

PRECISIONPOINT END USER LICENSE AGREEMENT

STANDARD TERMS AND CONDITIONS

1. DEFINITIONS

In these General Terms:

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);

"Confidential Information" means Licensor's confidential or proprietary information, technical data or know-how, including all such information, data or know-how relating to the Licensed Materials and details of any source code, research, products, services, Licensees, markets, software, developments, inventions, processes, designs, drawings, engineering, marketing or finances;

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

"General Terms" means the general terms and conditions set out in this document;

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

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

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

and any right or interest in any of the foregoing;

"Licensee" means the corporation identified at the head of this document as the Licensee.

"Licensor" means PrecisionPoint Software Ltd.

"License Fees" means the fees payable by Licensee for the Licensed Materials and other services identified in this Agreement

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

"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.);

"Program(s)" means the computer software in object code form provided by Licensor pursuant to this Agreement

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

1.2 references to clauses are references to clauses and sub-clauses of these General Terms;

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 these General Terms;

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

2. PROGRAM LICENSE

Licensor hereby grants to Licensee a non-exclusive, non-transferable license to use the AX Connector Program(s). The license shall commence on the Effective Date and rollover for terms of 12 months until terminated by either party in accordance with the terms of Clause 9.

3. **DOCUMENTATION**

Licensor hereby grants to Licensee the license to use the Documentation.

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);

4.1.8 not install, or allow to run, any other application programs or databases on the same server machine as the Programs without the express written permission of Licensor. Failure to observe this sub-clause will invalidate all warranties, licenses and support terms.

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

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**

7.1 Licensor shall deliver to Licensee the Licensed Materials

7.2 During the first 12 months after the Effective Date Licensor will supply Licensee with the maintenance and support services identified in Exhibit A

8. **LICENSE FEES**

8.1 Invoices shall be payable by Licensee upon receipt of Licensor's or Licensor's agent's invoice.

8.2 In addition to the License Fees Licensor may levy and Licensee shall pay all sales and other taxes, including value added tax, resulting from this Agreement or any activities under this Agreement, unless Licensee furnishes proof of exemption from payment of such taxes which is in a form reasonably acceptable to Licensor;

8.3 Licensor reserves the right to charge Licensee interest in respect of the late payment of any amounts due to Licensor under this Agreement at the base rate plus 8% from time to time of HSBC plc bank in the UK from the due date until actual payment;

8.4 Licensor may increase the Maintenance and Support fees 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 should Licensee:

9.1.1 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 Convene 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' notice not to expire before the first 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 delivery acceptance date conform to the specifications applied to them in the Documentation;

10.1.3 it will perform the maintenance and 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.

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;

10.4.3 Where Equipment is supplied pursuant to this agreement, the use of the Program(s) on equipment other than the Equipment;

10.4.4 the failure by Licensee to implement recommendations in respect of or solutions to faults previously advised by Licensor;

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 the Equipment; 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 maintenance and 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 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 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 damages of an amount equal to:

11.5.1 the aggregate of License Fees paid by the Licensee to the Licensor during the period of validity of the License and maintenance and support fees paid by the Licensee to the Licensor during the 12 month period before the Event of Default occurred in the case of an Event of Default falling within Clause 11.

11.5.2 in the case of any other Event of Default, the aggregate of License Fees paid by the Licensee to the Licensor in the period of 12 months prior to such Event of Default.

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 may only be disclosed to Licensee's employees who need to have access to it for the purpose specified in these General Terms and who are subject to written confidentiality agreements which are at least as protective of Licensor's rights as this Agreement. Licensee shall notify and inform such employees of

Licensee's limitations, duties and obligations regarding use, access to and non-disclosure of Confidential Information. Licensee 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 Licensor. Licensee 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. Licensee agrees to notify Licensor in writing of any misuse or misappropriation of Confidential Information received under these General Terms which comes to the attention of Licensee. Licensee agrees to hold the Confidential Information in confidence both during the term of this Agreement and following any termination of this Agreement.

12.2 Licensee'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 Licensee;

12.2.2 Licensee is legally compelled to disclose, provided, however, that prior to any such compelled disclosure, Licensee will assert the privileged and confidential nature of the Confidential Information against the third party seeking disclosure and cooperate fully with Licensor 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 Licensor acknowledges that it is aware that certain of the Confidential Information which it receives from the Licensee is or may be price sensitive if the Licensee is listed on a recognized stock exchange. The Licensor 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 authorised 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 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.

15.5 This Agreement shall be construed in accordance with, and governed by, the laws of England and to the jurisdiction of whose courts the parties hereby submit.

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 or faxed to that person's fax number set out on the signature page.

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

1. The Licensee is required to purchase annual software maintenance and support services described in this Agreement for all separately priced modules and customizations of the standard software unique to the Licensee.
2. The Maintenance and Support begins on the Effective Date of this license and will expire automatically on the anniversary date and thereafter on the annual anniversary date.
3. Renewal of maintenance and support services on a date other than the annual anniversary date will incur a charge equivalent to twice the fee otherwise payable for the period between the anniversary of the renewal date and the actual date on which the agreement is resumed.
4. The fees for the renewal year shall be as specified in PrecisionPoint's then current Price List, subject to a maximum increase of 5% per year, cumulative, so long as Licensee stays current on Maintenance.

A. MAINTENANCE SERVICES

1. Maintenance includes the right to receive error corrections, bug fixes, patches, updates and other modifications to the Software and Documentation licensed by the Licensee that are made generally available to Licensees on Maintenance ("Maintenance Releases").
2. Subject to payment of the applicable maintenance fees, the license granted to Licensee extends to, and the term "Software" shall include all Maintenance Releases received from PrecisionPoint.
3. PrecisionPoint 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 PrecisionPoint of the named contacts who are authorized to contact PrecisionPoint Support on behalf of the Licensee.
2. PrecisionPoint's automatic Guardian Support function, which is part of the licensed 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 PrecisionPoint.
3. PrecisionPoint 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 Software and which requested features, functionality and other changes will be made to the Software.
4. Information provided by Licensee in connection with PrecisionPoint performance of support services may be used by PrecisionPoint to support or enhance the Software.

5. PrecisionPoint shall have no obligation to support:
 - a) Altered, damaged, or Modified Software except when such alterations or modifications are made by Licensor;
 - b) Software that is not the most current release or the immediately previous major release or a release provided by PrecisionPoint to Licensee within the past year;
 - c) Software problems caused by Licensee's negligence, abuse, or misapplication, by use of Software other than as specified in the Documentation, or by other causes beyond the reasonable control of PrecisionPoint;
 - d) Software installed on any computer hardware or operating system not identified in the respective Documentation as supported by PrecisionPoint.

6. PrecisionPoint reserves the right to implement bug fixes solely in the current version of the Software.

PrecisionPoint EULA agreed and accepted

Company:

Signature:

Name:

Position: