

Trial Evaluation Agreement Terms – U.S. (May 2021)

TRIAL EVALUATION AGREEMENT

(May 2021)

IMPORTANT: DO NOT USE THE LICENSED PRODUCTS UNTIL YOU HAVE READ AND AGREED TO THIS LICENSE AGREEMENT. This is an agreement between you (“Customer”) and Precisely Software Incorporated (“Precisely”). By executing a Trial Evaluation Order Form or clicking your acceptance of this Agreement on an online portal, marketplace or website (each a “Portal”), you are agreeing to the terms of this Trial Evaluation Agreement (the “Agreement”). IF YOU ARE NOT WILLING TO BE BOUND BY THE AGREEMENT, do not install or use the Licensed Products and (to the extent you received the Licensed Products) immediately send the Licensed Products and any other Confidential Information, as defined herein, back to Precisely at the address on the Order Form attention Contract Management. The terms of this Agreement will only apply to the extent Customer and Precisely have not executed a separate Trial Evaluation Agreement for the same Licensed Products.

1. Grant of License. Precisely hereby grants Customer a non-exclusive, non-transferable, trial evaluation license to the products set out in the Order Form or available on a Portal (collectively, the “Licensed Products”) for use solely on the operating system identified therein. Customer will use the Licensed Products solely to evaluate the Licensed Products for the purpose of determining whether to license the Licensed Products. Customer will not have the right under this Agreement to use the Licensed Products for production, development or any other purpose not specifically set forth herein.

2. Fees. The Licensed Products are licensed to Customer at no cost during the term.

3. Confidentiality.

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) the Licensed Products, research

and development information, analytical methods and procedures, hardware design, technology (iv)

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customers of either party; (vi) business practices, know-how, marketing or business plans; (vii) the 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 Services.

- b) The Receiving Party agrees: (i) to hold the Disclosing Party's Confidential Information in strict confidence, apply at least the standard of care used by the Receiving Party in protecting its own Confidential Information, but not less than a reasonable standard of care, and not to disclose such Confidential Information to any third party; and (ii) without the written permission of the Disclosing Party, not to use any Confidential Information of the Disclosing Party except as reasonably required to exercise its rights or perform its obligations under this Agreement. 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 3; 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 3.
- f) Disclosing Party may be irreparably damaged if the obligations under this Section 3 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 3 or any other appropriate equitable order or decree. This Section 3 will remain in effect during the term of this Agreement and for a period of twenty four (24) months thereafter.

4. Warranty. THE LICENSED PRODUCTS ARE PROVIDED "AS IS" PRECISELY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE LICENSED PRODUCTS. UNDER NO CIRCUMSTANCES WILL PRECISELY BE LIABLE FOR ANY DIRECT, CONSEQUENTIAL, INCIDENTAL OR INDIRECT DAMAGES, COSTS, LOSSES AND/OR EXPENSES ARISING OUT OF OR RELATED TO CUSTOMER'S USE OF THE LICENSED PRODUCTS.

5. Term. This Agreement and the Order Form will commence on the date set forth in the Order Form or the
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for the term set forth in the Order Form, or in respect of Licensed Products used on or downloaded from a Portal, for a period of thirty (30) days, provided, however, Precisely will have the right to immediately terminate this Agreement and the Order Form upon notice to Customer. Upon termination of this Agreement, Customer will immediately cease use of the Licensed Products and purge its system and records of the Licensed Products and each party will promptly return all Confidential Information of the other party in its possession.

6. Product Specific Terms. In addition to the terms of the Agreement and the Order Form, certain Licensed Products may contain third party content that requires the Customer to agree to additional terms. These additional terms can be found at <https://www.precisely.com/legal/licensing/english> and are incorporated herein by reference. If Customer has any questions as to which specific terms apply to Customer's license, **DO NOT SIGN THE ORDER FORM OR USE THE LICENSED PRODUCTS ON, OR DOWNLOAD THEM FROM, A PORTAL** and contact your Precisely account professional for clarity prior to execution/acceptance.

7. General.

- a) This Agreement will be governed by, and construed in accordance with, the laws of the State of New York without regard to its conflict of laws principles. 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.
- b) Customer will not assign its rights and obligations under this Agreement without the prior written consent of Precisely.
- c) If physical delivery of the Licensed Products is required, delivery of the Licensed Products will be FOB point of origin (within the United States) and for deliveries outside of the United States or from any country outside of the United States, delivery will be Carriage Paid To (CPT). Precisely may, to the extent available, deliver the Licensed Products or key codes electronically via the Internet or permit Customer to download the Licensed Products or key codes from Precisely's website.
- d) If any provision of this Agreement 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.
- e) This Agreement and the Order Form and all appendices, exhibits, schedules and attachments thereto constitutes the sole and complete agreement between the parties with regard to its subject matter, may not be modified or amended except by a writing signed by both parties hereto except as otherwise indicated herein, and supersedes all proposals, understandings, representations, prior agreements or communications relating to the Licensed Products and the subject matter of this Agreement. This Agreement also supersedes any pre-printed terms contained on any purchase order or similar document issued by Customer and any such terms will have no force or effect.