PERFECTO ENTERPRISE WEBSITE AND MOBILE APPLICATION TESTING PLATFORM
TERMS OF SERVICE

IMPORTANT – YOU SHOULD CAREFULLY READ THESE TERMS OF SERVICE (THE "AGREEMENT") BEFORE USING OR ACCESSING THE ENTERPRISE WEBSITE AND MOBILE APPLICATION TESTING PLATFORM SERVICE (THE "SERVICE") PROVIDED BY PERFECTO MOBILE INC. ("PERFECTO"), A DELAWARE CORPORATION AND A WHOLLY OWNED SUBSIDIARY OF PERFORCE SOFTWARE, INC., A DELAWARE CORPORATION, AVAILABLE THROUGH PERFECTO'S WEBSITE LOCATED AT https://www.perfecto.io/. BY ACCESSING THE SERVICE FOR PERSONAL USE, THIS AGREEMENT APPLIES TO AND BINDS YOU PERSONALLY. IF YOU ARE ACCESSING THE SERVICE AS PART OF YOUR WORK FOR AN ORGANIZATION, THIS AGREEMENT APPLIES TO AND BINDS SUCH ORGANIZATION AND THE PERSONS ACCESSING THE SERVICE ON BEHALF OF THE ORGANIZATION. AS USED IN THIS AGREEMENT, "CUSTOMER" WILL REFER TO THE PERSON, ORGANIZATION, AND THE PERSONS ACCESSING THE SERVICE ON BEHALF OF THE ORGANIZATION. BY ACCESSING OR USING THE SERVICE, YOU, AND THE ORGANIZATION, AS APPLICABLE, AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO BE BOUND BY THIS AGREEMENT, THEN YOU SHALL NOT ACCESS OR USE THE SERVICE.

Customer and Perfecto are each sometimes referred to herein as "**Party**" and collectively as the "**Parties**."

1. **Definitions**. As used in this Agreement, the following terms shall be defined as follows:

   (a) **Affiliate**: Any natural person or entity that directly or indirectly, controls or is controlled by or is under common control with a Party.

   (b) **Documentation**: The standard written and published materials regarding the Software and Hardware accessible via Perfecto's website at https://help.perfecto.io/, as may be updated from time-to-time.

   (c) **Embedded Software**: The software in object code form that is embedded into or incorporated within the Hardware, including the Hardware operating system.

   (d) **Feedback**: Any suggestion, enhancement, request, recommendation, correction, or other feedback provided by Customer or its Users relating to the use of the Subscription Services.

   (e) **Hardware**: The cradle(s) used to test Customer's applications that are incorporated into the Services platform. Unless otherwise agreed upon between the Parties, the Hardware will be located within a Perfecto datacenter.

   (f) **Intellectual Property Rights**: Any patent, patent applications, trade secret, trademark, copyright, industrial design, or any other intellectual property right registered or unregistered in any country throughout the world, and all related goodwill.

   (g) **Malicious Code**: Any viruses, worms, spyware, poison pills, time bombs, backdoors, drop dead dates or other destructive or disabling devices that are intended to do harm and that are within the Software upon its delivery to Customer.

   (h) **Open Source Software**: The software with its source code made available pursuant to a license by which, at a minimum, the copyright holder provides anyone the rights to study, change and/or distribute the software to anyone and for any purpose.

   (i) **Organization Data**: Any proprietary, confidential and/or personal data, regarding or related to Customer or its Affiliates, that Perfecto may be exposed to throughout the performance of this Agreement, or that may be generated or processed in connection with Customer's use of the Subscription Services.

   (j) **Software**: The software products in object code form used in providing the Services, but excluding any Embedded Software, licensed by Perfecto to Customer.

   (k) **Subscription Services**: The products and services purchased by Customer pursuant to this Agreement on a subscription basis as identified on each Order Form, which includes, but is not limited to, the Software,

Hardware, the Service, the Documentation, other credits or fees included as part of the particular order form, or any part thereof.

(l)　**Subscription Term**: The period identified on the order form for which Perfecto has committed to provide, and Customer has committed to pay for, the Subscription Services.

(m)　**Support and Maintenance**: The technical support and maintenance services for the Services.

(n)　**Third Party Products**: Non-Perfecto-branded products and services (including mobile devices, and any Embedded Software included therewith).

2.　**Subscription Services**. The Service is purchased by Customer on a subscription basis during the Subscription Term, which such Subscription Term is set forth in an ordering document (herein referred to as an "**Order Form**").

3.　**License**. In consideration of the payment of all Fees set forth herein, and subject to Customer's compliance with Customer's undertakings herein contained, Perfecto hereby grants during each Subscription Term, and Customer hereby accepts, solely for its internal use, a non-exclusive, non-transferable, non-sublicensable, revocable, non-assignable (except as otherwise provided in Section 13(c) herein) limited license to use, copy, load, run, have run, and display the Software and any Third Party Products via the Hardware (collectively the "**License**") on the mobile devices purchased by Customer from Perfecto. The License shall also include the right, subject to the license conditions and restrictions set forth herein, to use the Subscription Services in an amount equal to the number of the Hardware licensed by Customer from Perfecto and as set forth on the applicable Order Form.

4.　**Support and Maintenance**. The technical support and maintenance services for the Services ("Support and Maintenance") is included during the Subscription Term as part of the Fees paid by Customer to Perfecto for the Subscription Services. The terms and conditions of Support and Maintenance that are currently being provided are set forth on Perfecto's website at https://support.perfecto.io/terms.html. Perfecto may update the terms of Support and Maintenance, from time to time, so long as the Software functionality and service levels are not materially diminished.

5.　**Future Functionality**. Customer acknowledges that any purchase of Subscription Services hereunder is not contingent upon (a) the delivery of any new or modified functionality or features that are not available to Perfecto's customers as of the Effective Date, or (b) any oral or written public comments, statements or representations made by Perfecto regarding any such new or modified future functionality or features.

6.　**Customer Feedback**. Any Feedback is and shall be given voluntarily. Customer hereby grants to Perfecto an irrevocable, non-exclusive, perpetual, royalty-free, transferrable license, with right to sublicense, to use and incorporate into its products and services any Feedback and to disclose, reproduce, distribute, and otherwise exploit the Feedback without attribution to Customer. Feedback, even if designated as confidential, shall not create any confidentiality obligation hereunder.

7.　**Scope of Rights; Restrictions on Use**.

(a)　Scope. This Agreement confers no title or ownership and is not a sale of any rights in the Subscription Services and Services. All rights not expressly granted to Customer is reserved solely to Perfecto and/or its licensors. Nothing herein should be construed as granting Customer, by implication, estoppel or otherwise, a license relating to the Subscription Services and Services other than as expressly stated in this Agreement.

(b)　Restrictions. Pursuant to the License granted hereunder, Customer may only use the Subscription Services within Customer's organization. Customer agrees that Customer will not (i) reverse engineer, disassemble, decompile or attempt to derive the architecture or design, or any source code contained in the Software and Embedded Software, (ii) modify the Subscription Services, (iii) otherwise translate or use the Subscription Services except as specifically allowed by this Agreement, or allow any person or entity (whether with or without consideration) the right to do any of the foregoing; (iv) sublicense, transfer and/or assign (except as otherwise expressly provided herein) the Subscription Services to any third party, whether with or without consideration; (v) render any services to third parties using the Subscription Services; (vi) remove or in any manner alter any product identification, proprietary, trademark, copyright or other notices contained in the Subscription Services; (vii) allow any third parties to use the Subscription Services (except as otherwise expressly provided herein); or (viii) interfere with, burden or disrupt the Subscription Service functionality. Customer may not make any copies of the Subscription Services or any portions thereof.

(c)   CUSTOMER MAY NOT USE THE SUBSCRIPTION SERVICES FOR, OR IN CONJUNCTION WITH, ANY ACTIVITY THAT CONSTITUTES, OR ENCOURAGES CONDUCT THAT WOULD CONSTITUTE, A CRIMINAL OFFENSE, GIVE RISE TO CIVIL LIABILITY OR OTHERWISE VIOLATE ANY LAW APPLICABLE IN THE JURISDICTIONS WHERE CUSTOMER ENGAGES IN ACTIVITY OR BUSINESS, INCLUDING ANY APPLICABLE LAWS AND REGULATIONS GOVERNING PRIVACY, DEFAMATION, UNLAWFUL DISCRIMINATION, MASS EMAIL AND SPAM, CONSUMER PROTECTION, UNFAIR COMPETITION, AND FALSE ADVERTISING. CUSTOMER MAY NOT USE THE SUBSCRIPTION SERVICE FOR, OR IN CONNECTION WITH, ANY ACTIVITY THAT MAY BE DEEMED, OR ENCOURAGE ACTIVITY THAT MAY BE DEEMED THREATENING, HARASSING, MISLEADING, DECEPTIVE, ABUSIVE, VULGAR, OBSCENE OR PORNOGRAPHIC. PERFECTO MAY EMPLOY TECHNOLOGICAL MEASURES TO DETECT AND PREVENT FRAUDULENT OR ABUSIVE USE OF THE SUBSCRIPTION SERVICES. PERFECTO MAY TERMINATE THE AGREEMENT WITHOUT PRIOR NOTICE AND AT ITS SOLE DISCRETION, IF PERFECTO DEEMS CUSTOMER'S USE OF THE SUBSCRIPTION SERVICES TO BE FRAUDULENT OR ABUSIVE.

(d)   Affiliates. Notwithstanding anything to the contrary herein, the rights granted to Customer hereunder may be exercised by Customer's Affiliates and/or independent contractors performing services on behalf of Customer and/or such Affiliates, provided that Customer shall remain responsible at all times for such Affiliates' and independent contractors' adherence to all applicable terms and conditions of this Agreement and shall be primarily liable for any breach of this Agreement by such Affiliate and/or independent contractor.

8.   **Proprietary Rights, Confidentiality, and Privacy**.

(a)   Subscription Services, Professional Services, and Derivative Works. Perfecto (or its licensors, as applicable) will retain all title to and ownership of the Subscription Services, Professional Services, and all related concepts, technical know-how, and all modifications, customizations, revisions, bug fixes, enhancements, improvements and derivative works, but excluding any testing scripts and APIs developed by Perfecto specifically for Customer (collectively, the "**Derivative Works**") thereof developed by Perfecto or anyone else, including Customer, including all Intellectual Property Rights and, except for the expressed limited license granted hereunder, Customer shall have no rights in or claims with respect thereto. Customer shall have all right, title and ownership in and to any testing scripts and APIs developed by Perfecto for Customer as part of the Professional Services. To the extent it shall be determined that Customer has any right in connection with the Subscription Services, Professional Services, or Derivative Works other than the limited specific license hereunder, Customer hereby irrevocably: (i) assigns to Perfecto, whenever and in perpetuity, any right, title and interest, whether now existing or later arising, that Customer may have in or to the Subscription Services, Professional Services, Derivative Works, and/or related Intellectual Property Rights; and (ii) agrees to take any lawful action that Perfecto reasonably requests to vest or protect our right, title and interest therein (at Customer's sole cost).

(b)   Confidential Information.

1.   General. Each Party agrees that all inventions, know-how, engineering, business, technical and financial information it obtains ("**Receiving Party**") from the disclosing Party ("**Disclosing Party**") constitute the confidential property of the Disclosing Party ("**Confidential Information**"), provided that it is identified as confidential at the time of disclosure or should be reasonably known by the Receiving Party to be Confidential Information due to the nature of the information disclosed and the circumstances surrounding the disclosure. Notwithstanding the foregoing marking requirements, the Subscription Services, training materials, technical information and other code or data of any type provided by Perfecto (or its agents), the pricing offered by Perfecto to Customer, and this Agreement's terms and conditions are Perfecto Confidential Information without any marking or further designation. Except as expressly authorized herein, the Receiving Party will hold in confidence and not use or disclose any Confidential Information.

2.   Exclusions. The Receiving Party's nondisclosure obligation will not apply to information that the Receiving Party can document: (i) was rightfully in its possession or known to it prior to receipt of the Confidential Information; (ii) is or has become public knowledge through no fault of the Receiving Party; (iii) is rightfully obtained by the Receiving Party from a third party without breach of any confidentiality obligation; or (iv) is independently developed by employees or contractors of the Receiving Party who had no access to such information.

3.   Use and Disclosure Restrictions. Neither Party will use the other Party's Confidential Information except as necessary for the performance of this Agreement and will not disclose such

Confidential Information to any third party except to those of its employees and contractors that need to know such Confidential Information for the purpose of performing this Agreement, provided that each such employee and contractor is subject to a written agreement that includes binding use and disclosure restrictions that are at least as protective as those set forth herein. Each Party will use all reasonable efforts to maintain the confidentiality of all such Confidential Information in its possession or control, but, in no event, less than the efforts that such Party ordinarily uses with respect to its own proprietary information of similar nature and importance. The foregoing obligations will not restrict either Party from disclosing Confidential Information of the other Party: (i) pursuant to the order or requirement of a court, administrative agency or tribunal or other governmental body, provided that the Party required to make such a disclosure gives reasonable written notice to the other Party to contest such order or requirement, unless it is not legally prevented to provide such notice to the other Party; and (ii) on a confidential basis to its legal or financial advisors. In addition, each Party may disclose the terms and conditions of this Agreement as required under applicable securities laws, but such Party will use all reasonable efforts to obtain confidential treatment to the maximum extent possible for the terms and conditions of this Agreement.

(c)   Privacy.   Perfecto will comply with the terms of its Privacy Statement accessible at https://www.perfecto.io/privacy-statement/, and as modified from time-to-time. Customer acknowledges and agrees that Perfecto may use Customer's Organization Data for the following purposes:

1.   To provide Customer with the Subscription Services, improve and customize Customer's experience with the Subscription Services, provide Customer with the Services, handle Customer inquiries, and send Customer related recommendations and suggestions; and

2.   To collect Fees, conduct administrative activities necessary to maintain and provide the Subscription Services, enforce this Agreement, take any action in any case of dispute, or legal proceeding of any kind involving Customer, with respect to the Agreement, and prevent fraud, misappropriation, infringements, and other illegal activities and misuse of the Subscription Services.

9.   **Fees and Payments**.

(a)   Fees. By entering into this Agreement, Customer hereby agrees to pay the fees specified the applicable Order Form (the "**Fees**") in accordance with the payment terms set forth herein.

(b)   Taxes. All Fees due and other charges stated herein are exclusive of and do not include any sales, use, value-added, or other taxes, charges and/or duties, which shall be Customer's responsibility. Taxes based on Perfecto's net income or gross receipts shall be Perfecto's responsibility.

(c)   Payment Terms. Unless otherwise specified in an Order Form, all invoices shall be due and payable within thirty (30) days after the invoice date. Payments received by Perfecto under this Agreement after their due date will incur late charges at a rate equal to one and one-half percent (1.5%) per month or the highest rate permitted by applicable law, whichever is lower, and such amounts will be billed to Customer by Perfecto.

10.   **Limited Warranty, Limitation of Liability and Indemnification**.

(a)   Limited Warranty. Perfecto represents and warrants to Customer during any Subscription Term that (i) Perfecto (or its Licensors) is the sole owner of the Software and has all the necessary rights thereto to license the Subscription Services to Customer as contemplated hereunder; (ii) the Subscription Services shall materially conform to the applicable Documentation; and (iii) the Software will not contain Malicious Code.

(b) Limitations on Limited Warranty. THE FOREGOING LIMITED WARRANTY DOES NOT APPLY TO ANY DEFECTS, DAMAGES, FAILURES OR MALFUNCTIONS TO ALL OR ANY PART OF THE SUBSCRIPTION SERVICES RESULTING FROM: (I) USE OF THE SUBSCRIPTION SERVICES OTHER THAN AS SPECIFIED IN THE APPLICABLE DOCUMENTATION; (II) ANY ALTERATIONS, MODIFICATIONS OR ADAPTATIONS OF THE SUBSCRIPTION SERVICES PERFORMED BY ANYONE OTHER THAN PERFECTO OR UPON PERFECTO'S WRITTEN AUTHORIZATION; OR (III) ANY UNAUTHORIZED COMBINATION OR INTERFACING OF THE SUBSCRIPTION SERVICES WITH OTHER HARDWARE OR SOFTWARE. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, IN NO EVENT SHALL PERFECTO BE IN BREACH OF THE WARRANTY SET FORTH IN SECTION 10(a)(iii), IF, AT THE TIME ANY MALICIOUS CODE WAS INTRODUCED INTO THE SOFTWARE, PERFECTO EMPLOYED COMMERCIALLY REASONABLE MEASURES, CONSISTENT WITH THE STANDARDS OF ITS INDUSTRY, TO DETECT SUCH MALICIOUS CODE IN ORDER TO PREVENT ITS INTRODUCTION INTO THE SOFTWARE. Customer's sole and exclusive

remedy for breach of the warranties set forth in Section 10(a) shall be that Perfecto, at Perfecto's sole discretion, will either: (i) repair, replace, or provide a reasonable workaround for the defective and/or non-conforming portion of the Subscription Services within thirty (30) days after receiving written notice of the breach of the warranty that describes in detail the specific nature of the defect and/or non-conformity; or (ii) refund all amounts paid by Customer for such Subscription Services (after deducting amounts paid for actual use of the Subscription Services by Customer). To claim the benefit of this warranty, Customer must give Perfecto written notice of any breach of the warranty (as aforesaid) within thirty (30) days of the occurrence of the alleged breach.

(c) Professional Services Warranty. All employees of Perfecto performing Professional Services hereunder will have the requisite skill and training to perform Perfecto's obligations in a good and workmanlike manner consistent with professional standards in Perfecto's industry. Customer's sole and exclusive remedy for any breach of the foregoing Professional Services warranty shall be, at Perfecto's option, re-performance of the non-conforming Professional Services one time, or a refund of all prepaid Fees paid by Customer for the applicable non-conforming Professional Services. Perfecto's warranty obligations under this Section 10(c) are conditioned upon Customer providing Perfecto with a detailed written notice of any claimed breach of the warranty within thirty (30) days of occurrence of the alleged breach.

(d) Open Source Software. The Software includes certain Open Source Software. Open Source Software is governed solely by the applicable open source licensing terms, if any, and is provided "AS IS". Perfecto provides no warranty specifically related to any Open Source Software or any applicable Open Source Software licensing terms. The foregoing language is not intended to limit Perfecto's warranty obligation for the Subscription Services set forth in Section 10(a).

(e) Third Party Products. Third Party Products may carry a limited warranty from the third-party publisher, provider, or original manufacturer of such Third Party Products. To the extent required or allowed, Perfecto will pass through to Customer manufacturer warranties related to such Third Party Products. For Third Party Products procured on behalf of the Customer for use in the Services platform (the "**Perfecto Purchased Third Party Products**"), Perfecto will provide an additional two-year warranty that runs concurrent with any applicable manufacturer warranty for such Third Party Product (the "**Perfecto Warranty**"). In the event that Customer provides Perfecto with the Third Party Product for use in the Services platform (the "**Customer Provided Third Party Products**"), the Perfecto Warranty will not apply. Notwithstanding the foregoing, as part of the Services, Perfecto will provide all reasonable assistance to Customer in the management of any warranty issues related to the Customer Provided Third Party Products purchased by Customer for use in the Services platform. Customer understands and agrees that (i) for any Perfecto Purchased Third Party Products where the Perfecto Warranty, and any Third Party Product warranty, have expired, or are not applicable, and (ii) for any Customer Provided Third Party Products where the Third Party Product warranty has expired, or is not applicable, it is responsible for any costs and expenses related to the replacement of such defective or out of warranty Third Party Products.

(f) Customer Warranties. Customer represents and warrants that its (and its users') access to and collection, use, relocation, storage, disclosure and disposition of Organization Data shall comply with all applicable laws, including without limitation all privacy and data security laws.

(g) Mutual Representations and Warranties. Each Party represents and warrants to the other that: (i) it is duly organized, validly existing and in good standing under the applicable laws of the state of its incorporation or formation; (ii) it has the right and full power and authority to enter into this Agreement; (iii) it will comply, at all times, with all applicable laws, including (without limitation) any such applicable laws that may govern the disposal of the mobile devices; and (iv) when on the other Party's physical premises, it will comply with the other Party's communicated policies in relation to its conduct at such premises, to the extent such policies do not conflict with the terms of this Agreement.

(h) Exclusions. PERFECTO, ITS AFFILIATES, AND ITS THIRD PARTY PRODUCT LICENSORS AND SUPPLIERS DISCLAIM ANY AND ALL PROMISES, REPRESENTATIONS, AND WARRANTIES STATUTORY OR OTHERWISE, EXPRESS OR IMPLIED, ORAL OR IN WRITING, WITH RESPECT TO THE SUBSCRIPTION SERVICES, PROFESSIONAL SERVICES, AND THIRD PARTY PRODUCTS EXCEPT AS SET FORTH IN THIS SECTION 12, INCLUDING NON-INFRINGEMENT, CONDITION, QUALITY, THEFT OR DESTRUCTION, CONFORMITY TO ANY REPRESENTATION OR DESCRIPTION, THE EXISTENCE OF ANY LATENT OR PATENT DEFECTS, ANY NEGLIGENCE, AND MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE, OR THAT THE OPERATION THEREOF WILL BE UNINTERRUPTED OR ERROR FREE. .

(i) <u>Limitation of Liability</u>. TO THE EXTENT PERMITTED BY APPLICABLE LAW, AND EXCEPT FOR BREACHES OF CONFIDENTIAL INFORMATION, A PARTY'S INDEMNIFICATION OBLIGATIONS, AND CLAIMS BASED ON A PARTY'S WILLFUL MISCONDUCT, NEITHER PARTY'S CUMULATIVE LIABILITY TO THE OTHER PARTY FOR ALL CLAIMS IN CONNECTION WITH THIS AGREEMENT SHALL EXCEED THE AMOUNT PAID BY AND/OR DUE FROM CUSTOMER IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO ANY SUCH CLAIM. THIS LIMITATION OF LIABILITY IS CUMULATIVE AND NOT PER INCIDENT, (I.E. THE EXISTENCE OF TWO OR MORE CLAIMS WILL NOT ENLARGE THIS LIMIT). EXCEPT FOR BREACHES OF CONFIDENTIAL INFORMATION, A PARTY'S INDEMNIFICATION OBLIGATION, AND CLAIMS BASED ON A PARTY'S WILLFUL MISCONDUCT, IN NO EVENT SHALL EITHER PARTY, OR PERFECTO'S SUPPLIERS OR LICENSORS, BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, MULTIPLE OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, OR BUSINESS INTERRUPTION), LOSS OF DATA OR USE, ARISING OUT OF OR IN ANY WAY RELATED TO THE USE OF OR INABILITY TO USE SUBSCRIPTION SERVICES, OR OTHERWISE UNDER OR IN CONNECTION WITH ANY PROVISION OF THIS AGREEMENT, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING LIMITATIONS OF LIABILITY SHALL APPLY REGARDLESS OF THE CAUSE OF ACTION, WHETHER IN CONTRACT OR TORT, UNDER WHICH SUCH DAMAGES ARE SOUGHT.

(j) <u>Indemnification</u>. Perfecto agrees to defend or settle, at its expense, Customer and its directors, officers, employees, independent contractors, and/or Affiliates (collectively, the "**Indemnified Party**") from and against any third party claims alleging that the Indemnified Party's use of the Subscription Services infringes and/or misappropriates any (i) issued patent, (ii) registered trademark, (iii) registered copyright, (iv) trade secret, and/or (v) other intellectual property right. In connection with the foregoing defense, Perfecto shall indemnify the Indemnified Party against all damages finally awarded against Customer in a final judgment or settlement of any of the foregoing claims that are specifically attributable to such suit or action. The Indemnified Party shall give Perfecto prompt written notice of any such third party claim; *provided however*, that the Indemnified Party's failure to do so shall not reduce or diminish the Indemnifying Party's obligations hereunder except to the extent the Indemnifying Party has been adversely affected or prejudiced by such failure. Perfecto shall have no obligation under this <u>Section 10(j)</u> as to any claim, unless Perfecto will have sole control of its defense or settlement of any third party claim hereunder, provided however, that Perfecto shall not, without the Indemnified Party's prior written consent, settle any claim in a manner that admits liability on the part of the Indemnified Party. The Indemnified Party shall reasonably cooperate with Perfecto (at Perfecto's expense) in the defense as Perfecto may reasonably request (it being understood that nothing herein shall preclude the Indemnified Party from consulting with its own counsel at its own expense). If Customer is, or Perfecto believes it may become, prohibited from continued use of the Subscription Services by reason of an actual or anticipated claim of infringement, Perfecto shall, at its option and expense, (i) obtain for Customer the right to continue using the Subscription Services, (ii) replace or modify the Subscription Services so that they are no longer subject to such claim, but performs the same functions in an equivalent manner, and (iii) if neither of the foregoing options are commercially practicable, terminate this Agreement and/or applicable Order Forms and refund to Customer a prorated portion of any pre-paid Fees paid by Customer as of the date of termination for the Subscription Services subject to the claim, in which case Customer will cease use of the Subscription Services and return to Perfecto the Subscription Services subject to such claim. The indemnification set forth in this <u>Section 12(j)</u> does not apply to the extent of Customer's negligence, abuse or misapplication of the Subscription Services; use of the Subscription Services other than as specified in the applicable Documentation; any alterations, modifications or adaptations of the Subscription Services performed by anyone other than Perfecto; any unauthorized combination or interfacing of the Subscription Services with other hardware or software; or other causes beyond the reasonable control of Perfecto.

THIS <u>SECTION 10</u> STATES CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES FOR INFRINGEMENT OR CLAIMS ALLEGING INFRINGEMENT.

11. **Term and Termination**.

(a)   <u>Agreement Term</u>. The term of this Agreement shall begin on the Effective Date and continue until terminated as provided in this <u>Section 11</u>.

(b)   <u>Subscription Term(s)</u>. Each Order Form will terminate at the end of the Subscription Term identified therein, unless earlier terminated as provided in this <u>Section 11</u>. The Subscription Term shall be automatically renewed for additional periods of the same duration as the initial Subscription Term, unless either party requests termination at least forty-five (45) days prior to the end of the then-current term. For any renewal of a

Subscription Term, Perfecto reserves the right to increase the fees charged for Subscription Services that were charged in the prior, expiring Subscription Term (which such increase will not take into account any transaction incentives included on a prior order).

(c)   Termination for Convenience. Either party may terminate this Agreement, and/or any Order Form, for convenience; *provided, however*, that Customer shall not be entitled to any refund of any prepaid Fees and any unpaid Fees for any committed Subscription Term shall become immediately due and payable.

(d) Termination for Cause. Either Party may terminate this Agreement immediately if the other Party materially breaches or otherwise fails to comply with any material provision of this Agreement and such breach or failure is not cured within thirty (30) days after written notice of such breach or failure.

(e) Other Termination. Either Party will have the right to terminate this Agreement effective immediately if: (i) a petition of bankruptcy is granted against the other party; (ii) the other party makes an assignment for the benefit of creditors; (iii) the other party admits to being unable to meet its obligations as they come due; or (iv) a petition of bankruptcy is filed by or against the other party and if such petition is not dismissed by the bankruptcy court within sixty (60) days after its filing. A Party's intent to terminate this Agreement under this Section 11(e) will be made by a written notice to the other Party.

(f) Effect of Termination. If an Order Form is still in effect at the time of expiration of this Agreement, then the terms and conditions contained in this Agreement and the relevant Order Form(s) (including all licenses granted by Perfecto thereunder) shall continue to govern the outstanding Order Form(s) until the end of the applicable Subscription Term for that Order Form. However, if the Agreement is terminated prior to its natural expiration, then all outstanding Order Form(s) (and all licenses granted by Perfecto thereunder) shall immediately terminate as of the Agreement termination date, unless otherwise agreed by the Parties in writing. Customer shall immediately return to Perfecto any Subscription Services in Customer's possession. Perfecto will return, at Customer's cost and expense, all Third Party Products purchased directly by Customer and sent by Customer to Perfecto for use in the Customer's Services platform instance. For purposes of clarity, the foregoing sentence does not include Third Party Products that Perfecto procured on behalf of the Customer. Within thirty (30) days following the termination of this Agreement for any reason, each Party shall return or destroy, as requested by the other Party in writing, any Confidential Information of the other Party. Each Party agrees to certify, in writing, to the other compliance with the foregoing undertakings upon a Party's request. Termination shall be without prejudice to the rights and remedies of either Party that may have accrued prior to such termination. For the avoidance of doubt, and except in the case of breach of this Agreement by Perfecto, Customer shall not be entitled to a refund of any prepaid Fees upon termination or expiration of the Agreement, and Perfecto will not release Customer from its obligations to pay Perfecto all Fees that have accrued under this Agreement prior to its termination.

(g) Survival. Any provision of this Agreement that expressly, by implication or necessity, contemplates performance or observance subsequent to the termination or expiration of this Agreement will survive termination or expiration of the Agreement and will continue in full force and effect, including any outstanding payment obligations.

12.   **Miscellaneous**.

(a)   This Agreement and any claim, cause of action or dispute arising out of, or related thereto, shall be governed by and construed in accordance with the laws of the State of New York, regardless of Customer's country of origin or where Customer uses the Subscription Services from, without giving effect to any conflict of law principles, which would result in the application of the laws of a jurisdiction other than the State of New York. Any dispute, claim or controversy arising out of, connected with, or relating to this Agreement, the Subscription Services, or any use related thereto, will be submitted to the sole and exclusive jurisdiction of the competent court located in New York County, State of New York. The 1980 United Nations Convention on Contracts for the International Sale of Goods, any state's enactment of the Uniform Computer Information Transactions Act, and the United Nations Convention on the Limitation Period in the International Sale of Goods, and any subsequent revisions thereto, do not apply to this Agreement.

(b)   Subject to the confidentiality obligations under Section 8 above and upon notification to Customer, Perfecto may, at its own cost and expense, make reference to this Agreement (including mentioning or implying the name of Customer or any of its Affiliates) and display the Customer's logos and trademarks in Perfecto's website and promotional or advertising literature, without the consent of Customer. Except as expressly provided herein, Perfecto shall not obtain any rights with respect to the Customer's logos and/or trademarks.

(c)　　Neither Party may assign this Agreement, in whole or in part without the express written consent of the other Party, with the exception of an assignment carried out as part of a merger, restructuring, or reorganization, or as a sale or transfer of all or substantially all of a Party's assets. This Agreement inures to the benefit of, and is binding upon, the Parties and their respective heirs, legal representatives, permitted successors and permitted assigns.

(d)　　Except as otherwise expressly provided in this Agreement, all notices or demands required or permitted pursuant to this Agreement shall be in writing, and shall be sent (i) by courier or in person with signed receipt, (ii) by nationally recognized overnight delivery service, prepaid, with signature required, or (iii) by facsimile if promptly confirmed by copy sent pursuant to any of the foregoing methods, and in each case shall be sent to the other Party at its address set forth in the latest Order Form. All notices, demands, and other communications hereunder may be given by any other means (including electronic mail), but will not be deemed to have been duly given unless and until it is actually received by the intended recipient. Notice given by electronic mail will be deemed to have been given when sent so long as no electronic notice is delivered to the sending party indicating that the electronic mail could not be delivered.

(e)　　Except for the obligation to pay monies due and owing neither Party shall be liable to the other Party for any delay or failure in the performance of its obligations under this Agreement or the addendums while in effect or otherwise if such delay or failure arises from any cause or causes beyond the control of such Party including, without limitation, labor shortages or disputes, strikes, other labor or industrial disturbances, delays in transportation, acts of God, floods, lightning, fire, epidemic, shortages of materials, rationing, utility or communication failures, earthquakes, casualty, war, acts of the public enemy, an act of civil or military authority, sabotage, explosives, riots, insurrections, embargoes, blockades, actions, restrictions, regulations or orders of any government, agency or subdivision thereof, or failure of suppliers.

(f)　　Failure of either Party to enforce a right under this Agreement shall not act as a waiver of that right or prevent a subsequent exercise of the same or any other right under this Agreement. No modification, amendment, addition to or waiver of any rights, obligations, or defaults shall be effective unless in writing and signed by both Parties hereto.

(g)　　In the event that any of the terms of this Agreement is or becomes or is declared to be invalid or void by any court of competent jurisdiction, such term or terms shall be null and void and shall be deemed severed from this Agreement and all the remaining terms of this Agreement shall remain in full force and effect.

(h)　　This Agreement is the complete and exclusive agreement between the Parties hereto in connection with the subject matter hereof and supersedes any other proposal, representation, or other communication by or on behalf of either Party. No provision of any purchase order or any other form employed by either Party will supersede, contradict, vary or modify the terms and conditions of this Agreement, and any such document issued by a Party hereto relating to this Agreement will be for administrative purposes only and have no legal effect. In the event of possible conflict or inconsistency between documents, the conflict or inconsistency shall be resolved by giving precedence in the following order: (1) the terms of this Agreement, including all amendments thereto; and (2) the terms of the Order Form(s) incorporated herein.

(i)　　The Parties acknowledge that money damages may not be an adequate remedy in the event of actual or threatened breach of the obligations and/or undertakings hereunder. Therefore, in addition to any other remedies available hereunder, by law or otherwise, either Party will be entitled to seek and obtain injunctive relief and/or any other appropriate decree of specific performance or any other appropriate equitable relief.

(j)　　The Parties to this Agreement are independent contractors. There is no relationship of partnership, joint venture, employment, franchise, or agency created hereby. Neither Party will have the power to bind the other or incur obligations on the other's behalf without the other Party's prior written consent.

(k)　　Customer, on behalf of itself and its Affiliates, agrees to comply fully with all applicable laws, statutes, regulations, rules, ordinances, codes, and standards relating to any export controls and economic sanctions laws of the United States or abroad. Customer acknowledges that the Software is of United States origin and is subject to the Export Administration Regulations (the "**EAR**") administered by the U.S. Department of Commerce's Bureau of Industry and Security ("**BIS**"), and the laws and regulations governing economic sanctions and embargoes administered by the U.S. Department of the Treasury's Office of Foreign Assets Control ("**OFAC**"). Accordingly, any use, transshipment, or diversion of the Software contrary to applicable export control laws or sanctions laws is prohibited. Customer warrants and covenants that: (1) Customer and its Affiliates will not export, re-export, re-sell, provide access to, or otherwise transfer the Subscription Services or related technology with knowledge that a violation

of the U.S. law, the EAR, or the terms of any order, license, license exception, or other authorization issued under the EAR has occurred, is about to occur, or is intended to occur in connection with the item; and (2) Customer and its Affiliates will not export, re-export, re-sell, provide access to, or otherwise transfer the Subscription Services into any country or region subject to comprehensive economic sanctions (*i.e.*, currently Cuba, Iran, North Korea, Syria, and the Crimea Region of Ukraine). Customer further represents that: (a) Customer and its Affiliates are not, and are not acting on behalf of, (i) any natural person or entity who is a citizen, national, or resident of, or who is controlled by, the government of any country to which the United States has prohibited export, reexport, or transfer of the Subscription Services or related technology, or (ii) any natural person or entity listed on OFAC's list of Specifically Designated Nationals and Blocked Persons or the Consolidated Sanctions List, or BIS's Denied Persons List, Entity List, or Unverified List; and (b) Customer and its Affiliates will not permit the Subscription Services to be used for any purposes prohibited by law, including but not limited to any prohibited development, design, manufacture, or production of missiles or nuclear, chemical, or biological weapons. Customer shall exercise diligent efforts to ensure its and its Affiliates' compliance with this Section 11(k).