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## PRECISE DIGITAL STANDARD TERMS AND CONDITIONS

### Section 1 Price, Charges, and Taxes

**1.1 Payment.** Customer shall pay to Precise Digital (hereinafter referred to as "Vendor") the purchase price and reimbursements and shall assume responsibility for the other charges and claims set forth in the Applicable Proposal (hereinafter referred to as "Proposal"). All payments are due from Customer to Precise Digital within 30 days after the date of Precise Digital's invoice to Customer.

**1.2 Taxes.** Customer shall report and pay all federal, state, and local taxes (excluding only those taxes based on net income derived by Vendor) designated, levied, or based (1) upon the purchase price or any other amounts payable under this Agreement; (2) on account of this Agreement; or (3) with respect to the System, the Equipment, or the Programs or the acquisition, ownership, or use by Customer of the System, the Equipment, or the Programs. Customer shall indemnify and hold harmless Vendor from all claims and liability resulting from Customer's failure to report or pay such amounts.

**1.3 Interest Charges.** Customer acknowledges that the monetary obligations of Customer to Vendor hereunder constitute a commercial account. Customer shall pay, in addition to all other amounts owed to Vendor, interest calculated at 1.5% percent per month on all amounts that have been due and payable by Customer to Vendor for 30 days or longer. If Vendor employs any legal process to recover any amount due and payable from Customer hereunder, Customer shall pay all costs of collection and reasonable attorney fees.

**1.4 Freight and Insurance.** Customer shall reimburse Vendor for all charges for transportation, rigging, and drayage and for insurance, if any, of the System in transit. If Vendor uses a third-party mover or carrier to ship the System to Customer's address, Vendor shall, unless it notifies Customer to the contrary, arrange for shipment or carriage of the System, collectively or by component, to Customer F.O.B. point of manufacture or shipment.

### Section 2 Delivery, Inspection, and Installation

**2.1 Site Preparation.** Customer, at its expense and prior to delivery and installation of the System at Customer's address, shall prepare the Installation Site in an appropriate manner and shall cause the Installation Site to conform to any utility, climate control, and communication interface specifications that Vendor or the manufacturers or vendors of the Equipment may supply.

**2.2 Inspection of Equipment.** Customer shall promptly inspect the System upon its arrival at the Installation Site and shall notify Vendor if Customer finds any nonconformity or defect in the System.

**2.3 Installation.** When included in the Proposal, Vendor shall provide installation assistance as defined by the Proposal to help Customer install the System.

**2.4 Completion of Online Installation.** All online installation assistance must be completed within three (3) months after product delivery, unless otherwise agreed to in writing. After three months, all installation services will be considered complete and accepted by client, and Customer shall not be entitled to any further online training.

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### Section 3 Training and User Materials

**3.1 Training.** Customer shall select personnel suitable to operate and use the System and confirm that such personnel demonstrate the competence necessary to manage and operate the System. When included in the Proposal, Vendor shall provide Customer's personnel with training and instruction concerning the operation and use of the System by conducting a training session at a mutually convenient time at Customer's facility or via online training.

**3.2 Completion of Online Training.** All online training must be completed within three (3) months after product delivery, unless otherwise agreed to in writing. After three months, all training services will be considered complete and accepted by client, and Customer shall not be entitled to any further online training.

**3.3 Cancellation of Online Training.** Any cancellation of scheduled online training course must be by written notice at least forty eight (48) hours prior to the start of a scheduled course. If Customer fails to provide the required notice, the course can be rescheduled but at Vendor's then current pricing.

**3.4 User Materials.** Vendor may from time to time furnish Customer with drawings, diagrams, specifications, documentation, and other materials, including user manuals, relating to the use and servicing of the System. Vendor reserves all right, title, and interest in any such materials, including associated intellectual property rights, and Customer shall return such materials to Vendor at any time upon its request.

**3.5** Amounts due for installation and training may be invoiced by Precise Digital along with Precise Digital's invoice for initial product shipment, and such amounts are due and payable within 30 days of the date invoiced.

### Section 4 Proprietary Protection of Programs

**4.1 Reservation of Title.** This Agreement does not affect any transfer of title in the Programs, or any materials furnished or produced in connection therewith, including drawings, diagrams, specifications, input formats, source code, and user manuals. The Programs are provided, and are authorized to be installed, executed, and used only in machine-readable, object code form. Customer's rights in the Programs pursuant to the sublicense included in this Agreement are expressly limited to the use of the Programs by Customer at the Installation Site in connection with the Equipment.

**4.2 Restrictions on Use of Programs.** Neither the Programs nor any materials provided to Customer in connection with the Programs may be copied, reprinted, transcribed, or reproduced, in whole or in part, without the prior written consent of Original Manufacturer. Customer shall not in any way modify or enhance the Programs, or any materials furnished or produced in connection therewith, without the prior written consent of Original Manufacturer.

**4.3 Duration of Duties and Return of Programs.** The duties and obligations of Customer hereunder shall remain in full force and effect for so long as Customer continues to control, possess, or use the Programs. Customer shall promptly return the Programs, together with all materials furnished or produced in connection therewith, upon (1) termination for any reason of this Agreement or Customer's license of the Programs or (2) abandonment or other termination of Customer's control, possession, or use of the Programs.

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Section 5  
Warranties and Limitations

**5.1 Limited Warranty and Disclaimer**

**5.1.1 System and Equipment Warranties.** Vendor warrants, for the benefit of Customer only, that at the time of completion of delivery and installation of the System at the Installation Site, the System shall conform in all material respects to the manufacturer's specifications. Vendor warrants that it will be the owner of the Equipment when it is delivered, with the full right to sell the Equipment to Customer under the terms hereof. Vendor's sole obligation, and Customer's exclusive remedy, for any defect or nonconformity in the Equipment and the Programs shall be for Vendor to cooperate with Customer to provide it with the benefit, if any, of the warranty and support commitment of the third-party manufacturers and suppliers of the Equipment and the Programs. Customer, recognizing that Vendor is not the manufacturer of the Equipment or the Programs, expressly waives any claim against Vendor for any failure of the Equipment or Programs or any related patent, copyright or trademark infringement, with respect to the Equipment and the Programs. Customer may independently seek to obtain directly, from the manufacturers of the Equipment or the Programs, maintenance or repair of the Equipment or the Programs under any warranty or guarantee provided by such manufacturer. Customer acknowledges, unless Customer obtains separate service agreements with such manufacturers and suppliers or with a third-party maintenance vendor (such as Vendor) covering maintenance or repair of the Equipment and the Programs at the Installation Site, that such manufacturers and suppliers may require Customer to deliver defective Equipment or Programs to their authorized service centers for maintenance or repair.

**5.1.2 Exclusive Remedy.** As Customer's exclusive remedy for any nonconformity or defect in the System (or any other breach with respect to the condition or operation of the System) for which Vendor is responsible, Vendor shall, during the 3 month period following the completion of delivery and installation of the System at the Installation Site, provide reasonable efforts to correct or cure such nonconformity or defect.

**5.1.3 Conditions Precedent.** Vendor shall bear no responsibility for correcting, curing, or otherwise remedying any nonconformity or defect in the System (or any other breach with respect to the condition or operation of the System) if

- (1) the System is not properly installed;
- (2) the System is not maintained and operated under normal conditions by qualified personnel;
- (3) the System incorporates spare or replacement parts other than those purchased under this

Agreement;

- (4) the System has been altered, abused, misused, or taken apart;

(5) the nonconformity or defect (or other breach with respect to the condition or operation of the System) has not been reported to Vendor within 60 days after termination of such 3 month period referred to above; or

(6) the nonconformity or defect (or other breach with respect to the condition or operation of the System) has arisen as a result of damage to the System occurring subsequent to delivery thereof to the Installation Site, unless, in any such case, such event or condition directly results from the fault or negligence of Vendor.

**5.1.4 Disclaimer.** With the sole exception of the preceding undertakings, VENDOR DISCLAIMS ANY AND ALL PROMISES, REPRESENTATIONS, AND WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE SYSTEM (INCLUDING THE EQUIPMENT AND THE PROGRAMS), INCLUDING ITS CONDITION, THE EXISTENCE OF ANY LATENT OR PATENT DEFECTS, AND ITS MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR USE. VENDOR FURTHER DISCLAIMS ANY AND ALL PROMISES, REPRESENTATIONS, AND WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE NATURE AND QUALITY OF ANY OTHER PERFORMANCE BY VENDOR HEREUNDER.

**5.2 Limitation of Liability.** Exclusion of Lost Profits and Consequential Damages. The liability of Vendor to Customer for any claim whatsoever related to the System or this Agreement, including any cause of action sounding in contract, tort, or strict liability, shall be limited to the exclusive remedy set forth in Section 5.1.3, above. In no event shall Vendor be liable to Customer for any loss of profits; any incidental, special, exemplary, or

consequential damages; or any claims or demands brought against Customer by any other party, even if Vendor has been advised of the possibility of such claims or demands.

**5.3 Force Majeure.** Vendor shall not be responsible for delays or failures in its performance resulting from acts or omissions beyond its control or from any events, acts, or omissions attributable to the manufacturer of the Equipment or the Programs, the vendor of the Equipment to Vendor, the licensor of the Programs to Vendor, or any maintenance vendors.

## Section 6 Default

**6.1 Events of Default.** Any of the following shall constitute an "Event of Default" under this Agreement:

**6.1.1** Customer's failure to pay to Vendor any charge, cost, or other payment accruing hereunder, if such delinquency has not been corrected within 30 days after Vendor has given Customer written notice of such delinquency;

**6.1.2** Customer's failure to perform any other obligation set forth in this Agreement, including any act of repudiation or wrongful rejection of the System, if such failure has not been corrected within 30 days after Vendor has given Customer written notice of such failure; or

**6.1.3** Any act or event whereby Customer (a) is or becomes insolvent, (b) is or becomes a party to any bankruptcy or receivership proceeding or any similar action affecting the financial condition or property of Customer, if such proceeding has not been dismissed within 30 days, or (c) makes a general assignment for the benefit of creditors.

**6.2 Effect of Default.** Upon the occurrence of an Event of Default Vendor may (1) terminate this Agreement and invoke all rights Vendor possesses upon termination and (2) if Customer remains liable for any monetary obligation created under this Agreement, accelerate and declare all obligations of Customer created under this Agreement to be immediately due and payable by Customer as a liquidated sum and proceed against Customer in any lawful way for satisfaction of such sum, or repossess so much of the System as remains in Customer's possession.

**6.3 Waiver.** No delay or failure of either party in exercising any right hereunder, nor any partial exercise thereof, shall be deemed to constitute a waiver of any rights granted hereunder or at law. The presence or absence of an Event of Default shall in no way prejudice or abridge the right of Vendor to seek and obtain in appropriate circumstances stoppage of goods in transit or reclamation of goods after delivery.

## Section 7 Risk of Loss

Customer shall bear the entire risk of loss or damage to any equipment and Program after its shipment to the Installation Site or upon its delivery to the Installation Site. The occurrence of any such loss or damage shall not permit Customer to delay or reduce the payment of any fees or charges prescribed under this Agreement. Customer shall, at its own expense, obtain and maintain property and casualty insurance for the Equipment and the Programs against all risk of loss or damage. The amount of such insurance shall not be less than the replacement cost of the Equipment and the Programs. For such purpose, Vendor agrees to provide Customer with replacement materials, to the extent available, for only the cost of materials, provided that Vendor provides Customer with proof of loss or damage. Customer shall provide Vendor with a certificate of insurance with respect to such policy on or before the time of installation of the System at the Installation Site.

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Section 8  
General

**8.1 Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona.

**8.2 Entire Agreement; Amendments.** This Agreement, including the Proposal and these Terms and Conditions, which are hereby incorporated herein by this reference, constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes any and all prior and contemporaneous representations, proposals, agreements, negotiations, advertisements, statements, or understandings, whether oral or written. No amendment to this Agreement shall be binding on either party unless such amendment is in writing and executed by authorized representatives of both parties to this Agreement. If any term of Customer's Purchase Order or other documents contradicts any term of these Standard Terms and Conditions or Precise Digital's Invoice(s) then the terms of Precise Digital's Standard Terms and Conditions and Precise Digital's Invoices shall control. In case of conflict between Precise Digital's Invoice(s) and Standard Terms and Conditions, the terms included on Precise Digital's Invoice shall control with respect to that shipment/order which is the subject of the invoice only; otherwise, the Standard Terms and Conditions will control. Precise Digital's offers and willingness to do business with Customer, and all sales by Precise Digital to Customer, are expressly made conditional on acceptance by Customer of these Standard Terms and Conditions and any terms on Precise Digital's Invoices. Precise Digital expressly notifies Customer that all terms in any Customer purchase order or other document are rejected.

**8.3 Notice.** Any notices required or permitted under this Agreement shall be in writing and shall be effective when delivered in person or sent by registered or certified mail, return receipt requested, with proper postage affixed, or by personal courier to the address set forth in this Agreement or any more recent address of which the sending party has been apprised.

**8.4 Paragraph Headings.** The paragraph headings contained herein are for the convenience of reference only and shall not be construed so as to affect the interpretation or construction of any substantive provision of this Agreement.