

PRECISIONPOINT END USER LICENCE AGREEMENT

1. DEFINITIONS

In this Agreement:

1.1 the following words and expressions shall have the following meanings, unless the context otherwise provides:

"Computer Program Protection Legislation" means sections 50A, 50B and 296A of the UK Copyright, Designs and Patents Act 1988 (as amended);

"Effective Date" means the date on which the Licensor provides the Licensee with the license key for the Program(s);

"Confidential Information" means confidential or proprietary information, technical data or know-how, and details of any source code, research, products, services, licensees, customers, markets, software, developments, inventions, processes, designs, drawings, engineering, marketing or finances. The Licensed Materials are the Confidential Information of the Licensor;

"Documentation" means the user guides and manuals for use of the Program(s)

"Intellectual Property Rights" means all intellectual property rights of any nature whatsoever throughout the world and for the full duration of any and all intellectual property protection afforded to the same including all and any:

(a) patents, registered trademarks, service marks, copyright, designs and any and all applications for registration of any of the same wheresoever made and;

(b) unregistered trademarks, service marks, designs, design right and copyright; and

(c) know-how, trade secrets and confidential information;

and any right or interest in any of the foregoing;

"Licensee" means the customer identified in the Order (and includes any of its affiliates and subsidiaries that are controlled or owned by the Licensee, or are under common control with it);

"License Fees" means the fees payable by Licensee for the licence of the Licensed Materials identified in the Reseller Agreement

"Licensed Materials" means the Program(s), and Documentation;

"Licensor" means Precision Point Ltd.

"Losses" means all costs and expenses, direct losses, direct damages and adverse effects resulting from any and all claims, judgements, causes of action, liabilities,

obligations, direct damages, deficiencies, penalties, interest and expenses (including the reasonable fees and expenses of solicitors and other professionals and specialists) but excluding consequential and indirect damages (including loss of profit, revenue etc.);

"Maintenance Release" has the meaning set out in Schedule A

"Program(s)" means the computer software in object code form provided by Licensor pursuant to this Agreement as set out in the Reseller Agreement, and any Maintenance Release which is provided to the Licensee as part of the Support Services;

"Reseller" means Armanino LLP, 12657 Alcosta Blvd, Suite 500, San Ramon, CA 94583;

"Reseller Agreement" means the agreement between the Reseller and the Licensee under which the Reseller resells to the Licensee the right to use the Program(s) pursuant to this Agreement and provides the Support Services to the Licensee;

"Site" means the location where the Licensed Materials and Documentation shall be delivered by Licensor;

"Support Fees" means the annual fees for the provision of the Support Services set out in the Reseller Agreement

"Support Services" means the support and maintenance services to be provided by the Reseller to the Licensee as specified in the Reseller Agreement.

"Support Term" means the period of twelve months.

1.2 references to clauses are references to clauses and sub-clauses of this Agreement;

1.3 the singular shall include the plural and vice versa;

1.4 the headings are for ease of reference only and shall not affect the construction of this Agreement;

1.5 the terms **"include"**, **"including"** and **"in particular"** shall be construed without limitation.

2. PROGRAM LICENSE

Subject to payment of the License Fee and compliance with this Agreement, Licensor hereby grants to Licensee a non-exclusive, non-transferable license to use the Program(s). The license shall commence on the Effective Date and shall continue in perpetuity unless and until terminated by either party in accordance with the terms of Clause 9. The Licensee may not sub-license its rights under this clause 2.

3. DOCUMENTATION

Licensor hereby grants to Licensee a non-exclusive, non-transferable license to use the

Documentation for training and reference by the Licensee's staff in the use of the Program(s). Such license shall commence on the Effective Date and shall continue in perpetuity unless and until terminated by either party in accordance with the terms of Clause 9. The Licensee may not sub-license its rights under this clause 3.

4. LICENSE RESTRICTIONS

Licensee shall not use the Program(s) save as permitted under UK Computer Program Protection Legislation, and shall:

4.1 not do or attempt to:

4.1.1 reverse engineer or decompile, disassemble or otherwise reduce any machine- readable Program(s) or component thereof to human-readable form;

4.1.2 create or attempt to create, by reverse engineering or otherwise, the source code or internal structure of the Program(s) (or any part);

4.1.3 remove any product identification, legend or notices of any proprietary or copyright restrictions from any part of the Program(s) (or other accompanying materials);

4.1.4 list or otherwise display or copy any object code of the Program(s) (or any part);

4.1.5 copy any Program(s), develop any improvement, modification or derivative works thereof or include any portion thereof in any other computer program, equipment or item save as specifically licensed under this Agreement;

4.1.6 use the Program(s) to operate a service bureau or other revenue-generating service business; or

4.1.7 disassemble the Program(s) or unbundle any software contained within the Program(s) or use any components of the Program(s) separately from the Program(s);

4.2 not make any copies of the Program(s).

4.3 It is recommended that the Program(s) are not installed or allowed to run on the same server machine as the AX programs. Failure to observe this recommendation may affect the performance of the Program(s) and the Licensor shall not be responsible for any such decrease or failure in performance resulting from failure to comply with this recommendation.

5. DOCUMENTATION RESTRICTIONS

Licensee shall:

5.1 only make such number of copies of the Documentation as is strictly needed for training and reference use by their staff.

5.2 not remove any product identification, legend or notices of any proprietary or copyright restrictions from any part of the Documentation.

6. PROPRIETARY RIGHTS

6.1 As between Licensor and Licensee, Licensor retains all title and rights including all Intellectual Property Rights to the Licensed Materials, all copies, improvements, modifications and derivative works thereof and any related documentation and materials and Licensee may not use any of the foregoing except as expressly provided herein.

7. DELIVERABLES AND SUPPORT SERVICES

7.1 Licensor shall deliver to Licensee the Licensed Materials

7.2 Support Services will be provided to the Licensee by the Reseller in accordance with the provisions of the applicable Reseller Agreement. Support Services are provided on an annual basis subject to receipt of payment in advance of the Support Fees for each year. The first Support Term commences on the Effective Date and shall be automatically renewed at the end of each Support Term unless the Licensee provides an advance written notice to Licensor at least sixty (60) days prior to the then current renewal date. Maintenance Releases are provided by the Licensor as part of those Support Services on the same basis as the Licensor makes such Maintenance Releases generally available to its customers. Exhibit A sets out the activities to be provided by the Licensor as part of those Support Services and is hereby incorporated into this Agreement by reference.

8. LICENSE FEES AND SUPPORT FEES

8.1 License Fees and Support Fees are payable by the Licensee to the Reseller under the terms of the Reseller Agreement.

8.2 Support fees may be increased by up to 5% not more than once in every successive twelve months during the currency of this Agreement.

9. TERMINATION

9.1 This Agreement may be terminated by Licensor immediately:

9.1.1 If Licensee materially breach any of the provisions of this Agreement and fails to remedy such breach within 30 days written notice by the Licensor; or

9.1.2 If Licensee convenes a meeting of its creditors or a proposal is made for any other composition, scheme or arrangement with (or assignment for the benefit of) Licensee's creditors or if Licensee shall be unable to pay its debts or if a trustee, receiver, administrative receiver or similar officer is appointed in respect of all or any part of the business or assets of Licensee or if a petition is presented or a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding up of Licensee or for the making of an administration order (otherwise than for the purpose of an amalgamation or reconstruction) or any proceedings analogous to the foregoing are commenced in the jurisdiction in which Licensee does business; or

9.1.3 should any of the Licensed Materials become, or in Licensor's opinion be likely to become, the subject of a claim of infringement of any Intellectual Property Rights.

9.2 Any termination of this Agreement pursuant to

this clause shall be without prejudice to any other rights or remedies either party may be entitled to hereunder or at law and shall not affect any accrued rights or liabilities of either party.

9.3 Without limiting any other Clause in this Agreement, this Agreement may be terminated by notice in writing to the Licensor by the Licensee giving not less than three (3) months' written notice to either the first or a subsequent annual anniversary of the Effective Date.

9.4 Upon the termination of this Agreement all licenses granted in this Agreement shall terminate. Licensee shall immediately discontinue all use of the Licensed Materials and, unless otherwise instructed by Licensor within ten (10) days after such termination Licensee shall return all Licensed Materials and all copies thereof, and all other Confidential Information and materials delivered to Licensee hereunder to Licensor. The provisions of clauses 8, 11, 12, 13, 14 and 15 shall survive the termination of this Agreement.

10. WARRANTY

10.1 Subject to the exceptions set out in clause 10.4 and the limitations upon its liability in clause 11 Licensor warrants that:

10.1.1 (a) its title and property in the Program(s) and Documentation is free and unencumbered and (b) that it has the right, power and authority to license the same to Licensee upon the terms and conditions of this Agreement

10.1.2 the Program(s) will for a minimum period of ninety (90) days from the Effective Date conform to the specifications applied to them in the Documentation;

10.1.3 it will perform the Support Services referred to in clause 7.2 with reasonable care and skill.

10.1.4 Use of the Program(s) in accordance with the terms of this license will not infringe the intellectual Property Rights of a third party.

10.2 Licensee shall give notice to Licensor as soon as it is reasonably able upon becoming aware of a breach of warranty.

10.3 Subject to clause 10.4 Licensor shall remedy any breach of the warranties by the provision of the maintenance and support services referred to in clause 7.2 free of charge. In the case of a breach of clause 10.1.4, the Licensor may at its option procure for the Licensee the right to continue to use the Program(s) (or any part thereof) in accordance with the terms of this Agreement, modify the Program(s) so that they cease to be non-infringing, replace the Program(s) with non-infringing software or, if the Licensor reasonably believes that none of the above remedies are commercially reasonable or possible, terminate the licence under this Agreement in accordance with clause 9.1.3. In the event of termination of the Agreement under clause 9.1.3, the warranty in clause 10.1.4 shall be deemed to have survived such termination and the Licensee may claim damages for breach of such warranty (subject to the provisions of clause 10.4 and clause 11).

10.4 Licensor shall have no liability to remedy a breach of warranty where such breach arises as a result of:-

10.4.1 the improper use, operation or neglect of any of the Licensed Materials;

10.4.2 the modification of the Program(s) or their merger (in whole or in part) with any other software where the breach would not have occurred but for such modification or merger;

10.4.3 Where equipment, hardware or operating software is supplied pursuant to this agreement or the Reseller Agreement (or any equipment, hardware or operating software is recommended or specified for use in conjunction with the Program(s)), the use of the Program(s) on or in conjunction with other equipment, hardware or operating software;

10.4.4 the failure by Licensee to implement recommendations in respect of or solutions to faults previously advised by Licensor or the Reseller (including the failure to implement any Maintenance Release);

10.4.5 any repair, adjustment, alteration or modification of the Program(s) by any person other than Licensor without Licensor's prior written consent;

10.4.6 any breach by Licensee of any of its obligations under any maintenance agreement in respect of its hardware, equipment or operating software; or

10.4.7 the use of the Program(s) for a purpose for which they were not designed.

10.5 Without prejudice to the foregoing the Company does not warrant that the use of the Licensed Materials will meet Licensee's requirements or that the operation of the Licensed Materials (including where in machine-readable form the Documentation) will be uninterrupted or error free.

10.6 Subject to the foregoing all conditions, warranties, terms and undertakings, express or implied, statutory or otherwise, in respect of the Licensed Materials and the provision of the Support Services referred to in clause 7.2 are hereby excluded.

11. LIMITATION OF LIABILITY

11.1 The following provisions set out Licensor's entire liability (including any liability for the acts and omissions of its employees, agents and subcontractors) to Licensee in respect of:

11.1.1 any breach of its contractual obligations arising under this agreement; and

11.1.2 any liability under clause 14; and

11.1.3 any representation, statement or tortious act or omission including negligence arising under or in connection with this agreement AND THE LICENSEE'S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF THIS CLAUSE 11.

11.2 Any act or omission on the part of Licensor or its employees, agents or subcontractors falling within clause 11.1 shall for the purposes of this clause 11 be known as an "**Event of Default**".

11.3 Licensor's liability to Licensee for death or injury resulting from its own or that of its employees', agents' or sub-contractors' negligence, or for any fraud or fraudulent misrepresentation shall not be limited.

11.4 Subject to the limits set out in clause 11.5.1 Licensor shall accept liability to Licensee in respect of damage to the tangible property of Licensee resulting from the negligence of Licensor or its employees, agents or sub-contractors.

11.5 Subject to the provisions of clause 11.3 Licensor's entire liability in respect of any Event of Default shall be limited to an amount equal to:

11.5.1 the aggregate of License Fees paid by the Licensee during the period of validity of the License and Support Fees paid by the Licensee during the 12 month period before the Event of Default occurred in the case of an Event of Default falling within Clause 11.4

11.5.2 in the case of any other Event of Default (other than pursuant to clause 14), the aggregate of License Fees paid by the Licensee in the period of 12 months prior to such Event of Default.

11.5.3 In the case of any liability under clause 14, the sum of £500,000 in aggregate.

11.6 Subject to clause 11.3 Licensor shall not be liable to Licensee in respect of any Event of Default for any type of special, indirect or consequential loss.

11.7 If a number of Events of Default give rise substantially to the same loss then they shall be regarded as giving rise to only one claim under this agreement.

11.8 Licensee hereby agrees to afford Licensor not less than thirty days (following notification thereof by Licensee) in which to remedy an Event of Default hereunder.

11.9 Except in the case of an Event of Default arising under clause 11.3 Licensor shall have no liability to Licensee in respect of any Event of Default unless Licensee shall have served notice of the same upon Licensor within six months of the date it became aware of the circumstances giving rise to the Event of Default or the date when it ought reasonably to have become so aware.

12. NON-DISCLOSURE

12.1 Confidential Information of a party ("**Discloser**") may only be disclosed to employees of the other party ("**Recipient**") who need to have access to it for the purpose specified in this Agreement and who are subject to written confidentiality agreements which are at least as protective of Discloser's rights as this Agreement. Recipient shall notify and inform such employees of Recipient's limitations, duties and obligations regarding use, access to and non-disclosure of Confidential Information. Recipient shall not disclose the existence of, or the terms, conditions, or subject matter of this Agreement to any third party without the prior written consent of Discloser. Recipient agrees to use the same degree of care with respect to the Confidential Information as it uses to protect its own confidential information, but in any event it shall employ no less than a reasonable degree of care. Recipient agrees to notify Discloser in writing of any misuse or misappropriation of Discloser's Confidential Information received under this Agreement which comes to the attention of Recipient. Recipient agrees to hold the Confidential Information in confidence both during the term of this Agreement and following any termination of this Agreement.

12.2 Recipient's obligations with respect to the Confidential Information shall not apply to information which:

12.2.1 was or becomes publicly known through no fault of Recipient;

12.2.2 Recipient is legally compelled to disclose, provided, however, that prior to any such compelled disclosure, Recipient will assert the privileged and confidential nature of the Confidential Information against the third party seeking disclosure and cooperate fully with Discloser in protecting against any such disclosure and/or obtaining an order narrowing the scope of such disclosure and/or the use of the Confidential Information.

12.3 The Discloser acknowledges that it is aware that certain of the Confidential Information which it receives from the Recipient is or may be price sensitive if the Recipient is listed on a recognized stock exchange. The Discloser will draw this to the attention of all staff that have access to or may come into contact with the Confidential Information and make such staff aware of their legal obligations with regard to the non-disclosure or use of such information.

13. RIGHT OF INSPECTION

Licensee shall allow Licensor to inspect the Licensed Materials at any time during regular business hours upon twenty-four hours' prior written notice at the Site as requested by Licensor from time to time. Where such inspection or any other action on the part of Licensor reveals an underpayment on the part of Licensee of License Fees or any other amounts due to Licensor under this Agreement the amount of such underpayment shall be paid to Licensor immediately upon its request together with interest calculated in accordance with the provisions of clause 8.3 and where such payment exceeds five per cent of the amount actually paid the reasonably incurred costs of such inspection or other action shall be met by Licensee.

14. INDEMNITY

14.1 Licensee shall indemnify, defend and keep Licensor harmless from and against all Losses arising out of any breach by the Licensee of the restrictions on the use of the Program(s) under Clause 4 and 5 where such breach is an infringement of Licensor's Intellectual Property Rights.

14.2 Licensor shall indemnify, defend and keep Licensee harmless from and against all Losses arising out of any claim by a third party alleging that possession or use of the Program(s) as authorized under this Agreement infringes the Intellectual Property Rights of a third party.

15. GENERAL

15.1 No modification to this Agreement will be binding, unless in writing and signed by authorized representatives of each party.

15.2 Any waiver of any provision of this Agreement, or a delay by either party in the enforcement of any right hereunder, shall neither be construed as a continuing waiver nor create an expectation of non-enforcement of that or any other provision or right.

15.3 If any of the provisions of this Agreement is found to be invalid under any applicable statute or rule of law then, that provision notwithstanding, this Agreement shall remain in full force and effect and such provision shall be deemed omitted.

15.4 Save as set out below, Licensee shall not transfer, sub-license or assign this Agreement or its rights hereunder without obtaining the approval of the licensor which will not be unreasonably withheld. Without approval, any attempted transfer, sub-license or assignment shall be void. In the event of any transfer or disposal of all or substantially all the business and assets of the Licensee to a third party ("Acquirer"), the Licensee may assign this Licence to the Acquirer without consent, provided that the Licensor is given notice of the assignment and the identity of the Acquirer, the Licensor is satisfied with the financial standing of the Acquirer and the Acquirer undertakes to comply with the terms of this Agreement.

15.5 This Agreement shall be construed in accordance with, and governed by, the laws of England

15.6 Any dispute, controversy or claim arising under, out of or relating to this agreement and any subsequent amendments of this Agreement, including without limitation its formation, validity, binding effect, interpretation, performance, breach or termination, as well as non-contractual claims, shall be referred to and finally determined by arbitration in accordance with the WIPO Arbitration Rules. The arbitral tribunal shall consist of a sole arbitrator. The place of arbitration shall be London, England. The language to be used in the

arbitral proceedings shall be English. The dispute, controversy or claim shall be decided in accordance with the laws of England.

16. **NOTICES**

16.1 All notices, including notices of address change, required to be sent hereunder shall be in writing and sent to the addressee's address set out in an order form.

16.2 In the absence of earlier receipt and, in the case of personal or facsimile delivery, subject to clause 16.3, any notice given under this Agreement shall be deemed to have been duly given as follows:

16.2.1 if delivered personally, on delivery;

16.2.2 if sent by first class inland post, at 9:30am on the second business day after the date of posting;

16.2.3 if sent by airmail, at 9:30am on the sixth business day after the date of posting; and

16.2.4 if sent by facsimile, at the time shown on the relevant, valid and complete facsimile transmission report

16.3 Any notice given under this agreement on a day which is not a business day or at any time after 5:30 pm on a business day shall be deemed to be given at 9:30 am on the next business day. Any notice given before 9:30 am on a business day shall be deemed to be given at 9:30 am on that business day. In this Agreement a "**business day**" means any day other than a Saturday or a Sunday on which clearing banks are generally open for business in England.

SCHEDULE A SOFTWARE MAINTENANCE AND SUPPORT

Support Services are provided by the Reseller to the Licensee under the terms of the Reseller Agreement. Unless Licensor agrees to provide support and maintenance direct to the Licensee, the Licensee must purchase support and maintenance from an authorized reseller that supports the Program(s).

A. MAINTENANCE SERVICES

1. Support Services include the right to receive error corrections, bug fixes, patches, updates and other modifications to the Program(s) and Documentation licensed by the Licensee that are made generally available by the Licensor to licensees of the Program(s) who are on the maintenance program ("**Maintenance Releases**"). In addition the Support Services include the right to receive new versions of the Program(s) which are issued by the Licensor generally from time to time to licensees of the Program(s) who are on the maintenance program (versions of the Program(s) being denoted by a distinctive name (e.g. "Trent", "Mersey") or such other naming convention as used by the Licensor from time to time) ("**Version**"). The Support Services do not include the provision of any new or additional modules which add functionality to the Program(s).
2. Subject to payment of the applicable Support Fees, the license granted to Licensee extends to, and the term "Program(s)" shall include all Maintenance Releases and any new Versions received from Licensor.
3. Licensor retains the right to modify its maintenance programs but only if the modifications apply generally to all maintenance program licensees and only if the overall quality and availability of services is at least generally equivalent to the services stated in this Agreement.

B. SUPPORT SERVICES

1. The Licensee must notify Licensor of the named contacts who are authorized to contact Licensor Support on behalf of the Licensee.
2. Licensor's automatic Guardian Support function, which is part of the Software, will monitor the Licensee's server to ensure all data warehouse refresh Job Steps are completed correctly and will generate an advisory email to the Licensee and our Support Team in the event of any problems. This email will be followed up by contact from our Support Team to assist the Licensee in resolving the issue. It should be noted that this system does not involve the transmission of any data from the Licensee's data warehouse to Licensor.
3. Licensor will use all commercially reasonable efforts to resolve all support issues arising from product defects (Bugs) to the satisfaction of Licensee, but it retains the right to determine whether to revise, enhance or otherwise modify the Program(s) and which requested features, functionality and other changes will be made to the Program(s).
4. Information provided by Licensee in connection with Licensor performance of support services may be used by Licensor to support or enhance the Program(s).
5. Licensor shall have no obligation to support:
 - a) Altered, damaged, or modified Program(s) except when such alterations or modifications are made by Licensor or as made by the authorized Reseller as part of the Support Services;
 - b) Program(s) which are not the most current Release or the immediately previous Release or a Release provided by Licensor to the Licensee in the past year.
 - c) Software problems caused by Licensee's negligence, abuse, or misapplication, by use of the Program(s) other than as specified in the Documentation, or by other causes beyond the reasonable control of Licensor;
 - d) Program(s) installed on any computer hardware or operating system not identified in the respective Documentation as supported by Licensor.
6. Subject to paragraph 5(b) above, Licensor reserves the right to implement bug fixes solely in the current Version of the Program(s).