Precision Computer Agreements

Contains up to date Agreements for Precision Computer Services and Products

- Master Agreement

Master Agreement

1. **Engagement:** Client hereby engages Precision Computer (“Consultant”) for the initial term set forth above, to provide services in support of Client’s computer, electronic and information technology systems (“Services”) located at the Service Address identified above. Upon expiration of the initial term, and upon expiration of each successive term, this Agreement shall be automatically renewed and extended for an additional term equal to the original unless one of the parties hereto serves notice upon the other of intent not to renew the Agreement at least thirty days prior to the renewal date.

2. **Agreement structure.** The signing of this Agreement by the parties creates a set of agreed-upon provisions that will be incorporated into contemporaneous and/or future documents (each called an “Addendum”) describing specific services to be performed by Consultant for Client. An Addendum must be signed by both parties and must state that it is made pursuant to this Agreement. Each Addendum, including the incorporated provisions of this Agreement, will constitute a separate contract. All references in this Agreement to “this Agreement” will be deemed to refer to the applicable Addendum and the incorporated provisions of this Agreement.

3. **Amendments.** All amendments must be clearly identified as an amendment to this Agreement or to a specified Addendum, and must be in writing and signed by authorized personnel of both parties. Any amendment to this Agreement will apply to each Addendum signed on or after the date of the amendment, and will apply to a previously executed Addendum if: (a) the amendment expressly so states; or (b) it is obvious from the context that it should apply to the prior Addendum and does not materially alter the previously established obligations of the parties under that Addendum.

4. **Services.** “Services” means the services to be provided by Consultant, as specified in an Addendum.

5. **Term and termination.** Each Addendum will take effect when signed by both parties. The actual provision of Services will begin on the “Start Date” specified in the Addendum, which may or may not be the same as the effective date. Each Addendum will continue in effect until terminated by one of the parties in accordance with the paragraph of this Agreement titled “Termination for convenience”, but in the absence of such a termination for convenience: (a) if an Addendum specifies a term of months or a specific termination date, that Addendum will automatically terminate upon expiration of the “Initial Term” (defined as the period beginning on the Start Date and ending on the specified termination date or at the end of the specified number of months) unless the Addendum is renewed by the parties; or (b) if the Services consist of a specific project to be completed and no term of months or termination date is specified in the Addendum, the Addendum will automatically terminate upon completion of the project.

6. **Charges.** Each Addendum will specify all charges that Client will pay Consultant for the Services to be rendered pursuant to that Addendum.

7. **Taxes.** Consultant will collect from Client and transmit to the proper authorities all taxes that Consultant is required by law to collect from Client in connection with the transactions contemplated by this Agreement.

8. **Invoices.** Each invoice rendered by Consultant will include an invoice number, a purchase order number or department number (which Client will provide to Consultant), the time period covered by the invoice, the amount of any applicable tax, and sufficient detail to allow Client to determine the accuracy of the invoice. Except to the extent Client has a right to withhold or delay payment pursuant to the express provisions of this Agreement, invoices will be paid within 30 days of the invoice date.

9. **Disputed invoices.** Consultant will use commercially reasonable efforts to ensure the accuracy of invoices. Client will timely pay all undisputed invoice items as provided above, and will notify Consultant of any disputed invoice items not later than 60 days after the invoice date, or such invoice will be presumed to be correct. The parties agree to act reasonably to resolve any disputed items.

10. **Force majeure.** If either party is unable to perform, or is delayed in performing, an obligation under this Agreement because of circumstances outside its control (other than obligations to pay money): (a) the party so affected will promptly give notice to the other party and will use its best efforts to promptly resume performance and (b) subject to compliance with subpart (a) of this paragraph, the party so affected will not be liable for any failure or delay to perform its obligations under this Agreement to the extent such failure or delay is caused by circumstances outside that party's control.

11. **Service levels and remedies.** With respect to any monetary remedy specified in an Addendum for Consultant's failure to meet a service level obligation, the parties agree that it would be extremely difficult to determine the amount of actual damages resulting from breach of such obligation, but that the amount specified in the Addendum to be paid to or withheld by Client in the event of such a breach is a reasonable approximation of such damages and not a penalty, as liquidated damages and Client's sole and exclusive remedy for such failure.

12. **Warranties.** Consultant represents and warrants: (a) that all Services will be performed in a professional manner, by qualified personnel, and in accordance with the terms of this Agreement and applicable industry standards; (b) that all tangible items furnished to Client under this Agreement will be of the quality, size and dimensions requested by Client or required by the terms of this Agreement, will be free from defects in materials and workmanship, and will be fit for the intended purpose; (c) that in performing the Services, Consultant will not make unauthorized use of any trade secrets or confidential or proprietary information of a third party; and (d) that Consultant will have all right, title, ownership, marketing and other rights required to furnish all Services and tangible items to be provided to Client under this Agreement. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH ABOVE, THERE ARE NO OTHER WARRANTIES, EXPRESS OR IMPLIED, CREATED BY THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

13. **Independent contractor.** It is agreed and understood that Consultant's relationship to Client is that of an independent contractor. Neither party will be deemed to be a partner, agent, employee or joint venturer of the other party. Consultant and its employees, agents and contractors will not represent or imply that they are employees, agents, partners or joint venturers of Client. All persons performing Consultant's obligations under this Agreement will be considered to be solely the employees, contractors or agents of Consultant or its contractors, and Consultant and its contractors will be responsible for ensuring there is payment of any and all salaries, wages, payroll taxes, insurance and other items payable to or on behalf of such personnel, and for maintaining worker's compensation insurance on such personnel.

14. **Compliance with law.** In performing Consultant's obligations under this Agreement, Consultant and its personnel will comply with all applicable laws, ordinances, rules and regulations.

15. **Personnel on site.** If any portion of the Services will be performed at Client's premises, Consultant's personnel will comply with Client's site rules at all times while on Client's premises. Client will provide Consultant with a copy of its then-current site rules.

16. **Non-solicitation of employees.** Each party agrees not to hire or solicit for employment (or as an individual independent contractor) any employee of the other party until 1 year after the date such person terminates employment with the other party. Consultant further agrees not to hire or solicit for employment (or as an individual independent contractor) any other individual while he or she is performing services for Client pursuant to a contract. If this paragraph is breached by the hiring of an

employee of Client or Consultant, damages for such breach are agreed to be equal to the demonstrated cost of training a replacement for such individual. This paragraph does not apply to the hiring or solicitation of any individual who did not become known to the hiring or soliciting party as a result of the relationship between Client and Consultant created by this Agreement.

17. **Insurance.** Consultant agrees to obtain such insurance as it deems necessary and/or appropriate for the services to be provided under each Addendum.

18. **Indemnification.**

18.1. It is understood and agreed that, in seeking the professional services of Consultant, Client may be requesting Consultant to undertake uninsurable obligations for the Client's benefit and, in connection therewith, Consultant may encounter the presence or potential presence of hazardous substances or contaminants at Client's site. Therefore, Client hereby indemnifies and agrees to defend and hold Consultant harmless against and from any and all loss, cost, damage, liability and expense incurred by Consultant arising from the presence or potential presence of any hazardous substance or contaminant at Client's site. Such cost and expense shall include, without limitation, (i) reasonable attorneys' fees and costs of litigation, (ii) reasonable costs arising from any investigation of any governmental agency for purported violation of any environmental law or regulation relating as hazardous substances; (iii) costs of any investigative response, clean-up or remedial actions with respect to the same; and any and all of the foregoing which Consultant may be required under any applicable law or regulation to take, cause to be taken, or pay for.

18.2. Except as provided in subparagraph 18.1 above, and to the extent provided in Section 34, Consultant shall indemnify and agrees to defend and hold Client harmless against and from any and all loss, cost, damage, liability and expense incurred by Client as a result of negligent acts, negligent errors, negligent omissions or willful misconduct on the part of Consultant, Consultant's agents, employees or subcontractors in the performance of this Agreement, excepting such liability as may arise out of Client's negligence or willful misconduct.

19. **Confidentiality.** For purposes of this Agreement, Client's "Confidential Information" consists of: (a) all non-public information (including but not limited to trade secrets, proprietary information, and information about products, business methods and business plans) relating to Client's business (or to the business of Client's licensors, suppliers or other trading partners) that is either marked or otherwise identified as confidential or proprietary, or that a reasonable person would understand to be considered confidential by Client (even if not so marked or identified); and (b) all information that Client is obligated by law to treat as confidential for the benefit of third parties, including but not limited to personal, financial, and/or health information about individuals who have applied for or purchased financial products or services from Client. Consultant acknowledges that, in connection with the performance of this Agreement or otherwise in the course of its dealings with Client, Consultant may receive Confidential Information from Client or may otherwise have access to or learn of Client's Confidential Information. In the absence of Client's prior written consent to a specific disclosure or use, Consultant will not disclose to any third party any of Client's Confidential Information, either orally or in writing, and will not appropriate any of Client's Confidential Information to Consultant's own use or to the use of any third party. Confidential Information that is provided by Client to Consultant will be used by Consultant and its agents only for the purpose for which it was provided, and access to such information will be restricted to individuals who require the information (or access to the information) to further that purpose. Without limiting any of the foregoing, Consultant will take at least such precautions to protect Client's Confidential Information as Consultant takes to protect its own confidential information, and in any event will take all precautions that are reasonably necessary to protect the security of Client's Confidential Information. Upon Client's request, Consultant will return to Client all tangible items containing any of Client's Confidential Information, including all copies, abstractions and compilations thereof, without retaining any copies of the items required to be returned. Whether or not affiliates are included in the term "Client" for purposes of this Agreement in general, they will be treated as being so included for purposes of the confidentiality provisions of this Agreement. Accordingly, the Confidential Information of Client's affiliates will be

considered part of Client's Confidential Information.

20. **Notification obligation.** Upon learning of any unauthorized disclosure or use of Client's Confidential Information, Consultant will notify Client promptly and cooperate fully with Client to protect Client's Confidential Information.

21. **Disclosure required by law.** If Consultant believes it is required by law or by a subpoena or court order to disclose any of Client's Confidential Information, then prior to any disclosure Consultant will promptly notify Client in writing, attaching a copy of the subpoena, court order or other demand, and Consultant will make all reasonable efforts to allow Client an opportunity to seek a protective order or other judicial relief.

22. **Non-restricted information.** Except as stated in the final sentence of this paragraph, nothing in this Agreement will be construed to restrict disclosure or use of information that: (a) was in the possession of or rightfully known by Consultant, without an obligation to maintain its confidentiality, prior to receipt from Client; (b) is or becomes generally known to the public without violation of this Agreement; (c) is obtained by Consultant in good faith from a third party having the right to disclose it without an obligation of confidentiality; (d) is independently developed by Consultant without the participation of individuals who have had access to Client's Confidential Information. Consultant acknowledges that certain laws governing information about individuals are more restrictive than the foregoing statements, and Consultant agrees to comply in all respects with such laws.

23. **Duration of obligations.** The obligations imposed by this Agreement with respect to Confidential Information will survive termination of this Agreement and will remain in effect with respect to each item of Confidential Information until that information becomes unprotected under the terms of the paragraph above titled "Non-restricted information". However, if applicable law sets a maximum period for the duration of obligations of nondisclosure and non-appropriation of confidential information, the obligations imposed by this Agreement with respect to each item of Confidential Information (other than trade secrets and other than information about individuals that is protected by law) will remain in effect only until such period expires.

24. **Electronic file transfers.** If data files will be transferred electronically between the parties in connection with the performance of Services under this Agreement, the details pertaining to such file transfers will be set forth in the applicable Addendum. In connection with such file transfers, each party agrees to comply with the security requirements specified in the applicable Addendum, and to use all commercially reasonable efforts to safeguard data belonging to the other party that is in its possession or control.

25. **Computer system access.** If Consultant will have access to any part of Client's computer system in the course of performing under this Agreement, the provisions of this paragraph will apply. Consultant and its personnel will use such access solely to perform Consultant's obligations under this Agreement, and will not attempt to access any Client system, electronic file, software or other electronic service except as specifically required to perform such obligations. Consultant will limit access to Client's computer system to those of its personnel who require such access in order to perform Consultant's obligations under this Agreement, and will provide Client with a list of the names of all such individuals. Consultant agrees that each of its personnel who have access to Client's computer system: (a) will be assigned a separate log-in ID by Client and will use only that ID when logging on to Client's system; (b) will log-off Client's system immediately upon completion of each session of service; (c) will not allow the use of his or her log-in ID or password by other individuals to access Client's computer system; and (d) will keep strictly confidential the log-in ID and all other information that enables such access. In addition, Consultant and its personnel will strictly follow all other Client security rules and procedures for the use of Client's electronic resources that are provided by Client from time to time. Consultant will promptly notify Client upon termination of employment or reassignment of personnel with access to Client's computer system so that login IDs may be changed and other necessary preventive measures may be taken by Client to prevent unauthorized access. If Client revises the requirements for access to its computer system, Consultant will be notified of the changed or additional requirements and will comply

with them as a prerequisite to further access. Each individual who is to be allowed access to Client's computer system will be required by Client to read a summary of the conditions under which such access is allowed, and to sign that summary indicating they understand their responsibilities in connection with such access. Consultant understands and agrees that: (i) any access by Consultant personnel to Client's live environment is subject to monitoring by Client; (ii) Consultant personnel will make no change to any Client system without Client's prior approval for the specific change; and (iii) all user identification numbers and passwords disclosed to Consultant and any information obtained by Consultant as a result of Consultant's access to or use of Client's computer and electronic storage systems will be considered Confidential Information of Client. Consultant will cooperate fully with Client in the investigation of any apparent unauthorized access to Client's computer or electronic data storage systems by Consultant or its personnel.

26. **Remote access.** If Consultant will have remote access to any part of Client's computer system in the course of performing under this Agreement, the provisions of this paragraph will apply in addition to all provisions of the paragraph titled "Computer system access". Consultant agrees: (a) to use only a remote access method approved by Client; (b) to provide Client with the full name of each individual who will have remote access to Client's computer system and the phone number at which the individual may be reached while connected to Client's system. If the connection to Client's network is an ongoing connection such as frame relay or T1 line, access will be allowed only if Client receives satisfactory evidence that Consultant's firewall is maintained with adequate security, as determined by TruSecure Corporation or by another independent third-party reviewer acceptable to Client.

27. **Equitable relief.** In that any breach of the confidentiality provisions of this Agreement is likely to cause irreparable harm to Client for which damages will be an inadequate remedy, Consultant agrees that any court of competent jurisdiction may enter an order restraining such breach.

28. **Prohibition on publicity.** Neither party may advertise or promote itself using the name, service mark or description of the other party, without the written consent of the other party in the case of each such use.

29. **Termination for convenience.** If the applicable Addendum states that Consultant guarantees that the Services will be made available to Client for a specified period of time, then Consultant agrees that, absent a material breach by Client, Consultant will make the Services available to Client for at least the period of time so specified in the Addendum. Otherwise, Consultant may terminate the Addendum without cause by: (a) giving Client 30 days' written notice that it is terminating the Addendum for convenience; and (b) refunding to Client the unearned portion of any payments made in advance by Client in connection with the Services. Client may terminate an Addendum at any time without cause by providing 30 days' written notice to Consultant, in which case Consultant will refund to Client the unearned portion of any payments made in advance by Client in connection with the Services.

30. **Material breach.** The voluntary or involuntary commencement of bankruptcy, receivership, insolvency, reorganization or other similar proceedings by or against either party or the appointment of a receiver for all or substantially all of either party's assets will be considered a material breach of this Agreement by such party.

31. **Effect of termination.** Termination of an Addendum will not terminate this Agreement, and the parties will remain free to enter into any future Addendum pursuant to this Agreement. In addition, termination of an Addendum will not relieve either party of any previously accrued obligations or of any obligations that by their nature are intended to survive termination. In addition to obligations relating to Confidential Information, which survive subject to the terms of the paragraph of this Agreement titled "Duration of obligations", obligations that survive termination will include but not be limited to obligations in connection with warranties and indemnification.

32. **Client property.** All items furnished by Client to Consultant in connection with Consultant's performance of the Services will remain the property of Client unless otherwise expressly stated in the Addendum.

Upon termination of an Addendum for any reason (or when items are no longer needed by Consultant for the performance of the Services, if earlier), Consultant will promptly return the Client property to Client or, at Client's option, allow Client to retrieve it.

33. **Tangible Property Rights.** Authorization to use any software or hardware provided by Consultant to the Client provides a personal, non-exclusive, limited, non-transferable and temporary license. All rights are reserved. The Client may not re-publish, transmit, distribute, sell, lease, sublet or make any unauthorized use of Consultant property. Modification of such materials or the use of such materials for any purpose not authorized by Consultant is prohibited. Client agrees to act in good faith and maintain in good physical and working order any hardware, software or other tangible items belonging to Consultant that are installed, lent to, leased to, or for any other reason in possession by Client or Client personnel. In the event of damage, theft, modification, defacing, loss of, or any other acts considered beyond what would be considered "normal wear" the Client will be responsible reimbursing consultant for repair and/or replacement of such material in an amount determined by consultant to be "fair market value" and will be due immediately at any time requested by consultant.

34. **Limitations on remedies.** In no event will Consultant be liable for any damages or loss caused by Client's failure to perform its responsibilities, or under any circumstances for lost profits, consequential or incidental damages arising out of any alleged breach by Consultant.

    In all events, Client's sole and exclusive remedy under the Agreement and/or any Addendum with Consultant will be to terminate the Agreement and Client may choose to file claim(s) for Physical Property and Digital Damage totaling no more than $1,000,000.

    With respect to any claimed defects in hardware or software, Client agrees to look solely to the manufacturer. In all events Client shall first give Consultant thirty days written notice of any alleged breach and the opportunity to contact the manufacturer to cure such breach. If such breach cannot be cured within said thirty-day period, Consultant shall have such additional time as is reasonably necessary to contact the manufacturer concerning the same.

    Irrespective of the provisions of this paragraph 34, Consultant, at its sole option, may choose to repair the system, replace the system or refund monies without incurring any liability to Client. Should Consultant elect to repair, replace or refund monies Consultant shall not undertake any expenditure in excess of any monies paid to Consultant by Client.

35. **Non-waiver.** No term or provision of this Agreement will be deemed waived and no breach will be deemed excused unless such waiver or consent will be in writing and signed by the party claimed to have waived or consented. No consent by any party to, or waiver of, a breach by the other will constitute a consent to, waiver of, or excuse for any different or subsequent breach.

36. **Partial invalidity.** If any provision of this Agreement is held to be unenforceable, the remaining provisions will continue in full force and effect. In addition, the parties or the court will modify any unenforceable provision so as to make it enforceable under applicable law, while keeping the modified provision as consistent as possible with the original intent of the parties.

37. **Assignment.** Neither party's rights or obligations under this Agreement (except the right to receive money) will be assigned or delegated without the written consent of the other party, except that either party may without such consent assign all of its rights and delegate all of its obligations under this Agreement to an entity: (a) which such party owns or controls; (b) by which such party is owned or controlled; or (c) which is under common ownership or control with such party. In addition, Client may with Consultant's consent assign its rights and delegate its obligations under this Agreement to an entity to which Client transfers substantially all of its assets relating to this Agreement. Any consent required by this paragraph will not be unreasonably withheld, conditioned or delayed. In the case of any assignment permitted hereunder without the other party's consent, the assignor will promptly notify the

non-assigning party in writing of the assignment and will include in its notice a statement of the facts that permit assignment without consent.

38. **Successors and assigns.** This Agreement will inure to the benefit of and be binding upon the respective successors and assigns, if any, of the parties. Nothing in this paragraph will be construed to permit any attempted assignment that would be unauthorized pursuant to any other provision of this Agreement.

39. **Construction.** The paragraph headings in this Agreement are for reference purposes only and will not be deemed a part of this Agreement. The wording used in this Agreement is the wording chosen by the parties to express their mutual intent, and no rule of strict construction will apply against either party.

40. **Entire agreement.** If Client's purchase order form is provided to Consultant in connection with this Agreement, the terms and conditions of that form will be superseded by the provisions of this Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof.

41. **Governing law.** This Agreement will be governed by the laws of the State of Missouri, without reference to conflict of law principles. However, if any version of the Uniform Computer Information Transactions Act (UCITA) is or becomes a part of the law of the aforementioned state, said statute will not govern any aspect of this Agreement, and instead the law as it existed prior to the enactment of that statute will govern.

42. **Consents, permissions and approvals.** If a provision of this Agreement requires one party to obtain the other party's written consent, permission or approval (or similar indication of agreement) with respect to a specified matter, such consent, permission or approval (or similar indication of agreement) will, unless otherwise expressly stated in the applicable provision of this Agreement, be valid if and only if it is given on a paper document manually signed in ink by an authorized representative of the party giving such consent, permission or approval (or similar indication of agreement). Notwithstanding the foregoing: (a) if the party's authorized representative faxes such a manually-signed paper document to the other party, the faxed copy of the manually-signed paper document will be valid to the same extent as the original; and (b) in no event may any provision of this Agreement be changed via email or by any document which is signed by only one party.

43. **Notices.** If a provision of this Agreement specifies that a "notice" to the other party must be "written" or "in writing", or that a party is to "notify" or give "notification" to the other party in writing, then the written notice, to be valid, must comply with the following requirements unless (and to the extent) the provision of this Agreement in which the written notice is referenced expressly allows deviation from these requirements. The requirements are as follows: (a) the notice must be written on a paper document that is addressed to the party's designated notice recipient and is either faxed to the notice recipient's fax number shown below or delivered to the notice recipient's address shown below; and (b) except in the case of a faxed notice, delivery of the notice must either be in person (with a signature from the notice recipient acknowledging the date of receipt), or through the use of an independent courier that provides or maintains a record of the delivery date, or by prepaid certified or registered mail with a return receipt requested. Written notices that meet these requirements will be deemed to have been "given": (i) in the case of a faxed notice, when the transmitting party obtains machine confirmation that all pages of the faxed notice have been successfully transmitted to the correct fax number; (ii) in the case of a notice sent by courier, when the notice is actually delivered to the notice recipient's address; and (iii) in the case of certified or registered mail, three days after the notice is deposited in the U.S. Mail, properly addressed and with postage prepaid. The parties' designated notice recipients, along with their respective addresses and fax numbers, are set forth below. Either party may change its designated notice recipient, or the fax number or address of the notice recipient, by giving written notice to the other in compliance with the provisions of this paragraph.

44. **Price Adjustments.** Consultant shall have the right to propose an adjustment to the Monthly Base Rate.

45. **Limitations of Technology.** The Client acknowledges that technologies are not universally compatible, and that there may be particular services or devices that the Consultant may be unable to monitor, manage, or patch. The Consultant agrees to inform the Client when such a situation arises. The Client agrees to correct the situation if applicable, and to hold the Consultant harmless in any case. Patches and antivirus definitions are distributed by their respective software vendors, and as such, the Consultant has no direct control over the effectiveness or lack thereof of the software being applied. The Consultant shall not be held responsible for interruptions in service due to patches released by software vendors