

Perfana Software License Agreement

Effective starting January 6, 2020

This Perfana Software License Agreement (the “**Agreement**”) is between you and Perfana Software BV (Chamber of Commerce registration 74990381) in The Netherlands (“**Perfana**” or “**we**”). If you are agreeing to this Agreement not as an individual but on behalf of your company, government, or other entity for which you are acting (for example, as an employee or governmental official), then “**you**” means your entity and you are binding your entity to this Agreement. Perfana may modify this Agreement from time to time, subject to the terms in Section 20 (Changes to this Agreement) below.

The “**Effective Date**” of this Agreement is the date which is the earlier of (a) your initial access to or use of the Software (as defined below) or (b) the effective date of the first Order referencing this Agreement.

You indicate your assent to be bound by this Agreement by clicking on the “I agree” (or similar button or checkbox) that is presented to you at the time of your Order, or by using or accessing the Software. If you do not agree to this Agreement, do not use or access the Software.

1. Scope of Agreement

1.1. Software

This Agreement governs your initial purchase of Perfana’s Software, Support and Maintenance for the Software, and any Additional Services, as well as any future purchases made by you that reference this Agreement. This Agreement includes each Order, the Perfana Policies and any other referenced policies and terms. The Software and its permitted use are further described in the Documentation. The term “Software” includes Documentation unless otherwise specified.

1.2. Cloud Products

This Agreement does not apply to Perfana’s hosted or cloud-based solutions (currently designated as “Cloud” deployments), use of which requires a separate agreement with Perfana.

2. Accounts; Authorized Users

2.1. Authorized Users

Only Authorized Users may access and use the Software. Some Software may allow you to designate different types of Authorized Users, in which case pricing and functionality may vary according to the type of Authorized User. You are responsible for compliance with this Agreement by all Authorized Users, including what Authorized Users do with your data, and for all fees incurred by Authorized Users (or from adding Authorized Users). All use of Software must be solely for the benefit of you or your Affiliates and must be within the Scope of Use as set forth in Section 3 (Use of the Software).

3. Use of the Software

3.1. Your License Rights

Subject to the terms and conditions of this Agreement, Perfana grants you a non-exclusive, non-sublicensable and non-transferable license to install and use the Software during the applicable License Term for your own business purposes, in accordance with this Agreement, your applicable Scope of Use, the Documentation and all Laws.

3.2. Restrictions

Except as otherwise expressly permitted in this Agreement, you will not: (a) reproduce, modify, adapt or create derivative works of any part of the Software; (b) rent, lease, distribute, sell, sublicense, transfer, or provide access to the Software to a Third-party; (c) use the Software for the benefit of any Third-party; (d) incorporate the Software into a product or service you provide to a Third-party; (e) interfere with any license key mechanism in the Software or otherwise circumvent mechanisms in the Software intended to limit your use; (f) reverse engineer, disassemble, decompile, translate, or otherwise seek to obtain or derive the source code, underlying ideas, algorithms, file formats or non-public APIs to the Software, except to the extent expressly permitted by applicable law (and then only upon advance notice to us); (g) remove or obscure any proprietary or other notices contained in the Software; (h) use the Software for competitive analysis or to build competitive products; (i) publicly disseminate information regarding the performance of the Software; or (j) encourage or assist any Third-party to do any of the foregoing.

3.3. Number of Instances

Unless otherwise specified in your Order, for each Software license that you purchase, you may install one (1) production instance of the Software on systems owned or operated by you or one of your Authorized Users. We may also make available “developer” licenses free of charge for certain of our Software offerings to allow you to deploy non-production instances, such as for staging or QA purposes. Details for how to request non-production licenses are available on our website.

3.4. Your Modifications

Subject to the terms and conditions of this Agreement (including Section 2 (Combining the Products with Open Source Software) of [Third-party Code in Perfana Products](#)), for any elements of the Software provided by Perfana in source code form and to the extent permitted in the Documentation, you may modify such source code solely for purposes of developing bug fixes, customizations and additional features for the Software. Any modified source code or Documentation constitutes “**Your Modifications**”. You may use Your Modifications solely in support of your permitted use of the Software (and only with your own instances of the Software), but you may not distribute the code to Your Modifications to any Third-party. Notwithstanding anything in this Agreement to the contrary, Perfana has no support, warranty, indemnification or other obligation or liability with respect to Your Modifications or their combination, interaction or use with our Software.

3.5. Attribution

In any use of the Software, you must not remove, obscure, or alter in any way the following attribution to Perfana on any of the user interfaces of the Software: “Powered by Perfana,” which must in every case include a hyperlink to <https://perfana.io>, and which must be in the same format as delivered in the Software.

3.6. System Requirements

You are solely responsible for ensuring that your systems meet the hardware, software and any other applicable system requirements for the Software as specified in the [Documentation](#). Perfana will have no obligations or responsibility under this Agreement for issues caused by your use of any third-party hardware or software not provided by Perfana.

3.7. Indemnification by You

You will defend, indemnify and hold harmless Perfana from and against any loss, cost, liability or damage (including attorney’s fees) arising from or relating to any claim brought against Perfana

- a) by a Third-party relating to Your Modifications (including but not limited to any representations or warranties you make about Your Modifications of the Software) or your breach of Section 3.4 (Your Modifications);
- b) by a Third-party related to your Customer Materials, as defined in Section 6.2 (b); or
- c) by a Third-party relating to any non-Perfana content or data used by you in connection with the Software.

This indemnification obligation is subject to your receiving (i) prompt written notice of such claim (but in any event notice in sufficient time for you to respond without prejudice); (ii) the exclusive right to control and direct the investigation, defense, or settlement of such claim; and (iii) all reasonably necessary cooperation of Perfana at your expense.

4. Plug-ins and Third-party Products

4.1. Third-party Products

You (including your Authorized Users) may choose to use or procure other third-party products or services in connection with the Software, including Third-party Plug-ins (see Section 4.2 (Perfana Plug-in Hub)) or implementation, customization, training or other services. Your receipt or use of any third-party products or services is subject to a separate agreement between you and the third-party provider. If you enable or use third-party products or services (including Third-party Plug-ins as referenced in Section 4.2 (Perfana Plug-in Hub)) with the Software, you acknowledge that the third-party providers may access or use your data as required for the interoperation of their products and services with the Software. This may include transmitting, transferring, modifying or deleting your data, or storing your data on systems belonging to the third-party providers or other third parties. Any third-party provider's use of your data is subject to the applicable agreement between you and such third-party provider. **We are not responsible for any access to or use of your data by third-party providers or their products or services, or for the security or privacy practices of any third-party provider or its products or services. You are solely responsible for your decision to permit any third-party provider or third-party product or service to use your data. It is your responsibility to carefully review the agreement between you and the third-party provider, as provided by the applicable third-party provider. PERFANA DISCLAIMS ALL LIABILITY AND RESPONSIBILITY FOR ANY THIRD-PARTY PRODUCTS OR SERVICES (WHETHER SUPPORT, AVAILABILITY, SECURITY OR OTHERWISE) OR FOR THE ACTS OR OMISSIONS OF ANY THIRD-PARTY PROVIDERS OR VENDORS.**

4.2. Perfana Plug-in Hub

As further described in the [Perfana Plug-in Hub Terms of Use](#), the [Perfana Plug-in Hub](#) lists a variety of Plug-ins that may be used with the Software, including both Perfana Plug-ins and Third-party Plug-ins. Perfana Plug-ins for Software are considered "Software" under this Agreement (unless Perfana specifies otherwise through the Perfana Plug-in Hub). Third-party Plug-ins are not Software and remain subject to their own applicable Vendor Terms. Perfana may enable interoperation of the Software with Third-party Plug-ins as set forth in Section 4.1 (Third-party Products). The terms "Plug-ins", "Perfana Plug-ins", "Third-party Plug-ins", "Vendor" and "Vendor Terms" are defined in the [Perfana Plug-in Hub Terms of Use](#), which is a separate agreement governing use of the Perfana Plug-in Hub.

5. Privacy Terms

Perfana may collect certain data and information from you in connection with your use of the Software and otherwise in connection with this Agreement. All such data and information will be

collected and used by Perfana in accordance with Perfana's [Privacy Policy](#), which you acknowledge. You may disable data collection by the Software through the settings in the Software.

6. Perfana Commitments

6.1. Support and Maintenance

During the period for which you have paid the applicable Support and Maintenance fee, Perfana will provide Support and Maintenance for the Software in accordance with the [Perfana Support Policy](#) and [Enterprise Support and Services Policy](#) (if applicable). Support and Maintenance for Software includes access to New Releases, if and when available, and any references to "Software" in this Agreement include New Releases.

6.2. Additional Services

Subject to this Agreement, you may purchase Additional Services from Perfana, which Perfana will provide to you pursuant to the applicable Order. Additional Services may be subject to additional policies and terms as specified by Perfana, including the [Enterprise Support and Services Policy](#).

- a) **Perfana Deliverables.** Perfana will retain all right, title and interest in and to any materials, deliverables, modifications, derivative works or developments that Perfana provides in connection with any Additional Services ("Perfana Deliverables"). You may use any Perfana Deliverables provided to you only in connection with the Software, subject to the same usage rights and restrictions as for the Software. For clarity, Perfana Deliverables are not considered Software, and any Software (including any New Release) is not considered an Perfana Deliverable.
- b) **Customer Materials.** You agree to provide Perfana with reasonable access to your materials, systems, personnel or other resources (including your instances of the Software) as reasonably necessary for Perfana's provision of Additional Services ("Customer Materials"). If you do not provide Perfana with timely access to Customer Materials, Perfana's performance of Additional Services will be excused until you do so. You retain your rights in your Customer Materials, subject to Perfana's ownership of any underlying Software, Perfana Deliverables or other Perfana Technology. Perfana will use Customer Materials solely for purposes of performing the Additional Services. You represent and warrant that you have all necessary rights in Customer Materials to provide them to Perfana for such purposes.

7. License Term, Returns and Payment

7.1. License Term and Renewals

The License Term, Support and Maintenance period will be indicated in the Order (as applicable). The License Term and any applicable service periods will commence on the Order date (unless a different start date is designated in the Order) and expire on the expiration date indicated in your account. Unless earlier terminated in accordance with this Agreement, each right to use Software will expire at the end of the applicable License Term. Unless you have selected the "autorenewal" option in your account, any renewals must be mutually agreed upon by the parties in writing. All renewals are subject to the applicable Software or Support and Maintenance continuing to be offered and will be charged at the then-current rates.

7.2. Delivery

We will deliver the applicable license keys to your account no later than when we have received payment of the applicable fees. You are responsible for accessing your account to determine that we have received payment and your Order has been processed. All deliveries under this Agreement will be electronic. For the avoidance of doubt, you are responsible for installation of the Software, and you acknowledge that Perfana has no further delivery obligation with respect to the Software after delivery of the license keys.

7.3. Return Policy

As part of our commitment to customer satisfaction, you may terminate your initial Order of the applicable Software under this Agreement, for no reason or any reason, by providing notice of termination and returning any applicable Software to Perfana no later than thirty (30) days after the Order date for such Software. In the event you terminate your initial Order under this Section 7.3 (Return Policy), Perfana may disable the license key that allowed the Software to operate and, at your request (which may be made through your account), Perfana will refund you the amount paid under such Order. This termination and refund right applies only to your initial Order and only if you exercise your termination right within the period specified above, and does not apply to Additional Services. You understand that Perfana may change this practice in the future in accordance with Section 20 (Changes to this Agreement).

7.4. Increased Scope of Use

During your License Term, you may increase your Scope of Use (e.g., adding Authorized Users, licenses, copies or instances) by placing a new Order or, if made available by Perfana, directly through the applicable Software. Any increases to your Scope of Use will be subject to additional fees, as set forth in the applicable Order.

7.5. Payment

You will pay all fees in accordance with each Order, by the due dates and in the currency specified in the Order. If a purchase order number is required in order for an invoice to be paid, then you must provide such purchase order number to Perfana by emailing the purchase order number to support@perfana.io . For Additional Services provided at any non-Perfana location, unless otherwise specified in your Order, you will reimburse Perfana for its pre-approved travel, lodging and meal expenses, which Perfana may charge as incurred. Other than as expressly set forth in Section 7.3 (Return Policy) and Section 16 (IP Indemnification by Perfana), all amounts are non-refundable, non-cancelable and non-creditable. You agree that we may bill your credit card or other payment method for renewals, additional users, expenses and unpaid fees, as applicable.

7.6. Taxes

Your fees under this Agreement exclude any taxes or duties payable in respect of the Software in the jurisdiction where the payment is either made or received. To the extent that any such taxes or duties are payable by Perfana, you must pay to Perfana the amount of such taxes or duties in addition to any fees owed under this Agreement. Notwithstanding the foregoing, you may have obtained an exemption from relevant taxes or duties as of the time such taxes or duties are levied or assessed. In that case, you will have the right to provide to Perfana any such exemption information, and Perfana will use reasonable efforts to provide such invoicing documents as may enable you to obtain a refund or credit for the amount so paid from any relevant revenue authority if such a refund or credit is available.

7.7. Withholding Taxes

You will pay all fees net of any applicable withholding taxes. You and Perfana will work together to avoid any withholding tax if exemptions, or a reduced treaty withholding rate, are available. If Perfana qualifies for a tax exemption, or a reduced treaty withholding rate, Perfana will provide you with reasonable documentary proof. You will provide Perfana reasonable evidence that you have paid the relevant authority for the sum withheld or deducted.

7.8. Reseller Orders

This Section 7.8 applies if you purchase the Software, Support and Maintenance or any Additional Services through an authorized partner or reseller of Perfana (“**Reseller**”).

- a) Instead of paying Perfana, you will pay the applicable amounts to the Reseller, as agreed between you and the Reseller. Perfana may suspend or terminate your rights to use Software if Perfana does not receive the corresponding payment from the Reseller.
- b) Instead of an Order with Perfana, your order details (e.g., Software, Scope of Use and License Term) will be as stated in the order placed with Perfana by the Reseller on your behalf, and the Reseller is responsible for the accuracy of any such order as communicated to Perfana.
- c) If you are entitled to a refund under this Agreement, then unless otherwise specified by Perfana, Perfana will refund any applicable fees to the Reseller and the Reseller will be solely responsible for refunding the appropriate amounts to you.
- d) Resellers are not authorized to modify this Agreement or make any promises or commitments on Perfana’s behalf, and Perfana is not bound by any obligations to you other than as set forth in this Agreement.
- e) The amount paid or payable by the Reseller to us for your use of the applicable Software under this Agreement will be deemed the amount actually paid or payable by you to us under this Agreement for purposes of calculating the liability cap in Section 15.2 (Liability Cap).

7.9. Future Functionality; Separate Purchases

You acknowledge that the Software and Additional Services referenced in an Order are being purchased separately from any of our other products or services. Payment obligations for any products or services are not contingent on the purchase or use of any of our other products (and for clarity, any purchases of Software and Additional Services are separate and not contingent on each other, even if listed on the same Order). You agree that your purchases are not contingent on the delivery of any future functionality or features (including future availability of any Software beyond the current License Term or any New Releases), or dependent on any oral or written public comments made by Perfana regarding future functionality or features.

8. No-Charge Software

We may offer certain Software (including some Perfana Plug-ins) to you at no charge, including free accounts, trial use, and Beta Versions as defined below (collectively, “**No-Charge Software**”). Your use of No-Charge Software is subject to any additional terms that we specify and is only permitted during the License Term we designate (or, if not designated, until terminated in accordance with this Agreement). Except as otherwise set forth in this Section, the terms and conditions of this Agreement governing Software, including Section 3.2 (Restrictions), fully apply to No-Charge Software. We may terminate your right to use No-Charge Software at any time and for any reason in our sole discretion, without liability to you. You understand that any pre-release and beta versions of

Software, and any pre-release and beta features within generally available Software, that we make available (collectively, “**Beta Versions**”) are still under development, may be inoperable or incomplete and are likely to contain more errors and bugs than generally available Software. We make no promises that any Beta Versions will ever be made generally available. In some circumstances, we may charge a fee in order to allow you to use Beta Versions, but the Beta Versions will still remain subject to this Section 8. All information regarding the characteristics, features or performance of any No-Charge Software (including Beta Versions) constitutes Perfana’s Confidential Information. To the maximum extent permitted by applicable law, we disclaim all obligations or liabilities with respect to No-Charge Software, including any Support and Maintenance, warranty, and indemnity obligations. NOTWITHSTANDING ANYTHING ELSE IN THIS AGREEMENT, PERFANA’S MAXIMUM AGGREGATE LIABILITY TO YOU IN RESPECT OF NO-CHARGE SOFTWARE WILL BE €100.

9. Use of Perfana Developer Assets

Access to any Perfana APIs, SDKs or other Perfana developer assets is subject to the [Perfana Developer Terms of Use](#) and not this Agreement.

10. License Certifications and Audits

At our request, you agree to provide a signed certification that you are using all Software pursuant to the terms of this Agreement, including the Scope of Use. You agree to allow us, or our authorized agent, to audit your use of the Software (including that of your Authorized Users). We will provide you with at least ten (10) days advance notice prior to the audit, and the audit will be conducted during normal business hours. We will bear all out-of-pocket costs that we incur for the audit, unless the audit reveals that you have exceeded the Scope of Use. You will provide reasonable assistance, cooperation, and access to relevant information in the course of any audit at your own cost. If you exceed your Scope of Use, we may invoice you for any past or ongoing excessive use, and you will pay the invoice promptly after receipt. This remedy is without prejudice to any other remedies available to Perfana at law or equity or under this Agreement. To the extent we are obligated to do so, we may share audit results with certain of our third-party licensors or assign the audit rights specified in this Section 10 to such licensors.

11. Ownership and Feedback

The Software is made available on a limited license or access basis, and no ownership right is conveyed to you, irrespective of the use of terms such as “purchase” or “sale”. Perfana and its licensors have and retain all right, title and interest, including all intellectual property rights, in and to Perfana Technology (including the Software). From time to time, you may choose to submit Feedback to us. Perfana may in connection with any of its products or services freely use, copy, disclose, license, distribute and exploit any Feedback in any manner without any obligation, royalty or restriction based on intellectual property rights or otherwise. No Feedback will be considered your Confidential Information, and nothing in this Agreement limits Perfana's right to independently use, develop, evaluate, or market products or services, whether incorporating Feedback or otherwise.

12. Confidentiality

Except as otherwise set forth in this Agreement, each party agrees that all code, inventions, know-how and business, technical and financial information disclosed to such party (“**Receiving Party**”) by 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 or proprietary due to the nature of the information disclosed and the circumstances surrounding the disclosure. Any Perfana Technology and any performance information relating to the Software will be deemed Confidential Information of Perfana without any marking or further designation. Except as expressly authorized herein, the Receiving Party will (1) hold in confidence and not disclose any Confidential Information to third parties and (2) not use Confidential Information for any purpose other than fulfilling its obligations and exercising its rights under this Agreement. The Receiving Party may disclose Confidential Information to its employees, agents, contractors and other representatives having a legitimate need to know, provided that they are bound to confidentiality obligations no less protective of the Disclosing Party than this Section 12 and that the Receiving Party remains responsible for compliance by them with the terms of this Section 12. The Receiving Party's confidentiality obligations will not apply to information which 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 of the Receiving Party who had no access to such information. The Receiving Party may also disclose Confidential Information if so required pursuant to a regulation, law or court order (but only to the minimum extent required to comply with such regulation or order and with advance notice to the Disclosing Party). The Receiving Party acknowledges that disclosure of Confidential Information would cause substantial harm for which damages alone would not be a sufficient remedy, and therefore that upon any such disclosure by the Receiving Party the Disclosing Party will be entitled to appropriate equitable relief in addition to whatever other remedies it might have at law.

13. Term and Termination

13.1. Term

This Agreement is effective as of the Effective Date and continues until expiration of all License Terms, unless earlier terminated as set forth herein.

13.2. Termination for Cause

Either party may terminate this Agreement (including all related Orders) if the other party (a) fails to cure any material breach of this Agreement within thirty (30) days after written notice; (b) ceases operation without a successor; or (c) seeks protection under any bankruptcy, receivership, trust deed, creditors' arrangement, composition or comparable proceeding, or if any such proceeding is instituted against that party (and not dismissed within sixty (60) days thereafter).

13.3. Termination for Convenience

You may choose to stop using the Software and terminate this Agreement (including all Orders) at any time for any reason upon written notice to Perfana, but, unless you are exercising your right to terminate early pursuant to Section 7.3 (Return Policy), upon any such termination (i) you will not be entitled to a refund of any pre-paid fees and (ii) if you have not already paid all applicable fees for the then-current License Term or related services period (as applicable), any such fees that are outstanding will become immediately due and payable.

13.4. Effects of Termination

Upon any expiration or termination of this Agreement, your license to the Software terminates (even if the License Term is identified as "perpetual" or if no expiration date is specified in your

Order) and you must cease using and delete (or at our request, return) all Software and Confidential Information or other materials of Perfana in your possession, including on any third-party systems operated on your behalf. You will certify such deletion upon our request. If this Agreement is terminated by you in accordance with Section 13.2 (Termination for Cause), Perfana will refund you any prepaid Software fees covering the remainder of the then-current License Term after the effective date of termination. If this Agreement is terminated by Perfana in accordance with Section 13.2 (Termination for Cause), you will pay any unpaid fees covering the remainder of the then-current License Term after the effective date of termination. In no event will termination relieve you of its obligation to pay any fees payable to Perfana for the period prior to the effective date of termination. Except where an exclusive remedy may be specified in this Agreement, the exercise by either party of any remedy, including termination, will be without prejudice to any other remedies it may have under this Agreement, by law, or otherwise.

13.5. Survival

The following Sections will survive any termination or expiration of this Agreement: 3.2 (Restrictions), 3.7 (Indemnification by You), 4.1 (Third-party Products), 7.5 (Payment), 7.6 (Taxes), 8 (No-Charge Software) (disclaimers and use restrictions only), 10 (License Certifications and Audits), 11 (Ownership and Feedback), 12 (Confidentiality), 13 (Term and Termination), 14.3 (Warranty Disclaimer), 15 (Limitations of Liability), 16 (IP Indemnification by Perfana) (but solely with respect to claims arising from your use of the Software during the License Term), 18 (Dispute Resolution), **Error! Reference source not found. (Error! Reference source not found.)**, and 21 (General Provisions).

14. Warranties and Disclaimer

14.1. General Warranties

Each party represents and warrants that it has the legal power and authority to enter into this Agreement. If you are an entity, you represent and warrant that this Agreement and each Order is entered into by an employee or agent of such entity with all necessary authority to bind such entity to the terms and conditions of this Agreement.

14.2. Virus Warranty

Perfana further represents and warrants that it will take reasonable commercial efforts to ensure that the Software, in the form and when provided to you, will be free of any viruses, malware, or other harmful code. For any breach of the foregoing warranty, your sole and exclusive remedy, and Perfana's sole obligation, is to provide a replacement copy of the Software promptly upon notice.

14.3. Warranty Disclaimer

EXCEPT AS EXPRESSLY SET FORTH IN SECTION 14.1 (GENERAL WARRANTIES) AND 14.2 (VIRUS WARRANTY), ALL SOFTWARE, SUPPORT AND MAINTENANCE AND ANY ADDITIONAL SERVICES ARE PROVIDED "AS IS," AND PERFANA AND ITS SUPPLIERS EXPRESSLY DISCLAIM ANY AND ALL WARRANTIES AND REPRESENTATIONS OF ANY KIND, INCLUDING ANY WARRANTY OF NON-INFRINGEMENT, TITLE, FITNESS FOR A PARTICULAR PURPOSE, FUNCTIONALITY, OR MERCHANTABILITY, WHETHER EXPRESS, IMPLIED, OR STATUTORY. PERFANA WILL NOT BE LIABLE FOR DELAYS, INTERRUPTIONS, SERVICE FAILURES OR OTHER PROBLEMS INHERENT IN USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS OR OTHER SYSTEMS OUTSIDE THE REASONABLE CONTROL OF PERFANA. TO THE MAXIMUM EXTENT PERMITTED BY LAW, NEITHER PERFANA NOR ANY OF ITS THIRD PARTY SUPPLIERS MAKES ANY REPRESENTATION, WARRANTY OR GUARANTEE AS TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, TRUTH, AVAILABILITY, ACCURACY OR

COMPLETENESS OF ANY SOFTWARE OR ANY CONTENT THEREIN OR GENERATED THEREWITH, OR THAT: (A) THE USE OF ANY SOFTWARE WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE; (B) THE SOFTWARE WILL OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM, OR DATA; (C) THE SOFTWARE (OR ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY YOU THROUGH THE SOFTWARE) WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS); (D) ERRORS OR DEFECTS WILL BE CORRECTED; OR (E) EXCEPT AS EXPRESSLY SET FORTH IN SECTION 14.2 (VIRUS WARRANTY), THE SOFTWARE IS FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. YOU MAY HAVE OTHER STATUTORY RIGHTS, BUT THE DURATION OF STATUTORILY REQUIRED WARRANTIES, IF ANY, WILL BE LIMITED TO THE SHORTEST PERIOD PERMITTED BY LAW.

15. Limitations of Liability

15.1. Consequential Damages Waiver

EXCEPT FOR EXCLUDED CLAIMS (DEFINED BELOW), NEITHER PARTY (NOR ITS SUPPLIERS) WILL HAVE ANY LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT FOR ANY LOSS OF USE, LOST OR INACCURATE DATA, LOST PROFITS, FAILURE OF SECURITY MECHANISMS, INTERRUPTION OF BUSINESS, COSTS OF DELAY OR ANY INDIRECT, SPECIAL, INCIDENTAL, RELIANCE OR CONSEQUENTIAL DAMAGES OF ANY KIND, EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE.

15.2. Liability Cap

EXCEPT FOR EXCLUDED CLAIMS, EACH PARTY'S AND ITS SUPPLIERS' AGGREGATE LIABILITY TO THE OTHER ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL NOT EXCEED THE AMOUNT ACTUALLY PAID OR PAYABLE BY YOU TO US UNDER THIS AGREEMENT IN THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE CLAIM.

15.3. Excluded Claims

"Excluded Claims" means (1) amounts owed by you under any Orders, (2) either party's express indemnification obligations in this Agreement, and (3) your breach of Section 3.2 (Restrictions) or of Section 2 (Combining the Products with Open Source Software) of [Third-party Code in Perfana Products](#) .

15.4. Nature of Claims and Failure of Essential Purpose

The parties agree that the waivers and limitations specified in this Section 15 (Limitations of Liability) apply regardless of the form of action, whether in contract, tort (including negligence), strict liability or otherwise and will survive and apply even if any limited remedy specified in this Agreement is found to have failed of its essential purpose.

16. IP Indemnification by Perfana

We will defend you against any claim brought against you by a third party alleging that the Software, when used as authorized under this Agreement, infringes any third-party patent, copyright or trademark, or misappropriates any third-party trade secret enforceable in any jurisdiction that is a signatory to the Berne Convention (a **"Claim"**), and we will indemnify you and hold you harmless against any damages and costs finally awarded on the Claim by a court of competent jurisdiction or agreed to via settlement executed by Perfana (including reasonable attorneys' fees), provided that we have received from you: (a) prompt written notice of the Claim (but in any event notice in sufficient time for us to respond without prejudice); (b) reasonable assistance in the defense and investigation of the Claim, including providing us a copy of the Claim, all relevant evidence in your possession, custody, or control, and cooperation with evidentiary discovery, litigation, and trial,

including making witnesses within your employ or control available for testimony; and (c) the exclusive right to control and direct the investigation, defense, and settlement (if applicable) of the Claim. If your use of the Software is (or in our opinion is likely to be) enjoined, whether by court order or by settlement, or if we determine such actions are reasonably necessary to avoid material liability, we may, at our option and in our discretion: (i) procure the right or license for your continued use of the Software in accordance with this Agreement; (ii) substitute substantially functionally similar Software; or (iii) terminate your right to continue using the Software and refund any license fees pre-paid by you for use of the Software for the terminated portion of the applicable License Term or, in the case of any “perpetual” licenses, the license fee paid by you as reduced to reflect a three (3) year straight-line depreciation from the license purchase date. Perfana’s indemnification obligations above do not apply: (1) if the total aggregate fees received by Perfana with respect to your license to Software in the twelve (12) month period immediately preceding the Claim is less than €50.000; (2) if the Software is modified by any party other than Perfana, but solely to the extent the alleged infringement is caused by such modification; (3) if the Software is used in combination with any non-Perfana product, software, service or equipment, but solely to the extent the alleged infringement is caused by such combination; (4) to unauthorized use of Software; (5) to any Claim arising as a result of (y) circumstances covered by your indemnification obligations in Section 3.7 (Indemnification by You) or (z) any third-party deliverables or components contained with the Software; (6) to any unsupported release of the Software; or (7) if you settle or make any admissions with respect to a Claim without Perfana’s prior written consent. THIS SECTION 16 STATES OUR SOLE LIABILITY AND YOUR EXCLUSIVE REMEDY FOR ANY INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS IN CONNECTION WITH ANY SOFTWARE OR OTHER ITEMS PROVIDED BY PERFANA UNDER THIS AGREEMENT.

17. Publicity Rights

We may identify you as an Perfana customer in our promotional materials. We will promptly stop doing so upon your request sent to sales@perfana.io.

18. Dispute Resolution

18.1. Informal Resolution

In the event of any controversy or claim arising out of or relating to this Agreement, the parties will consult and negotiate with each other and, recognizing their mutual interests, attempt to reach a solution satisfactory to both parties. If the parties do not reach settlement within a period of sixty (60) days, either party may pursue relief as may be available under this Agreement pursuant to Section 18.2 (Governing Law; Jurisdiction). All negotiations pursuant to this Section 18.1 will be confidential and treated as compromise and settlement negotiations for purposes of all rules and codes of evidence of applicable legislation and jurisdictions.

18.2. Governing Law; Jurisdiction

This Agreement will be governed by and construed in accordance with the applicable laws of The Netherlands, without giving effect to the principles of that Country relating to conflicts of laws. Each party irrevocably agrees that any legal action, suit or proceeding arising out of or related to this Agreement must be brought solely and exclusively in, and will be subject to the service of process and other applicable procedural rules of, the court in Amsterdam, The Netherlands, and each party irrevocably submits to the sole and exclusive personal jurisdiction of the courts in Amsterdam, The Netherlands, generally and unconditionally, with respect to any action, suit or proceeding brought by it or against it by the other party. In any action or proceeding to enforce a party’s rights under

this Agreement, the prevailing party will be entitled to recover its reasonable costs and attorneys' fees.

18.3. Injunctive Relief; Enforcement

Notwithstanding the provisions of Section 18.1 (Informal Resolution) and Section 18.2 (Governing Law; Jurisdiction), nothing in this Agreement will prevent Perfana from seeking injunctive relief with respect to a violation of intellectual property rights, confidentiality obligations or enforcement or recognition of any award or order in any appropriate jurisdiction.

18.4. Exclusion of UN Convention and UCITA

The terms of the United Nations Convention on Contracts for the Sale of Goods do not apply to this Agreement. The Uniform Computer Information Transactions Act (UCITA) will not apply to this Agreement regardless of when or where adopted.

19. Third Party Code

The Software includes code and libraries licensed to us by third parties, including open source software. See [Third-party Code in Perfana Products](#) for additional provisions regarding our use of third party code.

20. Changes to this Agreement

20.1. Modifications Generally

We may modify the terms and conditions of this Agreement (including Perfana Policies) from time to time, with notice given to you by email, through the Software or through our website. Together with notice, we will specify the effective date of the modifications.

No-Charge Software: You must accept the modifications to continue using the No-Charge Software. If you object to the modifications, your exclusive remedy is to cease using the No-Charge Software.

Paid Licenses: Typically, when we make modifications to the main body of this Agreement (excluding the Perfana Policies), the modifications will take effect at the next renewal of your License Term and will automatically apply as of the renewal date unless you elect not to renew pursuant to Section 7.1 (License Term and Renewals). In some cases – e.g., to address compliance with Laws, or as necessary for new features – we may specify that such modifications become effective during your then-current License Term. If the effective date of such modifications is during your then-current License Term and you object to the modifications, then (as your exclusive remedy) you may terminate your affected Orders upon notice to us, and we will refund to you any fees you have pre-paid for use of the affected Software for the terminated portion of the applicable License Term. To exercise this right, you must provide us with notice of your objection and termination within thirty (30) days of us providing notice of the modifications. For the avoidance of doubt, any Order is subject to the version of this Agreement in effect at the time of the Order.

Perfana Policies: Our products and business are constantly evolving, and we may modify the Perfana Policies from time to time, including during your then-current License Term in order to respond to changes in our products, our business, or Laws. In this case, unless required by Laws, we agree not to make modifications to the Perfana Policies that, considered as a whole, would substantially diminish our obligations during your then-current License Term. Modifications to the Perfana Policies will take effect automatically as of the effective date specified for the updated policies.

21. General Provisions

21.1. Notices

Any notice under this Agreement must be given in writing. We may provide notice to you via email or through your account. You agree that any such electronic communication will satisfy any applicable legal communication requirements, including that such communications be in writing. Our notices to you will be deemed given upon the first business day after we send it. You will provide notice to us by post to Perfana Software BV, Groot Hertoginnelaan 134, The Hague, The Netherlands. Your notices to us will be deemed given upon our receipt.

21.2. Force Majeure

Neither party will be liable to the other for any delay or failure to perform any obligation under this Agreement (except for a failure to pay fees) if the delay or failure is due to events which are beyond the reasonable control of such party, such as a strike, blockade, war, act of terrorism, riot, natural disaster, failure or diminishment of power or telecommunications or data networks or services, or refusal of a license by a government agency.

21.3. Assignment

You may not assign or transfer this Agreement without our prior written consent. As an exception to the foregoing, you may assign this Agreement in its entirety (including all Orders) to your successor resulting from your merger, acquisition, or sale of all or substantially all of your assets or voting securities, provided that you provide us with prompt written notice of the assignment and the assignee agrees in writing to assume all of your obligations under this Agreement. Any attempt by you to transfer or assign this Agreement except as expressly authorized above will be null and void. We may assign our rights and obligations under this Agreement (in whole or in part) without your consent. We may also permit our Affiliates, agents and contractors to exercise our rights or perform our obligations under this Agreement, in which case we will remain responsible for their compliance with this Agreement. Subject to the foregoing, this Agreement will inure to the parties' permitted successors and assigns.

21.4. Entire Agreement

This Agreement is the entire agreement between you and Perfana relating to the Software and supersedes all prior or contemporaneous oral or written communications, proposals and representations between you and Perfana with respect to the Software or any other subject matter covered by this Agreement. No provision of any purchase order or other business form employed by you will supersede or supplement the terms and conditions of this Agreement, and any such document relating to this Agreement will be for administrative purposes only and will have no legal effect.

21.5. Conflicts

In event of any conflict between the main body of this Agreement and the Perfana Policies, the Perfana Policies will control with respect to their subject matter.

21.6. Waivers; Modifications

No failure or delay by the injured party to this Agreement in exercising any right, power or privilege hereunder will operate as a waiver thereof, nor will any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder at law or equity. Except as set forth in Section 20 (Changes to this Agreement), any amendments or

modifications to this Agreement must be executed in writing by the authorized representatives of Perfana and you.

21.7. Interpretation

As used herein, “including” (and its variants) means “including without limitation” (and its variants). Headings are for convenience only. If any provision of this Agreement is held to be void, invalid, unenforceable or illegal, the other provisions will continue in full force and effect.

21.8. Independent Contractors

The parties are independent contractors. This Agreement will not be construed as constituting either party as a partner of the other or to create any other form of legal association that would give either party the express or implied right, power or authority to create any duty or obligation of the other party.

22. Definitions

Certain capitalized terms are defined in this Section 23, and others are defined contextually in this Agreement.

“Additional Services” means Support and Maintenance or other services related to the Software provided to you by Perfana, as identified in an Order.

“Affiliate” means an entity which, directly or indirectly, owns or controls, is owned or is controlled by or is under common ownership or control with a party, where “control” means the power to direct the management or affairs of an entity, and “ownership” means the beneficial ownership of greater than 50% of the voting equity securities or other equivalent voting interests of the entity.

“Perfana Policies” means Perfana’s [Acceptable Use Policy](#), [Privacy Policy](#), [Support Policy](#), [Enterprise Support and Services Policy](#), terms for [Third-party Code in Perfana Products](#) , and (unless otherwise specified) any other policies or terms referenced in this Agreement.

“Perfana Technology” means the Software (including all No-Charge Software), Perfana Deliverables, their “look and feel”, any and all related or underlying technology and any modifications or derivative works of the foregoing, including as they may incorporate Feedback.

“Authorized Users” means the specific individuals whom you designate to use the applicable Software and for whom you have paid the required fees if applicable. Authorized Users may be your or your Affiliates’ employees, representatives, consultants, contractors, agents or other third parties who are acting for your or your Affiliates’ benefit or on your or your Affiliates’ behalf.

“Documentation” means our standard published documentation for the Software, currently located [here](#).

“Feedback” means comments, questions, ideas, suggestions or other feedback relating to the Software, Support and Maintenance or Additional Services.

“Laws” means all applicable local, state, federal and international laws, regulations and conventions, including those related to data privacy and data transfer, international communications and the exportation of technical or personal data.

“License Term” means your permitted license term for the Software, as set forth in an Order.

“New Releases” means any bug fixes, patches, major or minor releases, or any other changes, enhancements, or modifications to the Software that Perfana makes available to you as part of Support and Maintenance.

“Order” means Perfana’s applicable ordering documentation or other purchase flow referencing this Agreement. Orders may include purchases of Software licenses, Support and Maintenance, Additional Services, increased or upgraded Scope of Use or renewals.

“Scope of Use” means your authorized scope of use for the Software as specified in the applicable Order, which may include: (a) number and type of Authorized Users, (b) number and type of Systems Under Test, (c) numbers of licenses, copies or instances, or (d) entity, division, business unit, website, field of use or other restrictions or billable units.

“System Under Test” means the software applications and physical and/or cloud computing resources that you choose to configure as a set in the Software as the applicable target of use.

“Software” means Perfana’s commercially available downloadable software products. Your Order will specify the Software that you may use.

“Support and Maintenance” means Perfana’s support and maintenance services for the Software, as further described in the [Perfana Support Policy](#) and [Enterprise Support and Services Policy](#) (if applicable). Your level of Support and Maintenance will be specified in your Order.

“Training” means Perfana-provided training and certification services.