

# PrecisionIT Group, LLC

## Master Services Agreement

### Terms & Conditions

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1. **SERVICES, SCOPE:** This agreement will cover all aspects of the relationship between PrecisionIT and Client. PrecisionIT will deliver services to client that may be defined by quotes, Statements of Work, e-mails, and other forms of written and verbal communication. All of these will be considered Work Orders. Services could be billed on a fixed fee, monthly recurring fee, or time and material basis. Approval for such work by client may be indicated by signature, e-mail, verbal approval, and payment of bills for such services. The Master Services Agreements will be in effect for all services performed by PrecisionIT on behalf of client.
2. **SPECIFIC EMPLOYEES:** Our work orders, including quotes, Statements of Work, and other work agreements define the services we provide to clients and are not a contract for services by any specific individual or employee. PrecisionIT will provide requested personnel from its own employee base per Client's request, but is not guaranteeing the provision of any particular employee(s). PrecisionIT reserves the right to rotate in from time to time, at its own election, and without notice, additional, supplementary, and/or replacement employee resources. If any specific PrecisionIT employee remains with the client for any shorter or extended period of time, but then terminates his or her relationship with PrecisionIT, such change shall have no effect on this Agreement or the covered quotes, work orders or statements of work, and this agreement will remain in full force with PrecisionIT retaining the right to provide substitute, alternate resources to fulfill the requirements of our Agreement.
3. **FEES:** Fees will be determined for each Statement of Work or project, including any Statement of work presented as an addend' to this document. Fees will change from year-to-year and from project-to-project.
  - 3.1) **Sample of fee arrangements:** Examples of fees include 'fixed monthly fee', 'fixed project fee', and 'time & material' billing.
  - 3.2) **Miscellaneous Charges:** All charges exclude taxes (including but not limited to Massachusetts sales tax); miscellaneous expenses (miscellaneous equipment for functionality not covered in this agreement); travel expenses related to visiting your office (mileage at standard federal rate from our office listed above, plus parking or subway fare). Travel time is not billed.
4. **BILLING & PAYMENT**
  - 4.1) **Billing for Services:** Managed Services (fixed monthly recurring fees arrangements) are billed at the beginning of each service month. Time & Material charges are billed at the end of each period. Fixed fee projects are billed in phases or at or near the end of a project.
  - 4.2) **Billing for Parts and Equipment:** Per request of client, Precision IT can procure computer related-product, including software & network hardware. Product purchased will be billed immediately. In some cases, as defined per a specific statement of work formal quote, some advanced payment will be required.
  - 4.3) **Payment terms:** Payment terms are "due on receipt." payments will be made in U.S. dollars. Late payments will be considered delinquent and shall accrue interest at a rate of 1% per month or the maximum interest permitted by law, whichever is less, until such charges are paid. In the event that PrecisionIT incurs fees or expenses, including attorney's fees, in collecting or attempting to collect any charges owed to PrecisionIT, Client will pay PrecisionIT for those charges and fees incurred.
  - 4.4) **Taxes and Other Charges:** All payments required by this Agreement are exclusive of all national, state, municipal or other governmental excise, sales, value-added, use, personal property and occupational taxes, excises, withholding taxes and obligations and other levies now in force or enacted in the future, all of which Client will be responsible for and will pay in full, except for taxes based on PrecisionIT's net income.
5. **TERM AND TERMINATION:** The term of this agreement is governed by and covers the individual work orders, Statements of Work, Quotes, and other agreements for our services, as defined in this Agreement. Certain terms will service the termination of this Agreement or the term of Work Orders
  - 5.1) **Termination of Statement of Services.** Either party may terminate a Work Order or Statement of Work in accordance with the termination provisions set forth therein, if any.
  - 5.2) **Termination for Default.** In addition to any other rights and remedies a party is entitled to at law or in equity, such party may terminate this Agreement and any current Statements of Work hereunder immediately by a written notice (a "**Default**

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**Notice**) if the other party commits any material breach of this Agreement; **provided**, that if such breach is capable of cure, such party shall have thirty (30) days following its receipt of a Default Notice (the "**Cure Period**") to cure such breach to the non-breaching party's reasonable satisfaction. If such breach is not cured prior to the expiration of the Cure Period, the non-breaching party may terminate this Agreement immediately by written notice. No Cure Period shall apply to a payment default by Client. PrecisionIT shall be entitled to suspend all Services until Client has cured any such payment default.

- 5.3) **Payment.** Unless otherwise stated in the applicable Statement(s) of Work, upon termination of such Statement(s) of Work by Client, **if** the Fees are tied to a fixed year term (i.e. 1 year or 2 years etc.), Client shall pay no later than 5 days following the date of such termination, as liquidated damages (and not as a penalty) those fees remaining on such term. Unless otherwise stated in the applicable Statement(s) of Work, upon termination of such Statement(s) of Work by either party, Client shall pay PrecisionIT for the Services performed prior to the effective date of termination on (i) a pro rata basis for a fixed monthly fee arrangement, (ii) a percentage of completion basis as determined in PrecisionIT's reasonable discretion for a fixed project arrangement and (iii) hourly basis for a time and materials arrangement. If pricing is defined in any accompanying Statement of Work as being tied to a fixed year term (i.e. 1 year or 2 years etc.), then cancellation by Client is deemed a cancellation without prejudice to PrecisionIT's rights to collect the full value of the yearly (or multi-year) Service Agreement as calculated through the end of its original term.
- 5.4) **Return of Materials.** Upon the termination of this Agreement, PrecisionIT shall promptly provide Client with all passwords and documentation, in addition to reasonable transition assistance. In cases where there is no annual contract (Managed Services Plan) in place, PrecisionIT may charge "per diem" or hourly rates for any transition period services. Client and PrecisionIT will exchange any material or equipment on loan or owned by the other.
6. **WARRANTY DISCLAIMER:** Except as set forth in this section and any other attached addenda, PrecisionIT expressly disclaims all warranties regarding any products or services provided by PrecisionIT to Client, whether express, implied, or statutory, including with limitation and implied warranties of merchantability, fitness for a particular purpose, title, non-infringement of third-party rights or based on course of conduct or trade custom or usage.
- More specifically, PrecisionIT does not control and therefore expressly disclaims responsibility for manufacturer's hardware or software failures and any failure by 3<sup>rd</sup> party service providers used by PrecisionIT that impact client. PrecisionIT is not responsible for the service limitations of 3<sup>rd</sup> party vendors, such as Internet Service provider, telephone service provider, parcel shipping company, 3<sup>rd</sup> party IT consultants hired by Client, and other vendors contracted by Client.
7. **RIGHT TO KNOW LAWS:** Client represents that those persons who PrecisionIT will send to work at its premises will not be exposed to any hazardous chemicals (as defined by the OSHA Hazard Communication Standard or any applicable state/local "right to know" law) under normal operating conditions or any foreseeable emergencies. If this is not presently the case, or if this changes in the future, Client agrees to give PrecisionIT immediate written notification so that Client and PrecisionIT take any appropriate precautions required by the OSHA Hazard Communication Standard or any applicable state/local "right to know" law.
8. **ADMINISTRATOR PASSWORDS:** Unless otherwise agreed in writing, or in the case where Client has a dedicated Internal IT support person on staff, all "Administrator" level passwords and information relating to the structure and setup of the network remain under the sole control and discretion of PrecisionIT. This insures that the network is secure and that any issues with the systems can be directly attributed only to PIT, and not the client, its employees, or third parties.

In the event of a termination of any relationship between PrecisionIT and the client, PrecisionIT follows the customary practice for the industry: passwords and documentation are timely provided to the client, in addition to any transition assistance the client desires, and at the same time, final payment and execution of a full release of all claims against PrecisionIT is provided by the client to PrecisionIT. In cases where there is no annual contract (Managed Services Plan) in place, PrecisionIT reserves the right to charge alternate "per diem" rates for any transition period services.

For Clients where Client has an Internal IT Manager or other personnel managing and directing IT decisions, Client acknowledges and agrees that by entering into this Agreement, PrecisionIT is not functioning as the main or sole manager of Client's IT systems; that this Services Agreement in such cases is not a contract for outsourced IT network management services (including hardware, software, and structural design, operation and management); and that the Client is managing and directing the day to day activities of the Precision IT personnel at Client's site. Moreover, in such cases, because PrecisionIT is not the sole custodian of Administrator passwords related to client's network, PrecisionIT does not have exclusive control of the Client's network, and therefore cannot be held liable for any problems with client's network or IT equipment.

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#### 9. GENERAL LIMITATION OF LIABILITY AND DAMAGES; INDEMNITY

Limitation on Damages: Neither PrecisionIT nor any of its affiliates, officers, directors, employees, agents or owners shall be liable to Client or any other person for any indirect, consequential, special, incidental, or punitive damages, or for any lost profits or revenue of any kind or nature whatsoever, arising out of any acts, errors, mistakes, or omissions of any person (including but not limited to any employee, agent, officer, or director of PrecisionIT), or any interruptions, defects in transmission, or delays of any kind whatsoever, arising out of or related to this Agreement or the obligations of either party pursuant to this Agreement. PrecisionIT will not be liable for the errors of upstream service providers.

Limitation of Liability: Total liability shall be limited to the fees paid to PrecisionIT, defined by the Statement of Work. In the case of a fixed fee project, total liability shall be limited to those specific project fees. In the case of Time & Material billing, total liability shall be limited to the fees billed for that particular project or task. In the case of Managed Services IT support monthly fees, total liability shall be limited to fees paid to PrecisionIT over the preceding six months.

#### Indemnity:

As Precision IT is providing the Services solely for the benefit of Client, Client shall indemnify PrecisionIT, any of its affiliates, officers, directors, employees, agents or owners, against all costs, fess, expenses, damages and liabilities (including defense costs) associated with any third-party claims, relating to the Services or arising as a result of this Services Agreement. PrecisionIT shall indemnify client, any of its affiliates, officers, directors, employees, agents or owners, against all costs, fess, expenses, damages and liabilities (including defense costs) associated with any third-party claims, relating to the Services or arising as a result of this Services Agreement.

The indemnifications provided under this Section are subject to the indemnified party providing prompt notice for any claim for which indemnification may be sought, the indemnified party's assistance and cooperation (at the indemnified party's expense for out-of-pocket expenses) as reasonably requested by the indemnifying party, and the indemnifying party having full control of the investigation, defense, settlement and incurring of all expenses in connection with any indemnified claim.

This indemnification shall be the indemnifying party's sole obligation and the indemnified party's sole remedy in connection with any claim for which indemnification may be sought.

10. CONFIDENTIALITY: PrecisionIT and Client agree, during the term of this Agreement and at all times thereafter, to maintain the confidentiality of any and all data, reports, interpretations, forecasts, agreements and records, and all other Confidential Information, whether written, oral or otherwise. Client agrees not to disclose rate(s), term(s), or any information regarding this Agreement, without the prior express written consent of PrecisionIT.

11. NON-SOLICATION -PRECISIONIT EMPLOYEES: During the term of this Agreement, and for a period of twenty-four (24) months after its termination for any reason, Client agrees that it shall not, through its own employees or agents, or through any individuals or entities acting on its behalf or for its benefit: (a) attempt to engage, hire or employ any employee of PrecisionIT, or any person who was an employee of PrecisionIT at any time during the twenty-four (24) month period prior to the attempt to engage, hire or employ; (b) participate directly or indirectly in any such engagement, hiring or employment by any business entity or individual; or (c) encourage any such employee to terminate his or her employment relationship with PrecisionIT. In the event of Client's breach or threatened breach of this provision, the parties acknowledge that irreparable injury will result to PrecisionIT for which there is no adequate remedy at law. Therefore, PrecisionIT shall be entitled to a temporary restraining order, preliminary injunction and/or permanent injunction restraining and enjoining Client from violating the terms of this provision. In addition to, or in lieu of the foregoing, PrecisionIT may pursue any and all other remedies legally available for such breach or threatened breach. Client further agrees that PrecisionIT shall be entitled to recover all attorney's fees and related expenses incurred by PrecisionIT in connection with any breach of this provision by Client.

12. SUCCESSORS AND ASSIGNS: This Agreement shall be binding upon each of the Parties and upon their heirs, administrators, representatives, executors, successors and assigns, and shall inure to the benefit of each of the Parties and to their heirs, administrators, representatives, executors, successors, and assigns. Notwithstanding the foregoing, neither party may assign this agreement or an interest therein without the consent of the other party; provided, however, PrecisionIT has the right to assign or transfer this Agreement pursuant to a merger, consolidation or sale of substantially all of its business assets or equity interests.

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13. **WAIVER**: The failure of either party to require the performance of any term or obligation of this Agreement, or the waiver by either party of any breach of this Agreement, shall not prevent any subsequent enforcement of such term or obligation or be deemed a waiver of any subsequent breach.
14. **VALIDITY OF TERMS**: If any term or provision of this Agreement shall be held void, illegal, unenforceable or in conflict with any law of a federal, state or local government having jurisdiction over this Agreement, the validity of the remaining portions or provisions of this Agreement shall not be affected thereby.
15. **GOVERNING LAW**: This is a Massachusetts contract and shall be construed under and be governed in all respects by the law of the Commonwealth of Massachusetts.
16. **ENTIRE AGREEMENT; AMENDMENT**: This Agreement together with all Statements of Work executed by PrecisionIT and Client in connection herewith constitutes the entire understanding of Client and PrecisionIT with respect to its subject matter and supersedes any contemporaneous or prior agreement or arrangement regarding said subject matter between Client and PrecisionIT. Wherever any conflict exists between this Agreement and any Statements of Work, the terms of the Statement of Work shall prevail. This Agreement shall be binding upon the Parties, and may not be released, discharged, abandoned, supplemented, amended, changed or modified in any manner, orally or otherwise, except by an instrument in writing of concurrent or subsequent date, signed by Client and PrecisionIT.
17. **FORCE MAJEURE**. PrecisionIT will not be deemed in default of this Agreement to the extent that performance of its obligations or attempts to cure any breach are delayed or prevented by reason of any act of God, fire, natural disaster, accident, act of government, shortages of materials or supplies, or any other cause beyond the control of such party (a "**Force Majeure Event**"); **provided**, that PrecisionIT gives Client party written notice thereof promptly and, in any event, within fifteen (15) days of discovery thereof and uses its best efforts to cure the delay. In the event of such a Force Majeure Event, the time for performance or cure will be extended for a period equal to the duration of the Force Majeure Event but not in excess of sixty (60) days. If a Force Majeure Event delay exceeds sixty (60) days, then either party may terminate this Agreement without fault and the provisions set forth in Section 6 shall apply.
18. **NOTICES**: Any notices given pursuant to this Agreement shall be in writing, delivered to the address set forth in this Agreement and shall be considered given when received.
19. **DATE OF CALCULATION**: When calculating the date upon which (or the time within which) any act is to be done pursuant to this Agreement, the date a notice is deemed received or that the period otherwise starts to run will be excluded. If the last day of a period is a non-business day (**i.e.**, Saturday, Sunday, or statutory holiday in Boston, Massachusetts), the period will be extended to the next business day. The period will expire at 11:59 p.m. on the last day of the period.
20. **COUNTERPARTS AND FACSIMILE SIGNATURES**: This Agreement may be executed in any number of counterparts, and each counterpart, when executed, shall have the efficacy of a signed original. Similarly, a facsimile, photocopy, or electronic copy of this executed Settlement Agreement shall have the same force and effect as the original.
21. **AUTHORITY**: Each party hereby represents and warrants to the other party the following: (i) it has full power and authority to enter into this Agreement; and (ii) all necessary actions have been taken to authorize the execution and delivery of this Agreement and this Agreement is a valid and binding obligation of such Party.
22. **INTEPRETATION**: This Agreement shall be construed without presumption of any rule requiring construction to be made against the party causing it to be drafted.