

This legal document is a license agreement and not an agreement for sale. You, as the End User, acknowledge that Precision IT, Inc. (“Precision IT”) is the exclusive owner of all right, title and interest in the Licensed Materials (as hereinafter defined). You further acknowledge that Precision IT is the owner and holder of all copyright, patent, trademark, trade secret and other proprietary rights therein, and reserves all such rights to itself except as expressly licensed to you hereunder. BY CLICKING “ACCEPT”, “AGREE” OR SIMILAR LANGUAGE OR BY USING OR CONTINUING TO USE ANY LICENSED MATERIALS FROM PRECISION IT, YOU AGREE THAT YOU HAVE READ, UNDERSTAND AND ACCEPT THE PROVISIONS IN THIS END USER LICENSE AGREEMENT.

## **END USER LICENSE AGREEMENT**

### **1.0 DEFINITIONS.**

1.01 “Agreement” means this End User License Agreement (“EULA”) between you (either an individual or a single entity), hereinafter as “you” and/or “End User,” and Precision IT Inc., hereinafter as “Precision IT,” “we,” and/or “us,” that governs End User’s use of any Licensed Materials made available by Precision IT.

1.02 A “Party” means one of the End User or Precision IT.

1.03 “Licensed Materials” means the Licensed Platform and web pages, sites, data (including the Precision IT “Compute Performance Metric” (CPM) relative performance value data), reports and/or other outputs, software products, including products and/or related materials used for accessing other Licensed Materials, documentations, and/or other materials made available to End User through the Licensed Platform.

1.04 “Licensed Platform” means software services, including the Total Cost of Ownership (TCO) & Consolidation Analysis Assessments as a Service (“TCO Service”), made available to End User by Precision IT in accordance with any Subscription Agreement.

1.05 “Subscription Agreement” means any agreement between End User, Precision IT, and/or a third party by which End User has obtained license and/or access to any Licensed Materials.

1.06 “Access Means” means the mode of access, e.g., explicit permission, password, and/or other means, by which End User has gained access to any Licensed Materials.

### **2.0 GRANT AND RESTRICTION OF LICENSE.**

2.01 During the term of the Subscription Agreement as specified in Section 3.01 below, Precision IT grants End User a non-exclusive, limited, personal, and non-transferable license, subjected to and conditioned on End User’s compliance with this Agreement and the Subscription Agreement, to use the Licensed Materials for the purposes pursuant to the Subscription Agreement. End User is deemed to have notice of the Subscription Agreement and have agreed to and ratified the Subscription Agreement to the extent applicable to End User. The agreement may be obtained upon request from Precision IT.

2.03 The Licensed Materials are protected by law, including but not limited to copyright, trade secret, and trademark law, as well as other applicable laws and international treaty provisions. End User

shall not remove any product identification, copyright notices, or proprietary restrictions from the Licensed Materials.

2.04 The Licensed Materials shall be used only for the purposes contained in the Subscription Agreement, and only by those End Users designated to receive the Licensed Materials under the terms of the Subscription Agreement.

2.05 End User agrees and requires End User's representatives, directors, managers, employees, affiliates, and others who End User has provided an Access Means to the Licensed Materials to agree that these persons shall do all that is reasonable and prudent to safeguard the Access Means, including but not limited to protecting the Access Means from unauthorized sharing and/or other third party access.

2.06 As a condition of the limited license for the Licensed Materials granted to End User in this Agreement, except as and only to the extent expressly permitted in this Agreement, End User may NOT:

- a. Publish, display, disclose, rent, lease, modify, loan, distribute or create derivative works based on the Licensed Materials or any part thereof;
- b. Copy, decompile, reverse engineer, disassemble, translate, adapt or otherwise reuse the Licensed Materials for a purpose not contained in the Subscription Agreement or this Agreement;
- c. Take any action that will infringe on the intellectual property or other proprietary rights of Precision IT or any third-party providers; or
- d. Sublicense or assign the Licensed Materials.

2.07 Nothing contained herein shall be construed, expressly or implicitly, as transferring any right, license, or title in the Licensed Materials to the End User other than those explicitly granted under this Agreement. Precision IT reserves all intellectual property rights not expressly agreed to herein.

2.08 End User has no ownership rights in the Licensed Materials. Rather, End User has a limited license to use the Licensed Materials for limited purposes pursuant to the Subscription Agreement and only as long as this Agreement and the Subscription Agreement remain in effect. Ownership of the Licensed Materials and all intellectual property rights therein shall remain at all times with Precision IT. Any other use of the Licensed Materials by any other person, business, corporation, government, or any other entity is strictly prohibited and is a violation of this Agreement.

2.09 Unauthorized copying of the Licensed Materials or failure to comply with the restrictions in this Agreement or the Subscription Agreement will result in automatic termination of this Agreement, and End User agrees that such action will constitute immediate, irreparable harm to Precision IT for which monetary damages would be an inadequate remedy, and that injunctive relief will be an appropriate remedy for such breach.

2.10 The rights granted under the terms of this Agreement include any upgrades, supplements, and/or replacements to the Licensed Materials.

2.11 Precision IT reserves the right, from time to time, with or without notice to End User, to change the terms of this Agreement in Precision IT's sole and absolute discretion. The most current

version of this Agreement will supersede all previous versions. End User's use of the Licensed Materials after changes are made means that End User agrees to be bound by such changes. Therefore, End User should review any changes to this Agreement periodically and copies of the most current version of this Agreement shall be made available to End User upon written request to Precision IT or posted on the site from which the Licensed Materials are accessed.

### **3. TERMINATION.**

3.01 This Agreement may be terminated by Precision IT for any violation of its terms in this Agreement or the terms of the Subscription Agreement. Further, this Agreement and all rights granted to End User under Section 2.01 will automatically terminate without notice or further action upon the ending of the term contained in the Subscription Agreement or the term for which End User or a third party granting access to End User has paid in full, unless End User renews End User's subscription. No waiver of any breach of any provision of this Agreement by Precision IT shall constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provisions hereof, and no waiver shall be effective unless it is made in writing and is signed by an authorized representative of Precision IT. All provisions relating to confidentiality, proprietary rights, and nondisclosure shall survive the termination of this Agreement.

### **4. DESTRUCTION OF LICENSED MATERIALS.**

4.01 Upon the termination of this Agreement, End User shall cease all use of the Licensed Materials and destroy all copies and instances or data, full or partial, of the Licensed Materials that End User has in the End User's possession, specifically including all CPM relative performance value data retained in or accessible within End User's systems or generated reports.

### **5. USE OF LICENSED PLATFORM.**

5.01 The Licensed Platform is subject to usage limits (e.g., quantities and limitations specified in the Subscription Agreement), including limits on access by a number of unique users, duration and/or amount of access, third-party access or other usage limits. End User shall safeguard the Access Means to ensure compliance with such usage limits. If the usage limits were not specified or is unlimited, reasonable usage limits shall apply, including limiting access to persons within the organization only, limiting usage that constitute unreasonable burden on the Licensed Platform or other users, and other reasonable usage limits, at Precision IT's sole discretion. Precision IT may limit or terminate access to the Licensed Platform if the usage limit is exceeded.

5.02 In using and/or accessing the Licensed Platform, End User may not perform the following activities:

(a) copying, reproducing, "ripping", recording, or making available to the public any part of the Licensed Platform, or otherwise any use of the Licensed Platform which is not expressly permitted under these Terms;

(b) using the Licensed Platform to import or copy any local files you do not have the legal right to import or copy in this way;

(c) reverse-engineering, decompiling, disassembling, modifying, or creating derivative works based on the Licensed Platform or any part thereof;

(d) circumventing any technology used by Precision IT, its licensors, or any third party to protect the Licensed Materials and/or other contents accessible through the Licensed Platform;

- (e) renting or leasing of any part of the Licensed Platform;
- (f) circumventing of any territorial restrictions applied by Precision IT;
- (g) using or authorizing the use of any automated system or technique (e.g., “bots” or “spiders” or “screen or data scraping”) or similar or equivalent human-assisted system or technique to access the Licensed Platform;
- (h) framing or mirroring any part of the Licensed Platform, other than framing for your own internal business purposes;
- (i) accessing the Licensed Platform for building a competitive product or service;
- (j) removing or altering any copyright, trademark or other intellectual property notices contained on or provided through the Licensed Platform;
- (k) accessing or permitting access or use of the Licensed Platform in a way that circumvents usage limits; and
- (l) providing your password or other modes of access to the Licensed Platform to any other person or using any other person’s user name and password or other modes of access to the Licensed Platform.

5.03 We provide the Licensed Platform, including related software and technology, for ultimate federal government end use solely in accordance with the following: government technical data and software rights related to the Product include only those rights customarily provided to the public as defined in this Agreement. The Licensed Platform is a “commercial items” as that term is defined at 48 C.F.R. 2.101, consisting of “commercial computer software” and/or “commercial computer software documentation” as such terms are used in 48 C.F.R. 12.212. With respect to U.S. Government end users, rights to the Licensed Platform acquired under this Agreement, if any, are consistent with only those rights set forth in 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data / Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If a government agency has a need for rights not conveyed under these terms, it must negotiate with us to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum specifically conveying such rights must be included in any applicable contract or agreement.

## **6. USER DATA USE.**

6.01 Precision IT will receive and maintain information and data provided by End User (“User Provided Data”). End User is solely responsible for any User Provided Data provided and for any consequences thereof. End User represents that End User has the right to the User Provided Data, and that such User Provided Data, or its use by Precision IT as contemplated by this Agreement, does not: (a) violate this Agreement and/or other agreements, applicable law, or the intellectual property or publicity rights of others; or (b) imply any affiliation, endorsement, approval, or cooperation with End User and/or User Provided Data by Precision IT or any entity or individual without express written consent from such individual or entity. End User grants Precision IT a perpetual, non-exclusive, transferable, sub-licensable, royalty-free, worldwide license to use the User Provided Data.

6.02 Precision IT strives to use any personally identifiable User Provided Data (including User Provided Data that directly and/or indirectly identifies End User or other specific persons or organizations) only in connection with providing the Licensed Platform to the End User. To this end, Precision IT will maintain confidential the following User Provided Data specific to an analysis through

the TCO Service: (a) customer name; (b) project name; (c) project description; (d) hardware configuration, pricing, and discount specific to the analysis; (e) software configuration, pricing, and discount specific to the analysis; (f) financial information specific to the analysis; and (g) consolidation analysis information related to the specific analysis.

6.03 Precision IT may use User Provided Data that do not personally identify the End User and/or may aggregate such User Provided Data with other data, modify, or otherwise process User Provided Data pursuant to the license granted under Section 6.01 to improve or enhance the Licensed Platform or for other purposes. For example, Precision IT may use User Provided Data that contains information generally available outside of User Provided Data specific to an analysis through the TCO Service, including: (a) manufacturer hardware configurations and respective price and cost information (e.g., list price, purchase price, and maintenance price); and (b) software vendor products and respective price and cost information (e.g., list price and license and annual maintenance cost formulas).

## **7. CONFIDENTIALITY.**

7.01 “Confidential Information” includes confidential User Provided Data under Section 6.02 and all Licensed Materials under this Agreement. Notwithstanding the foregoing sentence, Confidential Information shall not include any information that: (i) is or falls into the public domain without fault of the Party receiving the information (“Receiving Party”); (ii) the Receiving Party can show by written documentation was in its possession without any obligation of confidentiality prior to receipt thereof from the Party disclosing the information (“Disclosing Party”); (iii) is independently developed by the Receiving Party without the benefit of any Confidential Information of the Disclosing Party; or (iv) is obtained by the Receiving Party from a third party without any obligation of confidentiality to the Disclosing Party.

7.02 Each Party shall hold the other Party’s Confidential Information in strictest confidence at all times and shall not disclose the other Party’s Confidential Information. Each Party may disclose the other Party’s Confidential Information to such Party’s employees, agents, contractors, and consultants on a need-to-know basis. Each party agrees to take all reasonable measures to protect the Confidential Information of the other Party from falling into the public domain or the possession of persons other than those persons authorized to have any such Confidential Information, which measures shall include the highest degree of care that such Party utilizes to protect its own information of a similar nature, but in no event less than a reasonable degree of care. The Receiving Party shall be responsible to the Disclosing Party for any violations of this Agreement by the Receiving Party’s employees, agents, contractors, or consultants.

7.04 Nothing in this Agreement shall prohibit either Party from disclosing Confidential Information of the other Party if legally required to do so by judicial or governmental order or in a judicial or governmental proceeding (“Required Disclosure”); provided that the Receiving Party shall (i) give the other Party prompt notice of such Required Disclosure prior to disclosure; (ii) cooperate with the other Party in the event that it elects to contest such disclosure or seek a protective order with respect thereto, and (iii) in any event only disclose the exact Confidential Information, or portion thereof, specifically requested by the Required Disclosure.

## **8.0 ACCESS.**

8.01 End User must provide at their own expense the equipment, Internet connections or wireless devices to access and use the Licensed Materials. Precision IT does not guarantee that Licensed Materials can be accessed through all wireless devices or wireless service plans. Precision IT does not guarantee that the Licensed Materials are available in all geographic locations. End User acknowledges that when you use the Licensed Materials, your wireless carrier may charge you standard fees for data, messaging and other wireless access. Check with your carrier to verify whether there are any such fees that may apply to you. **YOU ARE SOLELY RESPONSIBLE FOR ANY COSTS YOU INCUR TO ACCESS THE LICENSED MATERIALS THROUGH YOUR MOBILE DEVICE.** If you register to use any Precision IT's mobile applications, you agree that we may communicate with you by SMS, MMS, text message or other electronic means to your mobile device and that certain information about your usage of the mobile services may be communicated to us. When you access the Licensed Materials on your wireless device, Precision IT may obtain information from your wireless carrier about the type of device you are using. Precision IT may use this information to notify you on what type of features and products from Precision IT that may be available to you on your device. Certain features of Licensed Materials may require collection of the phone number of your device. Precision IT may associate that phone number to the mobile device identification information; however, we will not use that number for telemarketing. Some mobile phone service providers in the USA and other jurisdictions are required to operate a system that will pinpoint the physical location of devices that use their service. Depending on the provider, we may automatically receive this information. If you elect to use certain location or pinpoint based services (such as, GPS assisted navigation instruction, wireless tower location), we must periodically receive your location in order to provide such location-based services to you. By using Licensed Material location based services, you authorize Precision IT to locate your hardware and to record, compile and display your location. As part of the Licensed Materials, Precision IT may also collect and store certain information about our users, such as, users' wireless mobile subscriber ISDN and/or IMEI numbers (as applicable) and users' network access identifier information. This information will be used to provide you with Precision IT services. Precision IT may use third-party providers to help operate and provide access to the Licensed Materials through mobile systems.

## **9. FEES AND PAYMENT.**

9.01 All licenses granted to the End User in this Agreement are conditional upon all current dues and obligations being met by the End User, pursuant to the Subscription Agreement. Precision IT may limit or suspend the Licensed Platform to the End User and/or all licenses granted to the End User in this Agreement until all current dues and obligations owed by the End User to Precision IT are met.

## **10. EXPORT CONTROL.**

10.01 The Licensed Platform and other Precision IT's products may be subject to U.S. export and re-export control laws and regulations, including the Export Administration Regulations ("EAR") maintained by the U.S. Department of Commerce, trade and economic sanctions maintained by the Treasury Department's Office of Foreign Assets Control ("OFAC"), and the International Traffic in Arms Regulations ("ITAR") maintained by the Department of State. You warrant that you are (1) not located in Cuba, Iran, North Korea, Sudan, or Syria, and (2) are not a denied party as specified in the regulations listed above.

10.02 You agree to comply with all applicable export and re-export control laws and regulations, including the EAR, trade and economic sanctions maintained by OFAC, and the ITAR. Specifically, you agree that you shall not – directly or indirectly – sell, export, re-export, transfer, divert,

or otherwise dispose of any products, software, or technology (including products derived from or based on such technology) received from Precision IT under these Terms to any destination, entity, or person prohibited by the laws or regulations of the United States, without obtaining prior authorization from the competent government authorities as required by those laws and regulations. This export control clause shall survive termination or cancellation of these Terms.

## **11. DISCLAIMER OF WARRANTIES AND LIMITATION OF LIABILITIES.**

11.01 THE LICENSED MATERIALS ARE PROVIDED "AS IS" AND "AS AVAILABLE," WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND. END USER EXPRESSLY ACKNOWLEDGES AND AGREES THAT USE OF THE LICENSED MATERIALS ARE AT END USER'S SOLE RISK AND THAT THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY AND EFFORT IS WITH END USER. PRECISION IT HEREBY DISCLAIMS ALL WARRANTIES AND CONDITIONS WITH RESPECT TO THE LICENSED MATERIALS, EITHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES AND/OR CONDITIONS OF MERCHANTABILITY, OF SATISFACTORY QUALITY, OF FITNESS FOR A PURPOSE, OF ACCURACY, OF QUIET ENJOYMENT, AND NON-INFRINGEMENT OF THIRD-PARTY RIGHTS. NO WARRANTY SHALL BE CREATED BY ANY ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY PRECISION IT OR ITS REPRESENTATIVE.

11.02 IN ADDITION, PRECISION IT DOES NOT WARRANT, ENDORSE, GUARANTEE, OR ASSUME RESPONSIBILITY FOR ANY THIRD PARTY APPLICATIONS, THIRD-PARTY APPLICATION CONTENT, USER CONTENT, OR ANY OTHER PRODUCT OR SITE ADVERTISED, OFFERED, OR FEATURED BY A THIRD PARTY ON OR THROUGH THE LICENSED PLATFORM OR ANY HYPERLINKED WEBSITE OR FEATURED IN ANY BANNER OR OTHER ADVERTISING OR FEATURED IN OR THROUGH ANY LICENSED MATERIALS OR OTHER CONTENTS. YOU UNDERSTAND AND AGREE THAT PRECISION IT IS NOT RESPONSIBLE OR LIABLE FOR ANY TRANSACTION BETWEEN YOU AND THIRD-PARTY PROVIDERS OF THIRD-PARTY APPLICATIONS OR PRODUCTS OR SERVICES ADVERTISED OR FEATURED ON OR THROUGH THE LICENSED PLATFORM. AS WITH ANY PURCHASE OF A PRODUCT OR SERVICE THROUGH ANY MEDIUM OR IN ANY ENVIRONMENT. YOU SHOULD USE YOUR JUDGMENT AND EXERCISE CAUTION WHERE APPROPRIATE. NO ADVICE OR INFORMATION WHETHER ORAL OR IN WRITING OBTAINED BY YOU FROM PRECISION IT SHALL CREATE ANY WARRANTY ON BEHALF OF PRECISION IT IN THIS REGARD. SOME ASPECTS OF THIS SECTION MAY NOT APPLY IN SOME JURISDICTIONS.

11.03 NEITHER PARTY SHALL BE LIABLE FOR ANY PERSONAL INJURY, OR ANY INCIDENTAL, SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, LOSS OF DATA, BUSINESS INTERRUPTION, OR ANY OTHER COMMERCIAL DAMAGES OR LOSSES, ARISING OUT OF OR RELATED TO THIS AGREEMENT OR END USER'S USE OR INABILITY TO USE THE LICENSED MATERIALS. EXCEPT FOR ITS INDEMNIFICATION OBLIGATIONS, IN NO EVENT SHALL EITHER PARTY'S TOTAL LIABILITY TO THE OTHER FOR ALL DAMAGES (OTHER THAN AS MAY BE REQUIRED BY APPLICABLE LAW) EXCEED THE HIGHER AMOUNT OF FIVE DOLLARS (\$5.00) OR THE TOTAL AMOUNT OF FEES PAID BY END USER FOR USING THE SITE DURING THE SIX (6) MONTHS PRIOR TO BRINGING THE CLAIM. THE FOREGOING

LIMITATIONS WILL APPLY EVEN IF THE ABOVE STATED REMEDY FAILS ITS ESSENTIAL PURPOSE.

## **12. INDEMNITY.**

End User agrees to indemnify and hold Precision IT and its officers, directors, employees, and licensors harmless from any claim or demand (including but not limited to reasonable legal and attorney fees) made by a third party due to or arising out of or related to End User's violation of the terms and conditions of this Agreement, willful misconduct or violation of any laws, regulations, or third party rights.

Precision IT will indemnify, defend and hold End User harmless against any action brought against End User to the extent that it is based upon a claim that the Products, as provided by Precision IT to End User under this Agreement, infringe any U.S. patent or copyright or that the Products incorporate any misappropriated trade secrets. Precision IT will pay any costs, damages and reasonable attorneys' fees attributable to such claim that are awarded against End User in such action. In light of Precision IT's obligations above, End User agrees to: (i) give prompt written notice to Precision IT of any such claim; (ii) allow Precision IT to control the defense and any related settlement of any such claim; and (iii) furnish Precision IT with reasonable assistance in the defense of any such claim, so long as Precision IT pays End User's reasonable out-of-pocket expenses. THE PROVISIONS OF THIS SECTION SET FORTH PRECISION IT'S SOLE AND EXCLUSIVE OBLIGATIONS, AND END USER'S SOLE AND EXCLUSIVE REMEDIES, WITH RESPECT TO INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS OF ANY KIND.

## **13. NO WAIVER.**

13.01 Precision IT's failure to enforce the strict performance of any provision of this Agreement will not constitute a waiver of Precision IT's right to subsequently enforce such provisions or any other provisions of this Agreement. No waiver of any provision of this Agreement shall be effective unless in writing.

## **14. ENTIRE AGREEMENT AND SEVERABILITY.**

14.01 This Agreement along with any applicable purchasing or subscription document are the entire agreements between End User and Precision IT relating to the Licensed Materials and supersede all prior or contemporaneous oral or written communications, proposals and representations with respect to the Licensed Materials or any other subject matter covered by this Agreement. To the extent the terms of the Subscription Agreement conflicts with this Agreement, the terms of this Agreement shall control.

14.02 If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, such provision will be changed and interpreted so as to best accomplish the objectives of the original provision to the fullest extent allowed by law and the remaining provision of the Agreement will remain in force and effect.

## **15. HEADINGS.**

15.01 The headings contained in this EULA have been inserted for convenient reference only and shall not modify, define, expand, or limit any of the provisions of this EULA.



**16. CHOICE OF LAW AND VENUE.**

16.01 This Agreement shall be construed, interpreted, and applied by the laws of the state of Colorado. Any dispute arising out of or in connection with this Agreement or related to any matter which is the subject of this Agreement shall be subject to the final jurisdiction of the state and/or federal courts of Colorado.