

Trial Evaluation Terms – EMEA

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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 Limited (“Precisely”). By executing a Trial Evaluation Order Form, 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 immediately send the Licensed Products and any other Confidential Information, as defined herein, back to Precisely at the address on the Order Form. 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 software products set out in the Order Form (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.

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) research and development information, analytical methods and procedures, hardware design, technology (including the Licensed Products), financial information, personnel data; (iv) information concerning the customers and potential customers of either party; (v) business practices, know-how, marketing or business plans; (vi) this Agreement, documentation, support guidelines, and training materials; and (vii) any other information

identified in writing as confidential or information that the receiving party knew or reasonably should have

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Receiving Party gains access in connection with this Agreement.

b) The Receiving Party agrees: (i) to hold the Disclosing Party's Confidential Information in strict confidence, and 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, 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 Agreement; 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 to enable such party to try to protect the confidentiality of the Confidential Information.

e) Disclosing Party may be irreparably damaged if the obligations under this Section 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 or any other appropriate equitable order or decree.

4. Warranty. The Licensed Products are provided "as is" and Precisely disclaims all warranties and conditions, express or implied, with respect to the Licensed Products to the fullest extent possible. Save for death or personal injury caused by negligence, in 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. In the event that Precisely shall be found liable to the Customer for any reason other than death or personal injury caused by Precisely's negligence, the sums payable to the Customer in respect of such liability shall not in any circumstances exceed £10,000.

5. Term. This Agreement and the Order Form will commence on the date set forth in the Order Form and will continue thereafter for the term set forth therein, 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. General.

a) This Agreement will be governed by, and construed in accordance with, the laws of England without

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Agreement, a suit will be brought only in a court of competent jurisdiction in England.

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 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.



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