![perfectforms logo]

PerfectForms™ – Support and Maintenance Agreement

Contents

PerfectForms Software Support and Maintenance Agreement

This Software Support and Maintenance Agreement is between PerfectForms, whose principal place of business is at 5927 Priestly Dr., Suite 213, Carlsbad, CA 92008 and the LICENSEE, and is in consideration of the payment by the LICENSEE of the applicable fees. PerfectForms agrees to provide to the LICENSEE services per the terms and conditions set out in clauses 1 to 11 attached and the schedules referred to therein.

1. DEFINITIONS

1.1.   "Commencement Date" means the date any on-premise Software component is first installed by or on behalf of the LICENSEE on any computer or computer network or hardware or storage facilities or the date of activation of an on-demand account

1.2.   "Configuration" means to configure the operation of the Software pursuant to clause 4 to perform certain predetermined functions offered by the Software as required by the LICENSEE and "Customization" means the use of PerfectForms technologies by PerfectForms to cause the Software to integrate and operate with third party software to meet the specific and reasonable requirements of the LICENSEE pursuant to clause 4 and to create accompanying documentation

1.3.   "Disabling Event" means one or more of the following events;

   1.3.1.   Use of the Software other than in accordance with or the purposes provided for in the Licensed Material

   1.3.2.   Configuration or Customization of the Software other than by PerfectForms or an accredited PerfectForms Partner or employees, agents or subcontractors of the LICENSEE who have been given appropriate training and approval by PerfectForms

   1.3.3.   Configuration, Customization or other modifications and/or enhancements to the Software made other than by PerfectForms not carried out in accordance with procedures specified from time to time for such software by PerfectForms

   1.3.4.   Use of the Software other than with operating systems approved by PerfectForms and appropriate hardware and network infrastructure

   1.3.5.   Use of a version of the Software which is not the latest version supplied to the LICENSEE

   1.3.6.   Failure by the LICENSEE to implement recommendations for or solutions to faults previously advised by PerfectForms or an accredited PerfectForms Partner

1.3.7. Use of any software in conjunction with the Software, other than software specified or agreed by PerfectForms

1.3.8. Faults in the hardware and/or operating system and/or any other software used in conjunction with the Software

1.3.9. Failure in the Software materially to provide Specified Functionality as a result of viruses, worms, trojans or any other similar invasive third party software

1.4. "Forum" means a platform for contribution of user community discussions and FAQs. The forum is hosted and monitored by PerfectForms for accuracy and appropriateness of contributions

1.5. "Licensed Material" means the latest version from time to time of the user documentation, agreed final specifications of any Configuration or Customization carried out by PerfectForms pursuant to clause 4 and other documentation relating to the Software made available by PerfectForms from time to time in any printed or electronic form

1.6. "Maintenance Fee" means PerfectForms standard charge from time to time for the provision of upgrades to the On-premise software. The fee is payable by the LICENSEE to PerfectForms in advance of such periods and calculated on a daily pro-rata basis with respect to the period from the Commencement Date to (but not including) the first Maintenance Renewal Date if such period is less than any period normally offered by PerfectForms

1.6.1. For an on-demand application, there is a "Service Fee" that entitles the LICENSEE use of the hosted PerfectForms application for a period from the Commencement Date to (but not including) the first Service Renewal Date

1.7. "Maintenance Period" means a period for which the Maintenance Fee has been paid by the LICENSEE under this Agreement

1.7.1. No such Maintenance Period applies to on-demand accounts. The software for On-demand accounts is maintained on PerfectForms servers

1.8. "Maintenance Renewal Date" the date upon which the LICENSEE'S Maintenance Fee shall be due for renewal. This date is typically on the anniversary of the beginning of the original Maintenance Period

1.8.1. "Service Renewal Date" the date for On-demand accounts where the LICENSEE'S service fee shall be due for renewal. This date is typically on the anniversary of the beginning of the original service period

1.9. "On-demand" means a hosted account for the LICENSEE that utilizes software resident on PerfectForms dedicated servers

1.10. "On-premise" means an application of PerfectForms software installed on the LICENSEE'S computer or computer network or hardware or storage facilities

1.11. "Program Error" means faults in the Software which materially adversely affect the Specified Functionality

1.12. "Software" means the PerfectForms software applications and processes supplied to the LICENSEE by PerfectForms or an accredited PerfectForms Partner. Software may be supplied as an On-premise or On-demand

1.13. "Specified Functionality" means the functionality of the Software described in the Licensed Material

1.14. "Support Scheme" means the set of reference materials and services designed to assist the LICENSEE in the use of PerfectForms. The Support Scheme applies to LICENSEES who are current on any and all applicable fees

1.15. "Support and maintenance" means the software support and maintenance services described in clause 5

1.16. Upgrade" means a new release within a version of the Software which shall be designated by a higher sequential number following the decimal place in the numeric descriptor for such version and which generally will contain enhanced functionality and/or permanent fixes but shall not include a replacement version (which shall be designated by a higher sequential number preceding the decimal place in the numeric descriptor for such version)

   1.16.1. For on-demand accounts, upgrades to the PerfectForms application are not required. The hosted application is always maintained at the most current software revision

1.17. "Workarounds" means programming or work process which allows the Software to meet the Specified Functionality without necessarily eliminating a Program Error

2. FEES

2.1. Unless otherwise stated or agreed all service fees are payable in advance of the period to which they relate

2.2. Invoices with respect to any service period will be issued as near as practicable to one calendar month prior to the commencement of such period. Any other services PerfectForms may agree to provide to the LICENSEE under this Agreement shall be invoiced when delivered or on a monthly basis, at the discretion of PerfectForms

2.3.   Unless otherwise stated all sums payable by the LICENSEE under this Agreement shall be due immediately and considered late beyond 30 days of the invoice date and are as stated exclusive of value added tax, goods and services tax, sales tax and any other similar taxes or duties which shall be paid in addition by the LICENSEE at the rate and in the manner from time to time prescribed by applicable law. Interest on late payment shall be payable at a rate of 2% over the prime rate from time to time

2.4.   The LICENSEE acknowledges and agrees that if any invoice is not paid on the due payment date then PerfectForms shall be under no obligation to provide services to the LICENSEE unless and until the relevant invoice shall be paid in full. Save only as expressly provided otherwise in this Agreement, no part of the Support Scheme Membership Fee, training fees, Configuration or Customization fees shall be repayable on termination of this Agreement for any reason

3. TRAINING AND OTHER SERVICES

3.1.   If requested by the LICENSEE, PerfectForms may at its standard fees and charges (including expenses) from time to time provide training courses in the use of the Software and other agreed services. Training may be provided at a mutually agreeable predefined location or may be delivered virtually upon mutual agreement of the LICENSEE and PerfectForms

3.2.   PerfectForms will use reasonable efforts to train the LICENSEE's nominated employees in the subject matter of a particular training course but does not guarantee any resultant level of competence of any such trainee

3.3.   The LICENSEE will ensure that its employees using the Software are trained to a sufficient level to enable them to use it competently

3.4.   Once a date for training an employee or for the provision of services has been agreed by the LICENSEE and PerfectForms then both parties will take all reasonable steps to prevent that date being cancelled or postponed. In the event that the date for a course or for the provision of services is cancelled or postponed by the LICENSEE for any reason the following charges shall apply

   3.4.1.   If the course or provision of services is cancelled or postponed within 2 working days of the agreed date there will be payable by the LICENSEE a charge calculated at 100% of the course fees or PerfectForms' fees otherwise chargeable for the services on that date

   3.4.2.   If the course or provision of services is cancelled between 3 and 5 working days of the agreed date there will be payable by the LICENSEE a charge calculated at 50% of the course fees or PerfectForms' fees otherwise chargeable for the services on that date

3.4.3. If the course or provision of services is cancelled between 6 and 10 working days of the agreed date there will be payable by the LICENSEE a charge calculated at 25% of the course fees or PerfectForms' fees otherwise chargeable for the services on that date

3.5. PerfectForms reserves the right to cancel or postpone any course or provision of services in the event of circumstances beyond its control, in which case its liability will be limited to refunding any fees paid in respect of the delivery of that course or the services on that date

4. CONFIGURATION AND CUSTOMIZATION

4.1. If requested by the LICENSEE, PerfectForms may agree to configure and/or customize the Software to the LICENSEE's specific and reasonable requirements. Any Configuration or Customization of Software by PerfectForms or the LICENSEE in accordance with this clause 4 will become part of the Software and will continue to be subject to all the terms of this Agreement. PerfectForms shall be entitled to charge its usual fees and charges from time to time for such Configuration or Customization services

4.2. Following such training as may be specified by PerfectForms trained employees or contractors of the LICENSEE may configure the Software in accordance with such procedures as are specified from time to time for such software by PerfectForms

5. SUPPORT AND MAINTENANCE

5.1. Continuity of the Maintenance Fee entitles the LICENSEE to all revisions to the PerfectForms software application so long as the LICENSEE is current on payments at the point when an update is released. Maintenance fees are for set periods and apply regardless of whether the LICENSEE chooses to apply and update during the maintenance period or not

5.1.1. For on-demand accounts, maintenance is not required. The hosted application is always maintained at the most current software revision

5.1.2. The LICENSEE may discontinue renewal of the Maintenance Fee on the Maintenance Renewal Date. In the event that the LICENSEE cancels, they may not rejoin at a later date. In any such case where a LICENSEE wishes to reestablish a Support and Maintenance agreement, they will need to negotiate new terms through the PerfectForms sales process

5.2. PerfectForms shall provide the Support Scheme to the LICENSEE with respect to the Software from the Commencement Date for such periods in respect of which the applicable fee has been paid in advance by the LICENSEE to PerfectForms. For the avoidance of doubt, in the event that LICENSEE has paid the applicable fee with respect to any period to an accredited PerfectForms Partner then that partner and not PerfectForms shall be responsible to provide the Support

Scheme to the LICENSEE for that period under a separate agreement between that partner and the LICENSEE

5.3.   The Support Scheme shall comprise the following services and facilities

5.3.1.   Documentation is provided and continually updated to reflect the full set of PerfectForms features. Current Documentation is available on perfectforms.com

5.3.2.   A user Forum is provided for general discussion and user collaboration. This is monitored by PerfectForms for accuracy and appropriateness of contributions. PerfectForms may also contribute on topics. Since Forum submitted questions are made to the community, there is no commitment of a service level

5.3.3.   An advisory and explanatory service with respect to the Software involving the provision of email consultation service to be provide between the hours of 6:00 am and 8:00 pm Eastern Standard time each day excluding public holidays and weekends

5.3.3.1.   Requests for advisory and explanatory services shall be initiated through the Support Request Form on the perfectforms.com support page

5.3.3.2.   The Service level for advisory and explanatory services shall be that PerfectForms responds within one business day from when the request is made. The total time to completely resolve the service instance may be longer depending on the nature of the request

5.3.3.3.   At the discretion of the cognizant support agent, telephone and / or virtual (web enabled) sessions with the customer may be used to resolve the request

5.3.4.   Provided that the LICENSEE shall have supplied to PerfectForms in writing where appropriate, a detailed description of any Program Error and the circumstances in which it arose, a Program Error correction service which will include the provision of updates or Workarounds as soon as reasonably possible (taking into account the seriousness of the loss of Specified Functionality) to correct the Software

5.3.5.   Regular communication from PerfectForms to the LICENSEE providing information on matters of general interest with respect to the Software

5.3.6.   Notification of the availability of Upgrades, although PerfectForms reserves the right to charge for the supply of Upgrades and for consultancy and other services in connection with the installation of Upgrades at PerfectForms standard charges from time to time

5.3.7.   Providing the assistance to the LICENSEE set out in clause 5.7

5.4.   The Support Scheme specifically shall not comprise the following services and facilities

5.4.1.   an advisory and explanatory service to users of the Software who have not attended the appropriate level of training or who have not adequately reviewed the Licensed Materials, FAQ's release notes, knowledge base and other information materials provided by PerfectForms or an accredited PerfectForms Partner from time to time

5.4.2.   modifications to the Software (including but not limited to additional reports) carried out by PerfectForms or an accredited PerfectForms Partner other than modifications which may be necessary or carried out under the Support Scheme

5.4.3.   unless otherwise agreed by PerfectForms, travel to and attendance at the LICENSEE's premises to provide Support Scheme services

5.5.   The LICENSEE will provide such access to the Software if necessary at the LICENSEE's premises during the periods specified in clause 5.2.1 as PerfectForms reasonably requires to provide services under the Support Scheme. The LICENSEE shall comply with its obligations under applicable health and safety regulations with respect to the provision of such access and facilities to PerfectForms. PerfectForms will take all practical steps to ensure that its personnel will, whenever on the LICENSEE's premises, obey all security and health and safety standards, procedures and directions notified to it by the LICENSEE

5.6.   If the LICENSEE wishes to take advantage of the internet support element of the Support Scheme then it shall ensure at its own cost that its computer installation includes the necessary internet connections, infrastructure and communications software to enable the internet support to be operational

5.7.   In the event that a Program Error causes corruption of the LICENSEE's data before the LICENSEE is able to detect the error, and provided that the LICENSEE is current on all applicable fees, PerfectForms shall provide reasonable assistance to the LICENSEE to restore the LICENSEE's data to the condition in which it would have been had the Program Error not occurred, subject to regular and proper data backups having been taken and stored safely by the LICENSEE. PerfectForms gives no warranty that it will be able to restore the LICENSEE's data

5.8.   Where a request under the Support Scheme arises as a result of a Disabling Event, PerfectForms shall be entitled to charge its normal fees and charges from time to time for the services provided

5.9.   PerfectForms may increase the Service or Maintenance Fees from any Renewal Date provided that any increase must be communicated to the LICENSEE not less than two months prior to such date

5.9.1.   PerfectForms reserves the right to charge for advisory and explanatory services where a disproportionate level of support is required for a LICENSEE

6. TERM AND TERMINATION

6.1.   This Agreement may be terminated

    6.1.1.   Immediately by PerfectForms at any time after the Support Scheme has been terminated

    6.1.2.   Immediately by PerfectForms if the LICENSEE fails to make any payment on the due date therefore and payment shall not have been made within 14 days' of a written request for the same

    6.1.3.   Immediately by either party if the other commits any material breach of any term of this Agreement (other than one falling within clause 6.1.2 above) and which (in the case of a breach capable of being remedied) shall not have been remedied within 21 days' of a written request to remedy the same

    6.1.4.   Immediately by either party in the case of insolvency

6.2.   Any termination of this Agreement pursuant to this clause 6 or clause 9.3 shall be without prejudice to any other rights or remedies a party may be entitled to hereunder or at law and shall not affect any accrued rights or liabilities of either party, nor the coming into or continuance in force of any clause which is expressly or by implication intended to come into or continue in force on or after such termination

7. WARRANTIES

7.1.   PerfectForms warrants that it will provide the services under this Agreement with reasonable care and skill provided that any liability accepted by PerfectForms under this clause 7.1 shall be limited by clause 8.2

7.2.   Notwithstanding any other provision of this Agreement PerfectForms does not warrant that use of the Software will meet the LICENSEE's data processing requirements nor that the operation of the Software will be uninterrupted or error-free

8. LIMITATION OF LIABILITY

8.1.   SUBJECT AS OTHERWISE PROVIDED IN CLAUSE 7, ALL CONDITIONS, DUTIES, WARRANTIES AND REPRESENTATIONS, EXPRESSED OR IMPLIED BY STATUTE, COMMON LAW OR OTHERWISE IN RELATION TO THE SOFTWARE OR ITS MAINTENANCE INCLUDING, BUT NOT LIMITED TO, ANY (IF ANY) IMPLIED WARRANTIES, DUTIES OR CONDITIONS OF MERCHANTABILITY, OF FITNESS FOR A

PARTICULAR PURPOSE, OF RELIABILITY OR AVAILABILITY, OF ACCURACY OR COMPLETENESS, OF RESPONSES, OF RESULTS, OF WORKMANLIKE EFFORT, OF LACK OF VIRUSES, OF LACK OF NEGLIGENCE, OF TITLE, OF QUIET ENJOYMENT, OF QUIET POSSESSION, OF CORRESPONDENCE TO DESCRIPTION, OF NON-INFRINGEMENT, WITH REGARD TO THE PROVISION OF OR FAILURE TO PROVIDE SUPPORT OR OTHER SERVICES, INFORMATION, SOFTWARE, OR RELATED CONTENT THROUGH THE SOFTWARE OR OTHERWISE ARISING OUT OF THE USE OF THE SOFTWARE ARE EXCLUDED TO THE FULLEST EXTENT PERMITTED BY LAW

8.2.   SUBJECT AS OTHERWISE PROVIDED IN CLAUSES 7 AND 8.3 AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, PERFECTFORMS SHALL BE UNDER NO LIABILITY TO THE LICENSEE FOR ANY LOSS, DAMAGE OR INJURY, DIRECT OR INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL (INCLUDING BUT NOT LIMITED TO, LOSS OF PROFIT OR CONFIDENTIAL OR OTHER INFORMATION, BUSINESS INTERRUPTION, LOSS OF PRIVACY, FAILURE TO MEET ANY DUTY INCLUDING OF GOOD FAITH, REASONABLE CARE OR NEGLIGENCE AND FOR ANY OTHER PECUNIARY OR OTHER LOSS WHATSOEVER) ARISING OUT OF OR IN ANY WAY RELATED TO THE USE OF OR INABILITY TO USE THE SOFTWARE OR THE LICENSED MATERIAL, THE PROVISION OR FAILURE TO PROVIDE SUPPORT OR OTHER SERVICES, HOWSOEVER ARISING, AND WHETHER OR NOT CAUSED BY THE TORT (INCLUDING NEGLIGENCE), FAULT, STRICT LIABILITY, BREACH OF CONTRACT OR WARRANTY OR MISREPRESENTATION OF PERFECTFORMS ITS EMPLOYEES OR AGENTS, EVEN IF PERFECTFORMS SHALL HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS, DAMAGE OR INJURY, SAVE THAT PERFECTFORMS SHALL ACCEPT LIABILITY WITHOUT LIMIT FOR DEATH OR PERSONAL INJURY CAUSED BY THE NEGLIGENCE OF PERFECTFORMS

8.3.   Subject to clause 8.4, in each year of this Agreement, PerfectForms' total aggregate liability for negligence, breach of contract, misrepresentation or otherwise shall in no circumstances exceed the Maintenance Fee (if any) received by PerfectForms in the 12 months prior to the event giving rise to liability. The LICENSEE releases PerfectForms from all obligations, liabilities, claims or demands in excess of this limitation and acknowledges and agrees that other parts of this Agreement rely upon the inclusion of this section and the resulting allocation of risks. If the LICENSEE has acquired the Software in a jurisdiction that does not allow the exclusion or limitation of incidental or consequential damages, to the extent only that such provisions are contrary to the laws of such jurisdiction, the above limitation or exclusion may not apply to such LICENSEE

8.4.   PerfectForms' aggregate liability for negligence, breach of contract, misrepresentation or otherwise for modifications made by PerfectForms to the Software pursuant to clause 4 shall in no circumstances exceed the total payments received by PerfectForms from the LICENSEE in connection with such modifications. PerfectForms shall have no liability of any nature whatsoever for modifications made to the Software by the LICENSEE or any third party whether or not made in accordance with clause 4.2

9. FORCE MAJEURE

9.1.   Neither party hereto shall be liable for any breach of its obligations hereunder resulting from causes beyond its reasonable control including but not limited to fires strikes (of its own or other employees) insurrection or riots embargoes container shortages wrecks or delays in transportation inability to obtain supplies and raw materials requirements or regulations of any civil or military authority (an "Event of Force Majeure")

9.2.   Each of the parties hereto agrees to give notice immediately to the other upon becoming aware of an Event of Force Majeure such notice to contain details of the circumstances giving rise to the Event of Force Majeure

9.3.   If a default due to an Event of Force Majeure shall continue for more than 3 months then the party not in default shall be entitled to terminate this Agreement. Neither party shall have any liability to the other in respect of the termination of this Agreement as a result of an Event of Force Majeure

10.   GENERAL

10.1.   The waiver by either party of a breach or default of any of the provisions of this Agreement by the other party shall not be construed as a waiver of any succeeding breach of the same or other provisions nor shall any delay or omission on the part of either party to exercise or avail itself of any right power or privilege that it has or may have hereunder operate as a waiver of any breach or default by the other party

10.2.   The LICENSEE shall not assign, transfer, charge or make over or purport to assign, transfer, charge or make over this Agreement or any of its rights or obligations hereunder or any part thereof without prior consent of PerfectForms. This Agreement does not create any right enforceable by any person not a party to it

10.3.   This Agreement shall be governed by and construed in accordance with the laws of The United States of America and the parties hereby submit to the non-exclusive jurisdiction of the US courts

10.4.   This Agreement replaces and supersedes all previous agreements (if any) between PerfectForms and the LICENSEE in connection with the support and maintenance of Software supplied to the LICENSEE by PerfectForms. PerfectForms reserves the right and LICENSEE acknowledges and agrees that PerfectForms may unilaterally make reasonable changes to these terms and conditions without prior notice. (Which shall exclude changes to fees within the prior to the applicable renewal date)

10.5.   Any notice request instruction or other document to be given hereunder shall be delivered or sent by first class post or by facsimile or email to the address of the other party set out in this Agreement (or such other address as may have been notified) and any such notice or other document shall be deemed to have been served (if delivered) at the time of delivery (if sent by

post) upon the expiration of 48 hours after posting (if sent by facsimile or email) upon the completion of transmission

10.6. The LICENSEE may from time to time provide suggestions, comments or other feedback ("Suggestions") to PerfectForms with respect to the Software or Support Scheme. Both parties agree that all Suggestions are and shall be given entirely voluntarily. Suggestions, even if designated as confidential by the LICENSEE, shall not, absent a separate written agreement, create any confidentiality obligation for PerfectForms. Furthermore, except as otherwise provided herein or in a separate subsequent written agreement between the parties, PerfectForms shall be free to use, disclose, reproduce, license or otherwise distribute, and exploit the Suggestions provided to it as it sees fit, entirely without obligation or restriction of any kind on account of intellectual property rights or otherwise

11. DATA PROTECTION

11.1. The LICENSEE acknowledges that in connection with the performance of its obligations under this Agreement PerfectForms may carry out Processing on Personal Data and sensitive personal data relating to employees of the LICENSEE. PerfectForms shall use its best endeavors to carry out such Processing in compliance with any applicable data protection legislation in force from time to time, and shall, without limitation to the foregoing

11.1.1. Take appropriate technical and organizational measures against unauthorized or unlawful processing of LICENSEE Personal Data and against accidental loss or destruction of, or damage to, LICENSEE Personal Data

11.1.2. Only disclose LICENSEE Personal Data or information extracted from such data to third parties with the prior written approval of the LICENSEE

11.1.3. In the event that PerfectForms is compelled to conform to edicts of the law, to respond to subpoenas, to court orders, or legal processes, then, subject to any restrictions, PerfectForms shall promptly notify such employee of the LICENSEE of such request and respond promptly to any request for information made by the LICENSEE in respect of such subject access

11.2. The LICENSEE acknowledges that it is solely responsible for the creation of all LICENSEE Personal Data upon which PerfectForms carries out Processing under this Agreement. The LICENSEE shall make obtain and maintain all necessary notifications authorizations and consents the LICENSEE is required to have for the Processing of LICENSEE Personal Data to be carried out by PerfectForms under this Agreement. PerfectForms acknowledges that LICENSEE Personal Data in the possession of PerfectForms shall at all times remain the property of LICENSEE

11.3. The LICENSEE hereby instructs PerfectForms to carry out such Processing on LICENSEE Personal Data as is reasonably required by PerfectForms to perform its obligations under this Agreement.

The LICENSEE may vary the instruction given by this clause 11.3 with respect to the Processing of LICENSEE Personal Data at any time by written notice to PerfectForms provided that PerfectForms shall have no liability of any kind to the LICENSEE for any loss or damage suffered by or claim made by any person against the LICENSEE arising directly or indirectly from PerfectForms complying with such notice