable in accordance with its terms.

**“Services”** means, as the context requires, either (a) the consulting or professional services provided by Precisely to Customer pursuant to a SOW (**“Professional Services”**), or (b) Support. For purposes of clarity, “Services” does not include the use of Precisely’s software-as-a-service (SaaS) offerings (defined herein as Hosted Software).

**“Service Level Availability”** or **“SLA”** means the applicable document describing Precisely’s policies relating to service levels in relation to each Hosted Software offering (see [www.precisely.com/availability](http://www.precisely.com/availability)).

**“Site”** has the meaning given in Section 5.2(a).

**“Software”**, as the context requires and as identified in an Order and more fully described in the Documentation, means either (a) software in object code form provided by Precisely and installed by Customer on the Customer System (**“On-Premises Software”**), or (b) software hosted by Precisely and made available by Precisely to Customer, including any individually branded software-as-a-service (SaaS) offering or on-demand offering (**“Hosted Software”**).

**“SOW”** means a Statement of Work or other mutual agreement between Customer and Precisely for the purchase of Services.

**“Suggestions”** means any suggestions, enhancement requests, recommendations or other feedback provided by Customer and/or Users relating to Licensed Products and/or Services, whether before, during or after the Term.

**“Support”** means the technical support and maintenance services for Licensed Products provided by Precisely or its authorized agents in accordance with the Support Terms.

**“Support Terms”** means the support and maintenance policies with respect to the same set out in the Precisely Support Handbook (see [support.precisely.com/handbooks/](https://support.precisely.com/handbooks/)).

**“Term”** means the term of this Agreement or an Order, as applicable, set out in Sections 17.1 and 17.2, respectively.

**“Territory”** means the geographical territory comprising one or more states, countries or other geographic regions as specified in an Order in which (a) Hosted Software is authorized to be accessed, and/or (b) the On-Premises Software are authorized to be used.

**“Third-Party Platform”** means any platform, add-on, service, code (including open source) or product not provided by Precisely that Customer elects to integrate, connect to, or enable for use with the Licensed Products.

**“Third-Party Products”** means products and/or services provided by third parties included in the Licensed Products and/or Services, including software (and any derivative work(s) thereof) that is distributed under an open-source license approved by and identified on <https://opensource.org/licenses> or any successor website thereof, including those listed at <https://www.precisely.com/automate-enterworks-licensing>.

**“Transaction”** as applicable to the use of Licensed Products and as noted in the applicable Documentation and Order, means the number of transactions, observed columns, active rows, Users, copies, processor cores, LPARs, or other metric to which Customer is entitled pursuant to an Order.

**“Updates”** means updates, upgrades, fixes, and corrective programming to Software that are provided as part of Support.

**“Use Code”** means the encrypted access code, license key, or enabling module provided to Customer by Precisely that enables Customer to use the Licensed Products in accordance with an Order.

**“User”** means an individual Customer employee or individual subcontractor who is authorized by Customer to use the Licensed Products in accordance with this Agreement and the applicable Order regardless of whether the individual is actively using the Licensed Products at any given time.

1.1 In the event of any conflict or ambiguity between the provisions of this Agreement, any Order and any document referred to in this Agreement, the conflict or ambiguity shall be resolved in the following descending order of precedence: any Addenda (with the most recent taking precedence); Orders (with the most recent taking precedence); the Documentation; the SLA; and the main body of this Agreement.

1.2 Words in the singular include the plural and vice versa and words in one gender include any other gender. Headings are for convenience only and shall not affect the interpretation of this Agreement. A reference to legislation or a legislative provision includes any subordinate legislation made under it and any legislative provision which modifies, consolidates, re-enacts or supersedes it. A reference to any party includes its successors in title and permitted assigns.

## **2. SUBSCRIPTIONS AND LICENSES**

2.1 An Order delineates the type of license being granted to Customer for the Licensed Products. In general, and unless otherwise provided in an Order, (a) subscription licenses are for a limited duration and include Support, (b) term licenses are for a limited duration and do not include Support (which must be separately purchased), and (c) perpetual licenses relate only to On-Premises Software, are for an unlimited duration, and do not include Support (which must be separately purchased). For a license to On-Premises Software to be perpetual, such grant of rights must be explicitly stated in the applicable Order. If the license type is not specified in the Order, a term license is presumed. In addition, Customer’s use of the Software is subject to additional applicable license restrictions (see: [www.precisely.com/Automate-License-Restrictions](https://www.precisely.com/Automate-License-Restrictions)) and associated additional license definitions (see: [www.precisely.com/Automate-License-Definitions](https://www.precisely.com/Automate-License-Definitions)) for any Automate Software products.

2.2 Where Customer purchases a license for Hosted Software pursuant to an Order, in addition to any rights granted and restrictions in the Order, Precisely grants to Customer and Customer's Users during the applicable Term a limited, non-exclusive, non-sublicensable, non-transferable subscription license to access and use such Hosted Software for Customer's internal business operations, subject to the terms of this Agreement.

2.3 Where Customer purchases a license for On-Premises Software pursuant to an Order (or purchases a subscription license to Hosted Software that requires On-Premises Software to correctly function), in addition to any rights granted and restrictions in the Order and subject to the terms of this Agreement, Precisely grants to Customer and Customer's Users during the applicable Term a limited, non-exclusive, non-sublicensable, non-transferable subscription license to the object code form of such On-Premises Software for Customer's internal business operations and installed on Customer System(s).

2.4 Where Precisely has agreed to provide an Evaluation of a Licensed Product, the terms of the separate Evaluation Agreement will control Customer's temporary use of the Licensed Product. In the event there is no separate Evaluation Agreement covering the Evaluation, the parties agree that the Licensed Product may be used solely for Evaluation purposes for the period specified by Precisely at the time of delivery or if no such period has been specified, then for a period of fourteen (14) days (the "**Evaluation Term**"). Licensed Products used in an Evaluation may not be used for any development, commercial, or production purpose. Customer must purchase a commercial license of the types in Section 2.1 for the applicable full use version of the Licensed Products pursuant to an Order if Customer uses the Licensed Product for any development, commercial, or production purpose.

2.5 Any specific terms applicable to Licensed Products set out in the Documentation form part of this Agreement.

2.6 Customer hereby grants to Precisely and its sub-contractors a limited, non-exclusive right and license during the Term to access and use the Customer Data solely to provide (a) the Licensed Products, (b) Evaluation of Licensed Products, and/or (c) Services. Customer controls whether Customer Data is submitted to any Licensed Products, including Hosted Software, or to Precisely in connection with the provision of Services.

2.7 In this Agreement, an obligation of Customer shall be deemed to include a requirement that Customer procure the compliance of its Users with such obligation.

### **3. USE OF LICENSED PRODUCTS**

3.1 Except as otherwise provided in an Order, Customer will use the Licensed Products solely for its internal business purposes and will not use the Licensed Products on behalf of or make the Licensed Products available to any third party (other than Customer's Users).

3.2 Customer will comply with applicable laws, rules and regulations governing use of the Licensed Products, including, without limitation, any data protection or privacy laws. Customer will be solely responsible for the accuracy and legality of all Customer Data submitted to Precisely and will comply with all laws, rules and regulations relating to the use, disclosure, and transmission of such Customer Data. Customer represents and warrants it has the legal right to provide the Customer Data to Precisely for the purposes set out in this Agreement and such disclosure of Customer Data is in accordance with Customer's privacy policies. With respect to any Customer Data which is the subject of a complaint made by a third party, Customer will promptly remove such Customer Data from the Licensed Products or request its return from Precisely if submitted in connection with Services.

3.3 Customer will not: (a) reverse engineer, decompile or disassemble the Licensed Products (except to the minimum extent permitted by applicable law); (b) license, sell, rent, lease, transfer or assign the Licensed Products (except to the limited extent expressly permitted under this Agreement); (c) repackage, re-brand, white label or otherwise use the Licensed Products for inclusion in any product and/or service which Customer sells or provides to any third party; (d) copy, modify, create derivative works from, frame, mirror, republish or distribute the Licensed Products; (e) access the Licensed Products for the purpose of building a product or service which competes with or performs the same or similar functions as any Licensed Products; (f) undertake benchmarking or performance analysis for Customer's development or improvement of its own products and services; (g) attempt to bypass copy protection devices, security or access controls; or (h) alter, remove or obscure any patent, copyright or trademark

notice contained in the Licensed Products; or (i) use any Third-Party Product that is provided with the Licensed Products independently from the Licensed Products.

3.4 Customer will not use or permit the use of the Licensed Products to provide: (a) real-time navigation or route guidance synchronized to the position of a person's sensor-enabled device; (b) in-flight navigation; or (c) a digital map database (a database containing road geometry and street names, routing attributes enabling turn by turn directions, or latitude and longitudes of individual addresses and house number ranges). Additionally, Customer will not use or permit the use of the Licensed Products in configuring, supporting, or otherwise servicing on-line control equipment in hazardous environments requiring fail-safe performance such as, but not limited to, nuclear facilities, aircraft communications or traffic control, emergency response or law enforcement use, life support machines or weapons systems in which failure of the Licensed Products could lead directly to death, personal injury, or severe physical or environmental damage.

3.5 Customer will not use or permit use of the Licensed Products to: (a) store or display adult content; (b) promote unlawful or illegal activities; (c) send or store infringing, obscene, threatening, or unlawful or tortious material; (d) unlawfully store, process or transmit Personal Data; or (e) knowingly disrupt other users of the Licensed Products, 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, security exploits, trojans and viruses, or use of the Licensed Products to make unauthorized entry to any other device accessible via the network or Licensed Products.

3.6 Customer shall take all reasonable measures to avoid and reduce damages attributable to loss, corruption, or destruction of Customer Data, including conducting security checks for the purpose of defending or detecting viruses and other disruptive programs within Customer Systems. In addition, Customer is responsible for maintaining regular (at least daily) backups of all Customer Data. Where Precisely has caused loss, corruption, or destruction of Customer Data, Precisely's liability and Customer's sole remedy is restoration of such data from last known daily backup.

3.7 The Licensed Products may include Third-Party Products which may be subject to additional terms and conditions specific to use of the Licensed Products. To the extent required by any license that accompanies any Third-Party Products, the terms of such license will apply in lieu of the terms of this Agreement with respect to such Third-Party Products, including, without limitation, any provisions governing access to source code, modification or reverse engineering. Such additional terms may also be set out or referenced in the Documentation and/or Order.

3.8 Support for the Licensed Products will be available as described in the Support Terms.

3.9 Customer will only use the Licensed Products during the Term of the applicable Order in accordance with the terms of this Agreement, the Order, and any user guides and instructions contained within the applicable Documentation.

3.10 All Customer Data submitted to Precisely in connection with the provision of Services or Licensed Products must be submitted in Precisely's submission format in accordance with the Documentation or any other format agreed to by the parties.

3.11 An Order may specify an Allotment or other License Metrics governing Customer's use of Software. Except as may be specifically authorized in an Order, (a) Allotments purchased may be used at any time during each twelve (12) month period during the Term of the Order, and (b) unused Transactions may not be carried over into subsequent twelve (12) month periods. Some Hosted Software will provide information detailing the current number of Transactions charged against Customer's Allotment. If such information is not available, upon request (not more than once per calendar quarter), Precisely will issue Customer a report detailing the current number of Transactions charged against Customer's Allotment.

#### **4. PROVISION OF HOSTED SOFTWARE**

4.1 This Section 4 shall only apply where an Order includes Hosted Software.

4.2 Precisely will make the Hosted Software available in accordance with the SLA.

4.3 Precisely will not materially decrease the overall functionality of the Hosted Software during the Term of the applicable Order. However, Precisely may make changes to the Hosted Software at any time provided that the changes apply to Precisely's customers of the Hosted Software generally. Precisely will use reasonable efforts to give prior written notice of any such material changes in accordance with Section 18.8.

4.4 Customer is responsible for registering Users and issuing usernames and passwords to Users for use of Hosted Software. Customer shall ensure that Users provide accurate information in the registration process and keep usernames and passwords secret to prevent any unauthorized access to and use of the Hosted Software. If a User ceases to be an employee or contractor of Customer, Customer shall promptly revoke that User's account to prevent further access by that User. Customer shall immediately notify Precisely if it knows or suspects any loss, theft or unauthorized use of the login details or other breach of security relating to access to and use of Hosted Software. Customer is responsible for all acts and omissions of its Users as if such acts and omissions were made by Customer.

4.5 Customer's own use of Third-Party Platforms is subject to Customer's agreement with the relevant provider and not this Agreement. Precisely does not control and has no liability for Third-Party Platforms used by Customer, including their security, functionality, operation, availability or interoperability or how the Third-Party Platforms or their providers use Customer Data. If Customer enables a Third-Party Platform in connection with use of the Hosted Software, Precisely is granted the right and license to access and exchange Customer Data with the Third-Party Platform on Customer's behalf.

## **5. ON-PREMISES SOFTWARE PROVISIONS**

5.1 This Section 5 shall only apply where (a) an Order includes On-Premises Software to be installed and operated on a Customer System, or (b) a subscription to Hosted Software requires On-Premises Software to be installed and operated on a Customer System to correctly function.

5.2 Where specified in the Order, the On-Premises Software may be subject to an Allotment and/or other License Metrics, which may include the following:

- (a) Where the Order specifies a Site for the installation of the On-Premises Software, Customer shall only install the On-Premises Software on the Customer System at that Site. Customer shall not transfer the On-Premises Software to any location other than the Site (including from an on-premises location to a cloud location) without Precisely's prior written consent. Customer will ensure that the Site is a suitable environment for the Customer System.
- (b) If the Order designates a Licensed Platform then the On-Premises Software may only be used on that Licensed Platform.
- (c) If the On-Premises Software is installed in a virtual environment on the Customer System, Customer must license the entire number of the applicable License Metric within the environment that may be allocated or used, in whole or in any part, to access the On-Premises Software.
- (d) Licensed Products licensed for desktop use by a specific number of Users may be installed on the number of devices equal to the specific number of User licenses purchased or may be installed on multiple devices provided that the number of individual Users does not exceed the number of licenses purchased.

5.3 On-Premises Software provided to Customer may require a Use Code and Precisely retains access control rights in relation to such Software: (a) to comply with requirements of regulatory authorities; (b) to prevent use of such Software beyond the term of an Order; and/or (c) to prevent use of such Software in excess of any License Metrics or other restrictions set out in this Agreement or in an Order.

5.4 Customer may make a reasonable number of copies of the On-Premises Software and associated Documentation solely at any Customer owned or third-party disaster recovery facility for the purpose of testing Customer's disaster recovery plan for passive/cold disaster recovery purposes ("**DR Copies**"). Customer must reproduce all copyright, trademark, trade secret and other proprietary notices in the DR Copies. The DR Copies can only be used to perform disaster recovery testing or if the Licensed Platform becomes inoperative, in which event all License Metrics limitations specified in the Order shall apply to the DR Copies. Except to perform disaster recovery procedures, Customer is not permitted to use the DR Copies for non-production concurrently with the

production copies of the Software. Use of the DR Copies for more than ninety (90) days requires Precisely's prior consent. For avoidance of doubt, this Section 5.4 does not apply to copies of On-Premises Software licensed in an Order for use specifically in active-active/warm disaster recovery situations and in such cases the terms of such Order shall instead control.

5.5 Customer shall maintain the Customer System in accordance with good industry practice and shall ensure that the Customer System meets the security standards required by applicable law. Customer is responsible for implementing all system vulnerability updates, patches and upgrades to ensure the security of the On-Premises Software and data processed on the Customer System. Customer shall comply with any requirements set out in the Documentation regarding the encryption and security of communications between On-Premises Software and Hosted Software, if any.

5.6 Customer shall keep the On-Premises Software updated with any Updates which Precisely may make available to Customer. Precisely may provide Customer with Updates as part of Precisely's update release cycle which Customer agrees to install within a reasonable period (not exceeding thirty (30) days). Customer may install, for a period of up to fifteen (15) days from the date of installation, a copy of the On-Premises Software and Updates in a test environment for the sole purpose of determining if such Updates will be deployed by Customer in the licensed production environment. At the end of such period, Customer will uninstall and delete all instances of the On-Premises Software and the Updates from the temporary test environment unless a separate license for such environment has been obtained.

5.7 Precisely may deliver the On-Premises Software electronically via the Internet or permit Customer to download such Software from a Precisely website or FTP site.

## **6. PROVISION OF SERVICES**

6.1 Any Services performed by Precisely relating to the set-up and implementation of a Licensed Product or Support will be detailed in the applicable Documentation or an Order. Any other Services performed by Precisely are required to be detailed in a separate SOW which will include additional terms relating to the provision of such Services. Unless otherwise set out in the SOW or as agreed to by the parties, Precisely will commence performance of Professional Services fifteen (15) business days following execution of the SOW and Professional Services will be performed remotely or from Precisely's offices.

6.2 For a time and materials engagement, Precisely estimates that the Professional Services will be completed in approximately the number of hours set out in the SOW. Precisely does not represent, however, that Professional Services will be completed within the number of hours specified therein. Any estimates provided in the SOW, including expected hours to complete Professional Services and any timeline provided by Precisely, are based on known functional requirements and technical environments as of the effective date of the SOW.

6.3 Any modifications to 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. Changes or delays in the work schedule originating with Customer will be subject to a project change procedure and may result in an increase in fees.

6.4 Precisely personnel performing Services at Customer's offices or facilities will comply with Customer's reasonable policies and procedures in effect at such location that have been provided to Precisely in advance and that are not inconsistent with Precisely's own policies.

6.5 Deliverables and Services are deemed accepted upon delivery unless otherwise set forth in a SOW.

## **7. WARRANTIES**

7.1 Precisely makes the following representations and warranties to Customer:

- (a) Precisely has the right to grant Customer a license to use the Licensed Products in accordance with Section 2 (Subscription and Licenses).
- (b) The Hosted Software will materially conform to the applicable Documentation during the Term of the applicable Order when used in accordance with this Agreement.



- (c) The On-Premises Software will materially conform to the applicable Documentation during the ninety (90) days following delivery of the On-Premises Software when used in accordance with this Agreement.
- (d) Precisely does not warrant the operability or accuracy of any part of the Customer System or any Customer Data Processed by Precisely.

7.2 If any Software fails to comply with the warranties in Sections 7.1(b) or (c) above, Customer must notify Precisely in writing of any alleged non-conformities within thirty (30) days of becoming aware of the non-conformity, in which event Precisely will have thirty (30) days from receipt of such notice (or an additional period of time as reasonably agreed to by the parties) to correct such errors or non-conformities in accordance with the Support Terms. If Precisely is unable to correct the non-conformity in accordance with the Support Terms for reasons for which Precisely is responsible, then Customer may elect to terminate its license to the non-conforming Software and receive a refund of all fees previously paid for such Software less any value received. The above is Precisely's entire liability and Customer's exclusive remedy.

7.3 Precisely warrants to Customer that the Services will be performed in a professional manner in accordance with generally accepted industry standards for the software consulting industry. Precisely will use reasonable commercial efforts to complete the Services in accordance with the Order. If the Services fail to comply with this warranty, Customer will promptly notify Precisely in writing specifying in reasonable detail any alleged non-conformities in the Service. Upon such notice, Precisely will, as Customer's remedy, promptly re-perform any such Service in accordance with the Order and this Agreement.

7.4 PRECISELY DOES NOT WARRANT THAT THE LICENSED PRODUCTS WILL OPERATE UNINTERRUPTED OR ERROR FREE OR THAT PRECISELY WILL CORRECT ALL NON-MATERIAL ERRORS IN THE LICENSED PRODUCTS. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS AGREEMENT, THE LICENSED PRODUCTS AND ANY SERVICES ARE PROVIDED "AS IS" AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, PRECISELY AND ITS THIRD PARTY SUPPLIERS DISCLAIM ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE USE OF THE SERVICES AND LICENSED PRODUCTS, INCLUDING, BUT NOT LIMITED TO: (A) ANY WARRANTY OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE (EVEN IF PRECISELY IS INFORMED OF THE PURPOSE), ACCURACY, RELIABILITY, OR NON-INFRINGEMENT, OR (B) ANY WARRANTIES ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE IN TRADE. CUSTOMER MAY HAVE OTHER STATUTORY RIGHTS, BUT ANY STATUTORILY REQUIRED WARRANTIES WILL BE LIMITED TO THE SHORTEST LEGALLY PERMITTED PERIOD.

## **8. PROPRIETARY RIGHTS**

8.1 All right, title and interest in the Licensed Products and Third-Party Products (including any trademarks, service marks, patents, copyrights, trade secrets, and modifications to and derivative works of the same) are and shall remain the exclusive property of Precisely or its licensors, as applicable, whether or not specifically recognized or perfected under applicable law. Customer agrees that where it provides Suggestions to Precisely in relation to the Licensed Products or Services, Customer grants to Precisely a worldwide, perpetual, irrevocable, royalty-free license to use, distribute, disclose, and make and incorporate Suggestions into its products and services without obligation or restriction. Precisely reserves all rights not otherwise expressly granted herein.

8.2 Customer retains all right, title and interest in and to all Customer Data (including any modifications to and derivative works of the same).

8.3 Precisely retains the right to use non-Personal Data derived from Customer's use of the Licensed Products for the purposes of performing analytics on the Licensed Products, or for improving or enhancing the Licensed Products or other products or services offered by Precisely to its customers, including in accordance with Section 11.4 of this Agreement.

8.4 Precisely grants Customer a perpetual, non-exclusive, non-transferable, royalty-free right and license to use the Deliverables arising from Professional Services on behalf of and for the benefit of Customer to the extent necessary for Customer to get the intended value from the Professional Services. Precisely retains all right, title and interest to the Deliverables except for those rights expressly granted to Customer.

## **9. FEES**

9.1 Customer will pay to Precisely, or Precisely's authorized designee or agent, the fees set out in each Order. All fees and any applicable taxes are due and payable by Customer in the currency specified in the Order by the latter of (a) the number of days from the date of invoice set forth in the Order, or if none, (b) within thirty (30) days from the date of invoice which Precisely may submit in accordance with the Order. The fees set out in an Order are Customer's payment for the purchase of a subscription or other license for a Licensed Product for the specified Term (or purchase of Services). Except as otherwise specified herein or in an Order, (a) fees are based on Licensed Products purchased and not actual usage, (b) payment obligations are non-cancelable, (c) fees paid are non-refundable, and (d) quantities purchased cannot be decreased during the relevant subscription term.

9.2 The fees do not include any amount for taxes. Customer will pay all national, state, and local sales, use, property, excise, privilege, ad valorem, Internet-related, and other taxes imposed on or with respect to this Agreement. 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, Precisely will itemize such taxes on its invoices and Customer will pay such taxes unless it provides Precisely with a valid tax exemption certificate authorized by the taxing authority in the Territory or demonstrates through documentation to Precisely's reasonable satisfaction that such itemized taxes do not apply.

9.3 Customer shall pay for all use in excess of the purchased Allotments in any Term, at such rates and frequency as may be provided in an Order, or if none, at standard rates and as invoiced by Precisely. Customer and Precisely may execute a further Order to cover excess use and Customer's projected use for the remainder of the subscription Term.

9.4 Fees for Professional Services will be invoiced to Customer based generally on one of the following billing options, as indicated in the SOW:

- (a) Time and Materials: For engagements with a time and materials billing schedule, invoices will be issued monthly in arrears as Services are performed, based on the hourly or daily rate set forth in the SOW. If Precisely performs Services at Customer's request on a weekend or federal holiday (for the country where the Services are being performed or if off-site the country where the Precisely resources are performing the Services), Customer will pay Precisely one and a half (1.5) times the hourly or daily rate for all Services performed on such weekend or federal holiday.
- (b) Prepaid Hours: Invoices will be issued to Customer based on the number of hours or days indicated as "**Prepaid Hours**" prior to commencement of any Services, based on the rates set forth in the SOW or other executed order document. Prepaid Hours are then allocated to Services performed upon execution until the Prepaid Hours are depleted. All Prepaid Hours must be used within twelve (12) months of the effective date of the original SOW purchasing the Prepaid Hours. If Customer fails to use the Prepaid Hours within such time period due to factors outside Precisely's control, Precisely will not be obligated to refund the unused pre-paid fees and will be under no obligation to perform the Services.
- (c) Fixed Fee: Invoices will be issued upon delivery of milestones, or in accordance with a billing schedule set forth in the SOW or other executed order document.

9.5 Customer will also pay for all reasonable travel-related and out-of-pocket expenses incurred by Precisely in the performance of the Professional Services which will be billed monthly and due thirty (30) days following date of invoice or as mutually agreed in an Order.

9.6 Where Customer fails to pay the fees by the due date and has not reasonably and in good faith disputed those fees by such date, then Precisely may, without limiting its other rights and remedies: (a) charge interest on the late payment of one and a half percent (1.5%) per month or the highest amount permitted by law; and/or (b) suspend access to Hosted Software and/or performance of Support until such overdue amounts have been paid in full.

## **10. CONFIDENTIALITY**

10.1 During the Term of this Agreement, each party and/or its Affiliate(s) may receive Confidential Information of the other party and/or its Affiliate(s). Each party agrees to cause its employees, subcontractors, agents and Affiliates, who require access to such information ("**Representatives**") to abide by these obligations.

10.2 The Recipient agrees: (a) to hold the Discloser's Confidential Information in strict confidence, and apply at least the standard of care used by the Recipient 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 other than its Representatives; and (b) without the written permission of the Discloser, not to use any Confidential Information of the Discloser except as reasonably required to exercise its rights or perform its obligations under this Agreement. Recipient shall be responsible for any breach of this Section 10 by any of its Representatives.

10.3 The foregoing obligations do not apply to information that: (a) is already public or becomes available to the public through no breach of this Section 10; (b) was in the Recipient's lawful possession before receipt from the Discloser, without an obligation of confidentiality; (c) is lawfully received independently from a third party who is not bound by a confidentiality obligation to Discloser; or (d) is independently developed by or on behalf of the Recipient without use of the Discloser's Confidential information.

10.4 A Recipient may disclose Confidential Information where it is compelled to do so by a governmental agency or a court of law having proper jurisdiction, in which event the Recipient will give the Discloser reasonable written notice to enable the Discloser to try to protect the confidentiality of the Confidential Information (unless the Recipient is prohibited by applicable law or government order from giving such notice).

10.5 Upon written request of the Discloser, the Recipient agrees to promptly return or destroy all Confidential Information in its possession and certify its destruction in writing provided that the Recipient may retain one (1) copy of the returned or destroyed items for archival purposes in accordance with its records retention policies and subject to this Section 10.

10.6 Discloser may be irreparably damaged in the event of a breach by Recipient of its obligations hereunder. The parties agree, therefore, that Discloser is entitled to seek, in addition to other available remedies, an injunction restraining any actual, threatened or further breaches of the Recipient's or its Representatives' obligations under this Section 10 or any other appropriate equitable order or decree.

10.7 The obligations in this Section 10 shall continue to apply to the Recipient until the earlier of: (a) three (3) years following the disclosure of the Confidential Information; or (b) the date on which the Recipient is no longer in possession of any Confidential Information belonging to the Discloser.

## **11. DATA PROTECTION**

11.1 Information Security. Precisely shall provide the Hosted Software in accordance with the technical and organizational measures described in any Security Addendum. In addition, Customer shall take proper security precautions with respect to the Hosted Software, including (a) allowing only appropriate persons access to the Hosted Software as Users; (b) properly configuring the Hosted Software; (c) ensuring the security of Customer Data in Customer's control; and (d) backing up all Customer Data. With respect to On-Premises Software, Customer is responsible for applying appropriate security measures for all Customer Systems upon which such On-Premises Software is installed.

11.2 Data Processing. If and to the extent Precisely Processes any Customer Personal Data, the terms of the Data Protection Addendum shall apply. Customer is solely responsible for providing any necessary legal notices to Customer Persons and obtaining any legally required consents and lawful bases related to Customer's use, collection, disclosure, sharing, cross border data transfer, and processing of Customer Personal Data (including the transfer of such Customer Personal Data to Precisely and its sub-processors for Processing for the purposes of and in accordance with this Agreement).

### **11.3 Prohibited Data**

- (a) **"BAA"** means a business associate agreement signed by Customer and Precisely governing the parties' respective obligations with respect to any HIPAA Data uploaded by Customer to Hosted Software in accordance with the terms of this Agreement. Upon mutual execution of a BAA, the BAA is incorporated by reference into this Agreement and is subject to its terms.

- (b) **"HIPAA Data"** means any patient, medical or other protected health information regulated by the Health Insurance Portability and Accountability Act, as amended and supplemented (**"HIPAA"**), or any similar national or state laws, rules, or regulations.
- (c) **"Prohibited Data"** means (i) HIPAA Data unless Customer has signed a BAA with Precisely, (ii) payment card data subject to the Payment Card Industry Data Security Standards (**"PCI DSS"**), and (iii) any similar types of data regulated by national or state laws, rules, or regulations.
- (d) To the extent Customer has signed a BAA with Precisely, Customer is permitted to submit HIPAA Data to Hosted Software; provided that HIPAA Data may only be submitted to the Hosted Software by Customer uploading it as Customer Data.

Customer shall not upload any Prohibited Data to the Hosted Software and Customer acknowledges that the Hosted Software is not intended to meet any legal obligations for Prohibited Data or the activities covered by Section 3.4. Precisely will have no liability under this Agreement for Prohibited Data, notwithstanding anything to the contrary in this Agreement, HIPAA, PCI DSS, or any similar national or state laws, rules or regulations, other than as may be set forth in a BAA.

11.4 Telemetry Data. Precisely may collect certain information related to the Hosted Software including, diagnostic information, usage data, performance information, and other telemetry data and information (**"Telemetry Data"**). Telemetry Data does not include any Customer Personal Data. By using the Hosted Software, Customer permits Precisely to collect and use the Telemetry Data for its internal business purposes, including the following: (a) to provide the Hosted Software in accordance with this Agreement, (b) to bill and collect Customer for use of the Hosted Software that is usage-based, (c) to perform sales and marketing activities, whether to Customer or third parties, (d) to comply with Precisely's legal and regulatory obligations (including to respond to any court order, subpoena, warrant, or law enforcement demand), (e) to research, develop and/or support Precisely's product offerings, or (f) any other legally permitted purpose.

## 12. COMPLIANCE

12.1 Export Restrictions. Customer acknowledges that the Licensed Products, Third-Party Products, Customer Data, content, data or other materials are subject to the export control and sanctions laws and regulations of the United States (**"U.S."**) and may also be subject to the laws and regulations of any country in which the Licensed Products, Third-Party Products, Customer Data, content, data or other materials is provided, accessible, incorporated, transferred, or received. Customer, Users, and any other users of the Licensed Products, Third-Party Products, Customer Data, content, data, or other materials (including, but not limited to, Customer's employees, contractors, or other third parties acting on Customer's behalf) (**"Customer Persons"**) will comply with all applicable export control and sanctions laws and regulations. Customer represents and warrants that Customer and all Customer Persons (i) are not an entity, citizen, or resident 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, Syria, the Crimea Region, and the Donetsk People's Republic and Luhansk People's Republic located in Ukraine) (**"Embargoed Countries"**); (ii) are not acting on behalf of, or directly or indirectly owned or controlled by any governmental entity of any Embargoed Country; (iii) 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"**); (iv) are not 50% or more owned (individually or in the aggregate), or otherwise controlled, by persons designated on a Prohibited Party List; (v) are not acting on behalf of the government of Venezuela, including any person or entity employed or owned or controlled, directly or indirectly, by any political subdivision, agency, or instrumentality of the government of Venezuela; and (vi) will not utilize the Licensed Products or portion thereof for military purposes or end uses, or in the design, development or production of nuclear, chemical, or biological weapons. Customer agrees that it will not export, re-export, or transfer the Licensed Products except in compliance with U.S. law. Customer specifically agrees not to, and shall not allow Customer Persons to, export, re-export, transfer, or download the Licensed Products, including its source or object code, the

underlying information or technology, or any related encryption: (a) to any Embargoed Country or to any national of any such country when such embargoes or restrictions are in effect; (b) to any end user who Customer knows or has reason to know will utilize the Licensed Products or portion thereof for military purposes or end uses, or in the design, development or production of nuclear, chemical, or biological weapons; (c) to any person who is designated on a Prohibited Party List or who is 50% or more owned (individually or in the aggregate), or otherwise controlled by, persons designated on a Prohibited Party List; or (d) without a license or other governmental authorization if required by law. Customer is solely responsible for complying with local laws in its jurisdiction that might impact its right to import, export or use the Licensed Products. Customer understands and acknowledges that Precisely shall have the right to direct Customer to terminate any Customer Persons who are in violation of, or who cannot make the representations provided in, this Section 12, and Customer warrants that it shall take steps to then immediately terminate and prohibit such Customer Persons from accessing or using the Licensed Products, Third-Party Products, content, data, or other materials. If Customer does not terminate such Customer Persons, Precisely reserves the right to terminate its relationship with Customer.

**12.2 Anti-Bribery Compliance.** Customer warrants that it has not taken and will not take, any action, directly or indirectly, in violation of (i) the U.S. Foreign Corrupt Practices Act of 1977, as amended (15 U.S.C. §§ 78dd-1, et seq.), (ii) the UK Bribery Act 2010, or (iii) any other applicable anti-corruption or anti-bribery laws.

### **13. INDEMNIFICATION**

#### **13.1 Precisely will:**

- (a) defend Customer against a claim by an unrelated third party alleging that Customer's use of the Licensed Products in accordance with this Agreement infringes any copyright, trademark, or patent registered or valid within the Territory or misappropriates any trade secret ("**IP Claim**"); and
- (b) indemnify and hold Customer harmless in respect of a final award made by a court of competent jurisdiction or the amount agreed to by Precisely in settlement of the IP Claim;

provided that: (i) Precisely will have exclusive control of the defense and negotiation of any settlement of the IP Claim; (ii) Customer notifies Precisely promptly of any such claim; (iii) Customer provides reasonable cooperation to Precisely in relation to the defense, settlement and mitigation of the IP Claim, and (iv) Customer does not make any admission or otherwise compromise the defense or settlement of the IP Claim. Precisely will not agree to any settlement which requires acknowledgment of fault or an incurred liability on the part of Customer not otherwise covered by this indemnification without Customer's prior consent, which consent shall not be unreasonably withheld or delayed. Customer may elect to participate in the defense of any claim with counsel of its choosing at its own expense.

**13.2** If the Licensed Products are subject to an IP Claim, or if Precisely reasonably believes that the Licensed Products may be subject to such a claim, Precisely reserves the right to: (a) modify the Licensed Products so that they are non-infringing or offer a non-infringing replacement Licensed Product, at no cost to Customer, which modified or replacement Licensed Product will be functionally equivalent; (b) procure, at no cost to Customer, the right to continue to use such Licensed Products; or (c) terminate Customer's use of such Licensed Products. If Precisely terminates use of such Licensed Products, Customer's remedies, in addition to the indemnification set out herein, will be limited to a refund of any prepaid but unused fees for such Licensed Products.

**13.3** Precisely will not indemnify Customer or be liable for claims arising from: (a) Customer Data, Third-Party Products, or any Licensed Products provided for Evaluation; (b) the use of the Licensed Products in combination with data, hardware or software not provided by Precisely; (c) Customer's use of the Licensed Products other than as permitted in this Agreement; or (d) any modification to the Licensed Products other than by Precisely.

**13.4** Customer acknowledges that certain risks are best able to be mitigated by Customer. In that regard, Customer shall (a) defend Precisely against a claim by an unrelated third party: (i) alleging that Customer Data or any other data, files or other materials provided by Customer to Precisely infringes any copyright, trademark, or patent or misappropriates any trade secret; or (ii) arising out of Customer's violation of Section 3 (Use of Licensed Products) or Section 12 (Compliance); and (b) indemnify Precisely in respect of a final award made by a court of competent jurisdiction or the amount agreed to by Customer in settlement of such claims; provided that: (i) Customer will have

exclusive control of the defense and negotiation of any settlement of such claims; (ii) Precisely notifies Customer promptly of any such claim; (iii) Precisely provides reasonable cooperation to Customer in relation to the defense, settlement and mitigation of such claims, and (iv) Precisely does not make any admission or otherwise compromise the defense or settlement of such claims. Customer will not agree to any settlement which requires acknowledgment of fault or an incurred liability on the part of Precisely not otherwise covered by this indemnification without Precisely's prior consent, which consent shall not be unreasonably withheld or delayed. Precisely may elect to participate in the defense of any claim with counsel of its choosing at its own expense.

13.5 This Section 13 sets out Precisely's entire liability and Customer's exclusive remedy for IP Claims.

#### **14. LIMITATION OF LIABILITY**

14.1 DISCLAIMER. TO THE MAXIMUM EXTENT PERMITTED BY LAW, SUBJECT TO SECTION 14.3, NEITHER PARTY (NOR PRECISELY'S THIRD PARTY SUPPLIERS) WILL BE LIABLE (IN TORT, CONTRACT OR OTHERWISE) FOR ANY PUNITIVE, SPECIAL, CONSEQUENTIAL, INCIDENTAL, OR INDIRECT DAMAGES, LOSS OF PROFITS OR REVENUE, LOSS OF DATA, GOODWILL OR REPUTATION, OR BUSINESS INTERRUPTION, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE.

14.2 MAXIMUM LIABILITY. TO THE MAXIMUM EXTENT PERMITTED BY LAW, SUBJECT TO SECTION 14.3, IN ANY EVENT, EACH PARTY'S (AND PRECISELY'S THIRD PARTY SUPPLIER'S) MAXIMUM LIABILITY FOR ANY CLAIM ARISING IN CONNECTION WITH THIS AGREEMENT OR ANY ORDER (IN TORT, CONTRACT OR OTHERWISE) WILL BE LIMITED TO THE AMOUNT OF FEES PAID BY CUSTOMER TO PRECISELY UNDER THE APPLICABLE ORDER DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRIOR TO THE DATE SUCH CLAIM IS MADE.

14.3 EXCLUSIONS. THE DISCLAIMER IN SECTION 14.1 AND THE MAXIMUM LIABILITY IN SECTION 14.2 DO NOT APPLY TO: (A) THE EXTENT PROHIBITED BY APPLICABLE LAW; (B) CUSTOMER'S BREACH OF SECTION 3 (USE OF LICENSED PRODUCTS) OR SECTION 12 (COMPLIANCE); (C) CUSTOMER'S OBLIGATIONS TO PAY AMOUNTS DUE UNDER AN ORDER OR SOW; (D) EITHER PARTY'S BREACH OF SECTION 10 (CONFIDENTIALITY); (E) EITHER PARTY'S LIABILITY UNDER SECTION 13 (INDEMNIFICATION); OR (F) EITHER PARTY'S MISUSE OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS.

14.4 SUBJECT TO APPLICABLE LAW, CLAIMS IN RELATION TO THIS AGREEMENT MUST BE MADE WITHIN 18 MONTHS OF THE EVENT GIVING RISE TO THE CLAIM.

#### **15. SUSPENSION**

15.1 Except to the extent limited by law or regulation, Precisely may suspend or restrict Customer's or any User's use of the Licensed Products while Precisely investigates if Precisely reasonably believes that Customer is in material breach of this Agreement. Precisely will carry out any such investigation promptly and Customer agrees to cooperate with Precisely in connection with any such investigation. A suspension under this Section 15.1 shall apply to all Licensed Products except in the case of non-payment where suspension shall be limited to the affected Licensed Products. Precisely will lift the suspension when the cause of the suspension has been remedied to Precisely's reasonable satisfaction.

15.2 Precisely may suspend or restrict Customer's or any User's use of the Licensed Products at any time where Precisely is required to by a governmental or regulatory body or a court of competent jurisdiction or in situations where a User is found to be on a Prohibited Party List.

15.3 Precisely may suspend or restrict the Licensed Products in accordance with the Support Terms.

15.4 Except where the suspension has arisen as a result of Precisely's breach of the Agreement, suspension of the Licensed Products in accordance with this Section 15 will not affect Precisely's other rights under the Agreement or Customer's payment obligations in relation to the Licensed Products.

#### **16. NO CANCELLATION BY CUSTOMER.**

Except to the extent otherwise required by applicable law or as specifically set forth in an Order, Customer cannot cancel or terminate any Order prior to the expiration of the applicable Term of such Order. Customer may stop

using the Licensed Products at any time, but Customer is liable for all remaining charges for the Term, regardless of whether Customer uses the Licensed Products for the entire Term.

## **17. TERM AND TERMINATION**

17.1 This Agreement is effective on the Effective Date and will remain in effect until terminated as set forth herein (the “**Term**” of this Agreement).

17.2 Each Order will commence on the Commencement Date and will remain in effect during the term identified in the Order (the “**Term**” of such Order). Except as set forth in an Order, each Order will automatically renew for twelve (12) month terms unless either party gives the other party notice of non-renewal at least thirty (30) days prior to the end of the applicable Term of the Order.

17.3 Either party may terminate this Agreement or any Order or SOW by written notice if the other party: (a) commits a material breach of this Agreement or the applicable Order or SOW which is capable of remedy and fails to cure such breach within thirty (30) days after receipt of such notice, or an additional period of time as agreed to by the parties; (b) is unable to pay its debts when they become due or becomes bankrupt, insolvent or goes into liquidation or enters into a voluntary arrangement or has a receiver or an administrator appointed over any or all of its assets or suffers an analogous event in any jurisdiction. For clarity, any expiration or agreed termination of Services or a SOW or an individual Order will not result in termination of this Agreement or any other SOW or Order.

17.4 Precisely may terminate this Agreement and any or all Orders and SOWs immediately by written notice if Customer is in material breach of Section 3 (Use of Licensed Products) or Section 12 (Compliance). Customer understands and acknowledges that a violation of Section 12 by Customer or any of its Customer Persons shall be deemed a material breach of this Agreement and will entitle Precisely to: (a) terminate this Agreement immediately for cause; (b) terminate or suspend any Customer Persons that are on any Prohibited Party List; and (c) be indemnified by Customer for and held harmless by Customer against any and all damages, fines, penalties, disgorgements, settlements, determinations, or claims faced by or imposed on Precisely or its Customer Persons to the extent attributable to the material breach of Section 12 by Customer or any of its Customer Persons, including Users.

17.5 Upon termination of this Agreement or expiration/termination of an Order or SOW as set forth in this Agreement: (a) Customer will immediately cease use of the applicable Licensed Products (including any Evaluation of Licensed Products) except to retrieve the Customer Data during the period set out in Section 17.6; (b) Precisely and Customer will promptly return all Confidential Information of the other party (except in the case of Customer Data which shall be deleted from the Hosted Software by Precisely at the end of the period set out in Section 17.6); provided that a party may retain a copy of the other party’s Confidential Information where it is obliged to do so by applicable law or regulations or as part of its archival process in accordance with Section 10.5; and (c) Customer shall delete and/or remove all copies of the On-Premises Software from Customer Systems, promptly destroy all copies of the On-Premises Software, and if requested, certify in writing that it has done so.

17.6 Where the Customer has purchased a subscription for Hosted Software, Precisely shall permit the Customer to download its Customer Data stored on such Hosted software for a period of 14 days following termination or expiry of the Term of the Order in relation to the Hosted Software. Customer is responsible for ensuring that it has exported and retrieved all Customer Data used in connection with Hosted Software before the termination or expiry of the Hosted Software subscription license.

17.7 Sections 8 (Proprietary Rights), 9 (Fees), 10 (Confidentiality), 11.3 (Prohibited Data), 13 (Indemnification), 14 (Limitation of Liability), 18.5 (Applicable Law and Jurisdiction), and 18.6 (Verification) and any other provisions which by their nature are intended to survive such termination or expiry will survive termination of this Agreement indefinitely or to the extent set out therein.

## **18. GENERAL**

18.1 Force Majeure. Except for Customer’s payment obligations, neither party will be liable for, and each is excused from, any failure to perform hereunder or delay in such, to the extent that such failure or delay is due to a Force Majeure Event. The occurrence of a Force Majeure Event will not operate to terminate this Agreement, but

if the non-performance of either party continues more than thirty (30) days as a result, the other party may, at its option, terminate this Agreement upon the giving of thirty (30) days' notice in writing to the non-performing party.

**18.2 Assignment.** Neither party shall be entitled to assign or otherwise transfer this Agreement, in whole or in part without the prior written consent of the other party which shall not be unreasonably withheld or delayed; provided that each party may assign this Agreement (in whole but not in part) to an Affiliate or a purchaser of all or substantially all of the business assets of its company or as part of a bona fide group reorganization by giving the other party written notice.

**18.3 Sub-Contracting.**

- (a) Precisely shall be entitled to appoint subcontractors to perform some or all of its obligations under this Agreement, including the Hosting Service Provider with respect to the Hosted Software. Services may also be provided by subcontractors. Precisely is responsible for all acts and omissions of subcontractors performing Services as if such acts and omissions were made by Precisely.
- (b) Customer acknowledges and agrees that the Hosted Software is hosted on a platform provided by a third-party Hosting Service Provider. Precisely may change its Hosting Service Provider; provided such change does not have a material adverse effect upon the Hosted Software or Customer's use of such Hosted Software.

**18.4 Publicity.** With Customer consent, Precisely is permitted to: (a) list Customer's name and logo in accordance with any Customer's trademark guidelines communicated to Precisely; or (b) state that Customer has Licensed Products. Specific details related to Customer's use of Licensed Products and other marketing material such as press releases, case studies and other collateral using quotes or requiring active participation of Customer to create will be subject to Customer's consent.

**18.5 Applicable Law and Jurisdiction.** This Agreement and each Order shall be governed by and construed under the laws of the Governing Law jurisdiction in the table set forth in Schedule 1 without regard to conflict of laws provisions thereof and without regard to the United Nations Convention on Contract for the International Sales of Goods. Customer hereby irrevocably consents to the exclusive jurisdiction of, and confers such jurisdiction upon, the courts in the Jurisdiction shown in the table in Schedule 1 in connection with any action, suit, or other proceeding arising out of, or relating to this Agreement or an Order, and all claims, counterclaims and crossclaims in any actions, suits or proceedings. Any of the Precisely entities named in Schedule 1 may be the licensor pursuant to an Order under this Agreement.

**18.6 Verification.** During the Term and for a period of six (6) months following its termination or expiry, Precisely or its designated third party may verify Customer's compliance with the terms of the Agreement and applicable Orders with respect to Customer's use of or access to the Licensed Products upon ten (10) days written notice to Customer. 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 Customer's work environment. Precisely may use an independent third party under obligations of confidentiality to provide assistance. Precisely will notify Customer in writing if any such verification indicates that Customer has used the Licensed Products in excess of the use authorized by this Agreement. Customer agrees to promptly pay all associated fees directly to Precisely for the charges for such excess use (including Precisely's reasonable costs associated with the verification).

**18.7 No Waiver.** 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 and signed by the party issuing the waiver.

**18.8 Notices.** 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 this Agreement. Any notice from Precisely relating to the Hosted Software and applying to Precisely's customers generally may be by a notice to Users within the Hosted Software itself or sent to the email address for the primary point of contact on file at Precisely. 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 Customer, and to Precisely as noted in Schedule 1; provided such notice is also sent to legal@precisely.com.



**18.9 No Third-Party Beneficiaries.** No person or entity not a party to this Agreement shall be entitled to rely on its terms; provided that Precisely's third party suppliers may rely on Sections 7.4 (Warranty Disclaimers) and 14 (Limitation of Liability) of this Agreement.

**18.10 Severability.** 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.

**18.11 Relationship.** Each party will act as an independent contractor and employees of each party will not be considered 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 is responsible for the acts of its own employees, officers, directors, subcontractors, representatives, and other agents.

**18.12 Entire Agreement.** This Agreement and all appendices, exhibits, schedules, addenda and attachments thereto constitute the entire agreement between the parties with regard to the subject matter, may not be modified or amended except by a writing signed by both parties hereto except as otherwise indicated herein, and supersede all proposals, understandings, representations, prior agreements or communications relating to Customer's use of the Licensed Products or Services. This Agreement also supersedes any preprinted terms contained on a purchase order or similar document issued by Customer and any such terms will have no force or effect regardless of whether Precisely signs such purchase order. Customer has not been induced to enter into this Agreement by any representations or promises not specifically stated herein. This Agreement will not be construed against the party that prepared it, but instead will be construed as if both parties prepared it.

**SCHEDULE 1**  
**PRECISELY ENTITIES**

Precisely Entity	Governing Law	Jurisdiction
Precisely Software Incorporated (or any entity not listed below)	New York, USA	A federal or state court of competent jurisdiction located in New York County in the State of New York, USA
Precisely Software and Data Canada Inc.	Province of Ontario, Canada	General Division of the Ontario Court of Justice
Precisely Software Brasil Ltda.	Federative Republic of Brazil	Central Courts of the City of São Paulo
Precisely Software Limited	England and Wales	English Courts
Precisely Software GmbH	Germany	Competent courts in Munich, Germany
Precisely Software S.A.S.	France	Competent courts in Paris, France
Precisely Software Pty Ltd	NSW, Australia	Courts of NSW and/or the Commonwealth of Australia
Precisely Software and Data Singapore Pte. Ltd.	Singapore	Courts of Singapore

Address for Notices to all of the above (unless otherwise specified in an Order):

Precisely Software Incorporated  
1700 District Avenue #300  
Burlington, MA 01803 USA  
Attn: General Counsel

Changes to addresses will be notified by Precisely in writing.

## SECURITY ADDENDUM

The terms of this Security Addendum (this “**Addendum**”) provide details of the information security program and policies and are incorporated into the Automate End User License Agreement between Customer and Precisely (the “**Agreement**”) for the Term of any applicable Order to which it applies.

This Addendum applies only to the extent Precisely obtains Customer Data as part of Customer’s license to Hosted Software pursuant to the Agreement.

### 1. ADDITIONAL DEFINITIONS

1.1 For the purposes of this Addendum, the following terms will have the corresponding definitions:

“**Customer Data**” has the meaning set forth in the Agreement.

“**Data Subject**” means an identified or identifiable natural person. An identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.

“**Precisely Systems**” mean the datacenter infrastructure owned or controlled by Precisely, including through agreements with the Hosting Services Provider(s) and other Precisely subcontractors.

“**Security Incident**” means, with respect to any Customer Data obtained by Precisely under the Agreement or this Addendum as part of Customer’s valid use of Hosted Software: any verified, actual: (a) loss or misuse (by any means) of such Customer Data; (b) accidental, inadvertent, unauthorized or unlawful destruction, alteration, disclosure of, access to, or corruption of such Customer Data; (c) compromise of the security, confidentiality or integrity of Customer Data, including but not limited to, a compromise of any physical, technical, administrative or organizational safeguards that relate to the protection of such Customer Data or (d) any unauthorized access to Precisely Systems containing Customer Data. Security Incidents do not include events which are either (a) caused by Customer, Customer Affiliates, Users or third parties operating under their direction, including failure to (i) control user access; (ii) secure or encrypt Customer Data which the Customer transmits to and from Precisely Systems during use of Hosted Software; and/or (iii) implement security configurations to protect Customer Data; or (b) unsuccessful attempts or activities that do not or are not reasonably likely to compromise the security of Customer Data, including unsuccessful login attempts, pings, port scans, denial of service attacks, and other network attacks on firewalls or networked systems.

“**Term**” with respect to this Addendum and an associated Order, means the period beginning on the Commencement Date of such Order and continuing for the Term of such Order.

1.2 In the event of any conflict or ambiguity between the provisions of this Addendum, the Agreement and any Order, the conflict or ambiguity shall be resolved in the following descending order of precedence: this Addendum; the Orders (with the most recent taking precedence); and the main body of the Agreement

1.3 Other terms that have been capitalized but not defined in this Addendum shall have the same meaning as in the Agreement.

### 2. OVERVIEW

2.1 Customer Data Access. Precisely acknowledges that, in the course of providing Hosted Software to Customer pursuant to the terms of the Agreement, it may have or be granted access to Customer Data. Precisely agrees to collect, process, transfer, disclose, store, and otherwise use Customer Data in the possession of Precisely consistent with the terms of this Addendum, unless otherwise required by law.

2.2 Data Security Programs. Precisely agrees to implement physical, technical, administrative or organizational safeguards that relate to the protection of such Customer Data against accidental or unlawful destruction, loss, access to or alteration of Customer Data in Precisely’s possession or control.

2.3 Data Security Policies. Precisely shall maintain policies and standards for the protection of Customer Data that originate from industry standard frameworks and establish uniform security and privacy standards for

Precisely's operations. Such policies shall be consistent with AICPA SOC 2 or another generally accepted industry standard that is applicable to Precisely as a service provider.

- 2.4 Third Party Subcontractors. Precisely shall be responsible for ensuring that its subcontractors who have Customer Data (including any Hosting Service Provider) maintain data security programs which are at least as stringent as Precisely's own programs with respect to the applicable service to which such subcontractor has been engaged, and in accordance with generally accepted industry standards and practices. Precisely shall maintain a risk management program focused on the identification, evaluation, and validation of a vendor's security controls.
- 2.5 On Boarding Process. The following measures are undertaken at the commencement of an individual's employment or engagement with Precisely:
- (a) **Background Checks**. Each individual assigned to perform Professional Services under the Agreement will have been subjected to a background check in accordance with Precisely's background checking policies, which at a minimum includes a criminal history search in accordance with local law. Each candidate's background check report is reviewed in determining whether employment of a candidate is consistent with the safe and efficient performance of Professional Services, taking into consideration any appropriate factors and applicable law.
  - (b) **Training**. Precisely has implemented and maintains a Data Privacy and Information Security awareness program. Upon joining Precisely, employees with access to Customer Data will be given training on data security and privacy issues as part of their orientation, including on Precisely's current Information Security and Data Privacy Policies. Employees further agree in writing to perform their work according to Precisely's policies, standards, and procedures regarding information security and privacy requirements. Subsequent annual training is required and is supplemented by numerous educational initiatives. Depending upon job function, certain employees receive specialized training and/or receive training on a more frequent basis.
- 2.6 Ongoing Assessment. Precisely will regularly test and monitor the effectiveness of its safeguards, controls, systems, and procedures by appropriate internal or external assessors. Precisely will periodically identify reasonably foreseeable internal and external risks to the security, confidentiality and integrity of Customer Data toward ensuring that these risks are addressed.

### **3. SECURITY MEASURES**

Precisely maintains appropriate data protection and security measures for Customer Data. Such measures shall include the following:

- 3.1 Physical Security. Precisely takes precautions to ensure that all Precisely Systems hosting Customer Data are maintained in a physically secure environment to prevent unauthorized physical access, and that access restrictions at physical locations containing Customer Data, such as buildings, computer facilities, and records storage facilities, are designed and implemented to permit access only to authorized individuals, and to detect any unauthorized access that may occur, including without limitation 24 x 7 security personnel at all relevant locations. Set forth below are examples of such physical security controls:
- (a) With respect to datacenter locations, all access is controlled and restricted by use of a defined security perimeter, appropriate security barriers, security cameras, entry and authentication controls, and access logs.
  - (b) Precisely implements and maintains appropriate security measures and procedures to protect and prevent the unauthorized viewing, copying, alteration or removal of any media containing Customer Data.
  - (c) Visitors to Precisely premises are required to be escorted at all times.
- 3.2 Network Security Controls. Precisely maintains the following network security controls and safeguards designed to prevent unauthorized access to Precisely Systems and network:

- (a) Defense-in-depth design with perimeter routers, network switches and firewall devices and default deny-all policy to protect its Internet presence;
- (b) Internet- access controlled by proxies and logged;
- (c) Intrusion detection system is deployed to monitor and respond to potential intrusions;
- (d) Real-time network events are logged and investigated using a security information event management tool;
- (e) Content filtering and website blocking using approved lists;
- (f) All wireless network devices follow the same policies and standards as wired devices; and
- (g) Rogue wireless access points are detected and disassociated with the corporate wireless network.

3.3 Platform Security Controls. Precisely maintains the following security controls and safeguards designed to protect and prevent unauthorized access to Customer Data on various computing platforms and operating systems:

- (a) Configuration/Hardening standards are established, documented, reviewed and updated regularly;
- (b) Changes are approved and follow Precisely's internal change control process;
- (c) Unauthorized hardware and software are prohibited from being installed in Precisely Systems;
- (d) Where technically feasible, a session is timed out after appropriate periods of inactivity;
- (e) Any vendor-supplied defaults (accounts, passwords and roles) are removed during installation;
- (f) Services and devices that are not required by valid business needs are removed; and
- (g) An anti-virus program with timely updates actively runs on servers and machines.

3.4 Application Security Controls. The following security controls and safeguards are designed to ensure the integrity and security of applications developed by Precisely and are implemented and maintained by Precisely:

- (a) Defense-in-depth with the use of n-tier architecture provides separation and protection of data;
- (b) Application development follows a secure software development life cycle (SSDLC) that includes training, development, testing and ongoing assessments;
- (c) All changes to such applications are documented, reviewed, tested and approved before being implemented into production;
- (d) Application vulnerabilities and patches are identified, tested and remediated/installed in a timely manner; and
- (e) Development and testing environments must not contain any production data.

3.5 Access Control and Management. Precisely maintains appropriate security measures and procedures to ensure that access to all Precisely Systems hosting Customer Data shall be protected through the use of access control systems that uniquely identify each individual requiring access, grant access only to authorized individuals and based on the principle of least privileges, prevent unauthorized persons from gaining access to Customer Data, appropriately limit and control the scope of access granted to any authorized person, and log all relevant access events.

3.6 Annual Penetration Testing. Precisely performs penetration tests on applicable Precisely environments, including perimeter vulnerability testing, internal infrastructure vulnerability testing, and application testing. Upon Customer's request, Precisely shall provide a redacted executive summary of process documentation and external assessment results to the extent applicable to the Hosted Software used by Customer.

#### **4. SECURITY QUESTIONNAIRES**

Upon Customer's written request to confirm compliance with the above Data Security requirements of this Addendum, Precisely shall promptly and accurately complete a written information security questionnaire provided by Customer or a third party on Customer's behalf regarding Precisely's business practices and information technology environment in relation to all Customer Data being handled and/or the Hosted Software being made available by Precisely to Customer pursuant to the Agreement. Precisely shall fully cooperate with such inquiries. Such requests shall be (a) not more often than once annually, (b) upon not less than thirty days prior written notice, and (c) conducted during normal business hours in a manner designed to minimize disruption of Precisely's business and operations.

#### **5. SECURITY INCIDENTS**

- 5.1 Notice. Precisely's security incident response team is staffed by the office of the Chief Information Security Officer and is responsible for investigating and responding to information-security related events escalated to their attention and determining if a Security Incident has taken place. Upon confirmation of a Security Incident, Precisely shall promptly, but in no event later than 48 hours thereafter, notify Customer of such Security Incident and provide Customer with information about the Security Incident including, where possible, (i) the categories and approximate number of affected Customer Data records and, if applicable, the categories and approximate number of affected Data Subjects, (ii) the impact and likely consequences of the Security Incident to Customer and, if applicable, the affected Data Subjects, and (iii) the corrective action or remediation efforts taken or to be taken by Precisely.
- 5.2 Remediation. Following any Security Incident, Precisely shall consult in good faith with Customer regarding remediation efforts that may be necessary and reasonable. Precisely shall (i) at Customer's direction undertake reasonable remediation efforts at Precisely's sole expense and reimburse Customer for Customer's reasonable expenses in connection with any remediation efforts undertaken by Customer directly arising from the Security Incident, (ii) ensure that such remediation efforts provide for, without limitation, prevention of the recurrence of the same type of Security Incident and (iii) reasonably cooperate with any remediation efforts undertaken by Customer directly arising from the Security Incident.
- 5.3 Incident Notification. Any notifications to customers or employees of Customer regarding Security Incidents will be handled exclusively by Customer, unless otherwise directed by Customer. Precisely shall reasonably cooperate in connection with notices to customers and employees of Customer regarding a Security Incident. Unless Precisely is legally prohibited, Precisely shall notify Customer promptly in the event that Precisely is required by law, court order, warrant, subpoena, or other legal or judicial process to disclose any Customer Data to any person other than Customer or persons expressly approved by Customer to receive such information.

#### **6. ENTIRE AGREEMENT**

This Addendum and the Agreement, where referenced, contain the entire agreement regarding the data security of the Hosted Software and supersede any other data security agreements and communications between the parties concerning the access to or use by Precisely of Customer Data in connection with the Hosted Software.