

Master Services Agreement

This Master Services Agreement (the “**Agreement**”) is by and between Perceptyx (as defined below) and Customer (as defined below) (each a “**Party**,” and collectively the “**Parties**”).

1. Definitions. In this Agreement the following terms have the meanings indicated:

“**Affiliate(s)**” means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity.

“**Aggregated Statistics**” means data and information related to Customer’s use of the Perceptyx Services that is aggregated and anonymized. Aggregated Statistics will not include any personal data, nor identify Customer or its Confidential Information.

“**Agreement**” means this Agreement and all associated Order Forms (including all documents incorporated therein).

“**Confidential Information**” means information that is disclosed by a Party to the other Party whether furnished orally, in writing or gathered by inspection, and identified as “confidential” at the time of such disclosure or that the receiving Party knows or should have known is confidential or proprietary information. “Confidential Information” will not include information which:

- (a) is publicly known or becomes publicly known through no fault of the receiving Party,
- (b) is disclosed by a third party entitled to disclose it,
- (c) is known by the receiving Party prior to disclosure by the other Party, or
- (d) is developed by or for the receiving Party without reference to or reliance upon information of the disclosing Party and is developed independently of information received from the disclosing Party.

“**Customer**” means the purchasing entity identified in the Order Form.

“**Customer Data**” means any content, materials, data and information that Customer enters into the production system of a SaaS Service or that Customer derives from its use of and stores in the SaaS Service (e.g. Customer-specific reports). Customer Data and its derivatives will not include Perceptyx’s Confidential Information.

“**Documentation**” means Perceptyx’s online technical and functional instructions for the SaaS Service.

“**Intellectual Property**” or “**Intellectual Property Rights**” means any and all now known or hereafter existing (a) rights associated with works of authorship, including copyrights, and moral rights; (b) trademark or service mark rights; (c) trade secret rights; (d) patents, patent rights, and industrial property rights; (e) layout design rights, design rights, and other proprietary rights of every kind and nature other than trademarks, service marks, trade dress, and similar rights; and (f) all registrations, applications, renewals, extensions, or reissues of the foregoing, in each case in any jurisdiction throughout the world.

“**Order Form(s)**” means a document that sets forth the Perceptyx Services Customer is purchasing and references this Agreement.

“**Perceptyx**” means: (i) Perceptyx, Inc., a California corporation, if Customer’s contracting entity is located within North or South America, or (ii) Perceptyx BV, a Netherlands private limited company, if Customer’s contracting entity is located outside of North or South America.



“Perceptyx Services” means the SaaS Service (including Documentation), SaaS Materials, Professional Services, and Support Services.

“Professional Services” means services such as implementation, training, customization, or other services that Perceptyx may perform as described in an Order Form.

“SaaS Service” means any solution hosted, supported, and licensed by Perceptyx as set forth in the applicable Order Form, including any related application programming interface (API).

“SaaS Materials” means any materials provided or developed by Perceptyx (independently or with Customer’s cooperation) in the course of performance under the Agreement, including in the delivery of any Support Services or Professional Services to Customer. SaaS Materials do not include the Customer Data, Customer Confidential Information, Documentation or the SaaS Service.

“Support Services” means the Perceptyx support and maintenance services set forth in the applicable Order Form.

“Users” means Customer’s or its Affiliates’ employees, consultants, contractors, and agents (i) for whom access to the SaaS Service during the term has been purchased pursuant to an Order Form, (ii) who are authorized by Customer or its Affiliates to access and use the SaaS Service, and (iii) who have been supplied user access credentials for such purpose by Customer (or by Perceptyx at Customer’s request).

2. Order Forms

2.1. As part of this Agreement, the Parties will agree to and execute an Order Form. The Order Form will be incorporated herein and provide the specific details of the Perceptyx Services to be performed. If there is a conflict between the terms of this Agreement and the terms of an Order Form, the terms of this Agreement will control unless the Order Form states that a specific provision of this Agreement will be superseded by a specific provision of the Order Form.

3. License Grants and Restrictions

3.1. Access and Use License. Perceptyx hereby grants to Customer a non-exclusive, non-transferable, non-assignable, non-sublicensable, limited right to access and use the SaaS Service in accordance with the Documentation during the term and for the number of individuals identified on the applicable Order Form, for Customer’s internal business purposes only.

3.2. Restrictions. Customer will not, directly or indirectly, and Customer will not permit any User or third party to:

- (a) reverse engineer, decompile, disassemble, copy, translate or modify the SaaS Service;
- (b) rent, lease, distribute, sell, resell, assign, or otherwise transfer its rights to use the SaaS Service;
- (c) use the SaaS Service for timesharing purposes or otherwise for the benefit of any person or entity other than for the benefit of Customer;
- (d) use the SaaS Service for any purpose other than its intended purpose; or
- (e) interfere with or disrupt the integrity or performance of the SaaS Service.

3.3. Reservation of Rights. Except as expressly granted in the Agreement, there are no other licenses granted to Customer, express or implied. Perceptyx reserves all rights not expressly granted to Customer under this Agreement.



3.4. Suspension of the SaaS Service. Perceptyx may suspend the SaaS Service if Customer is in violation of the terms of this Agreement and fails to cure the violation as set forth herein. Perceptyx will promptly notify Customer of the suspension.

4. Customer Obligations

4.1. SaaS Service Access. Use of the SaaS Service is limited to the number of individuals stated in the Order Form. Customer may provide access to the SaaS Service to Users and will ensure the confidentiality of all access credentials. Access credentials for the SaaS Service may not be used by more than one individual but may be transferred from one individual to another if the original User is no longer permitted to use the SaaS Service. Customer agrees to promptly notify Perceptyx of any unauthorized use of any access credentials or any other breach of security.

4.2. Customer Data. Customer is responsible for the Customer Data entered into the SaaS Service. Customer Data will not violate any individual's rights, or contain any information regarding an individual's financial or economic identity, sexual orientation, religious beliefs, medical or physical identity, including any information comprised of either "Protected Health Information" subject to and defined by the Health Insurance Portability and Accountability Act, Social Security number, driver's license number or state-issued identification card number, financial account number, or credit or debit card number, with or without any required security code, access code, personal identification number or password, that would permit access to an individual's financial account. Customer will obtain appropriate authorizations to share Customer employee contact information with Perceptyx prior to including it in Customer Data. Customer grants to Perceptyx (including Perceptyx's Affiliates and subcontractors) a nonexclusive, royalty-free right to process Customer Data solely to provide and support the Perceptyx Services.

4.3. Personal Data. Customer will collect and maintain all personal data contained in the Customer Data in compliance with applicable data privacy and protection laws.

4.4. Security. Customer will maintain reasonable security standards for its use of the SaaS Service.

4.5. Customer Employees. Customer is responsible for all representations it makes to its employees with respect to the Perceptyx Services.

5. Confidential Information

5.1. Protection of Confidential Information. The receiving Party will protect all Confidential Information of the disclosing Party as strictly confidential to the same extent it protects its own Confidential Information, and not less than a reasonable standard of care. The receiving Party will not disclose any Confidential Information of the disclosing Party to any person other than its personnel or representatives whose access is necessary to enable it to exercise its rights or perform its obligations under the Agreement and who are under obligations of confidentiality substantially similar to those in this section. The obligations set forth in this section will survive expiration or termination of this Agreement and continue thereafter for three (3) years following expiration or termination, except for any Confidential Information which is a trade secret, for which the confidentiality obligations will continue until such Confidential Information is no longer a trade secret. If any judicial, legislative, or administrative body requests or threatens to compel disclosure of the disclosing Party's Confidential Information, the receiving Party will promptly notify the disclosing Party and reasonably cooperate with the disclosing Party to prevent disclosure.



5.2. Aggregated Statistics. Notwithstanding anything else in the Agreement or otherwise, Perceptyx may monitor Customer's use of the Perceptyx Services and gather Aggregated Statistics. Perceptyx may use Aggregated Statistics for the following purposes:

- (a) product improvement and development of new Perceptyx products and services,
- (b) internal demand planning,
- (c) improving resource allocation and support,
- (d) training and developing machine learning algorithms,
- (e) verification of security and data integrity, and
- (f) identification of industry trends and developments, creation of indices and anonymous benchmarking studies.

6. Warranties

6.1. Compliance with Law. Each Party warrants that (i) it is in compliance with and will continue to be in compliance with all laws and regulations applicable to it in connection with:

- (a) in the case of Perceptyx, the operation of Perceptyx's business as it relates to the SaaS Service, and
- (b) in the case of Customer, the Customer Data and Customer's use of the SaaS Service.

6.2. Good Industry Practices. Perceptyx warrants that it will provide (i) the SaaS Service in substantial conformance with the Documentation; and (ii) the Professional Services and Support Services with the degree of skill and care reasonably expected from a global supplier of services substantially similar to the nature and complexity of such services.

6.3. Remedy. Customer's exclusive remedy and Perceptyx's entire liability for any breach of this warranty will be to re-perform the deficient Perceptyx Services. If Perceptyx fails to re-perform or if re-performance is not commercially feasible in Perceptyx's reasonable opinion, either Party may terminate the Agreement and Perceptyx will return to Customer a pro-rata portion of any pre-paid fees for any unused portion of the Perceptyx Services.

6.4. Warranty Exclusions. The foregoing warranties will not apply if: (i) the SaaS Service is not used in accordance with the Agreement or Documentation, (ii) any non-conformity is caused by Customer, or by any product or service not provided by Perceptyx, or (iii) the particular Perceptyx Service was provided for no fee.

6.5. Disclaimer. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS SECTION, PERCEPTYX MAKES NO WARRANTIES, EITHER EXPRESS OR IMPLIED, AND HEREBY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES REGARDING MERCHANTABILITY, NONINFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, RESULTS TO BE DERIVED FROM THE USE OF OR INTEGRATION WITH ANY PRODUCTS OR SERVICES PROVIDED UNDER THE AGREEMENT, OR THAT THE OPERATION OF ANY PRODUCTS OR SERVICES WILL BE SECURE, UNINTERRUPTED OR ERROR FREE. CUSTOMER AGREES THAT IT IS NOT RELYING ON DELIVERY OF FUTURE FUNCTIONALITY, PUBLIC COMMENTS OR ADVERTISING OF PERCEPTYX OR PRODUCT ROADMAPS IN OBTAINING SUBSCRIPTIONS FOR ANY SAAS SERVICE.

7. Indemnification

7.1. Perceptyx Indemnification. Subject to sections 7.2 and 7.4, Perceptyx will indemnify and defend at its own expense any action against Customer and its Affiliates against any claims brought by a third party alleging that the SaaS Service infringes or misappropriates a patent claim, copyright or trade



secret right. Perceptyx will indemnify Customer for any damages finally awarded against Customer and will pay the amount of any settlement Perceptyx enters into with respect to these claims.

7.2. Options. If a claim is made or is likely to be made, Perceptyx may, at its option and expense, either: (i) procure for Customer the right to continue to access and use the SaaS Service; (ii) replace or modify the SaaS Service so that it becomes non-infringing while preserving equivalent functionality; or (iii) if neither option (i) or (ii) is available on reasonable terms, terminate Customer's subscription for the SaaS Service concerned, and refund to Customer the unearned portion of any prepaid subscription license fees.

7.3. Exclusions. Perceptyx has no indemnification obligations for any claim based upon: (i) Customer's breach of its obligations under this Agreement (ii) any combination or use of any SaaS Service with products, service, or data not supplied or approved in writing by Perceptyx; (iii) any modification of the SaaS Service made pursuant to Customer specifications or any other modification made by any entity other than Perceptyx or its Affiliates.

7.4. Customer Indemnification. Customer will defend Perceptyx and its Affiliates and subcontractors against third party claims related to Customer Data. Customer will indemnify Perceptyx for any damages finally awarded against Perceptyx and its Affiliates and subcontractors and will pay the amount of any settlement Customer enters into with respect to these claims.

7.5. Procedure. The Party against whom a third party claim is brought will notify the other Party promptly in writing, reasonably cooperate in defense or settlement negotiations at the indemnifying Party's expense, and give sole control of the defense and any related settlement negotiations (provided that the indemnifying Party will not enter into any settlement that imposes any financial or specific performance obligation on, or admission of liability by, the Party against whom the claim is brought). The Party against whom the claim is brought may, at its own expense, engage separate counsel reasonably acceptable to the indemnifying Party to participate in the defense of the third party claim.

7.6. Exclusive Remedy. THE FOREGOING STATES THE SOLE, EXCLUSIVE, AND ENTIRE LIABILITY OF THE PARTIES, THEIR AFFILIATES AND SUBCONTRACTORS TO THE OTHER PARTY, AND IS THE OTHER PARTY'S SOLE REMEDY, WITH RESPECT TO COVERED THIRD PARTY CLAIMS AND TO THE INFRINGEMENT OR MISAPPROPRIATION OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS.

8. Limitation of Liability

8.1. Exclusion of Damages. IN NO EVENT WILL EITHER PARTY (INCLUDING ITS AFFILIATES) BE LIABLE UNDER THIS AGREEMENT FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, CONSEQUENTIAL, OR PUNITIVE DAMAGES OR FOR ANY LOST PROFITS, OR LOSS OF GOODWILL, DATA, OR INCOME, EVEN IF THE RESPONSIBLE PARTY HAD BEEN ADVISED OF THE POSSIBILITY OF THOSE TYPES OF DAMAGES OR EVEN IF THOSE TYPES OF DAMAGES WERE REASONABLY FORESEEABLE.

8.2. Unlimited Liability. Neither Party will exclude or limit its liability for damages resulting from:

- (a) the Party's indemnification obligations under this Agreement,
- (b) unauthorized use or disclosure of Confidential Information,
- (c) death or bodily injury arising from either party's gross negligence or willful misconduct, or
- (d) any failure by Customer to pay any fees due under the Agreement.



8.3. Limit on Liability. SUBJECT TO SECTIONS 8.1 AND 8.2, THE TOTAL AGGREGATE LIABILITY OF EITHER PARTY (INCLUDING ITS AFFILIATES) FOR ALL CLAIMS ARISING UNDER OR RELATED TO THIS AGREEMENT ARISING IN ANY TWELVE (12) MONTH PERIOD WILL NOT EXCEED THE ANNUAL SUBSCRIPTION FEES PAID FOR THE APPLICABLE SAAS SERVICE DIRECTLY CAUSING THE DAMAGE FOR THAT TWELVE MONTH PERIOD. ANY “TWELVE MONTH PERIOD” COMMENCES ON THE START DATE OF THE SUBSCRIPTION TERM OR ANY OF ITS YEARLY ANNIVERSARIES.

8.4. Risk Allocation. The Agreement allocates the risks between the Parties. The fees for the Perceptyx Services reflect this allocation of risk and limitations of liability.

9. Payment Terms

9.1. Invoices and Payments. All fees and payment terms (other than expenses) will be set forth in the applicable Order Form.

10. Term and Termination

10.1. Term. The term of the Agreement will commence upon the date indicated in the Order Form and continue until the expiration or termination of all term(s) set forth in the Order Form(s), unless earlier terminated as provided herein.

10.2. Termination. A Party may terminate the Agreement and/or any Order Form upon written notice to the other Party:

- (a) in the event the other Party commits a material breach of any provision of the Agreement and does not remedy such breach within thirty (30) days after receipt of written notice;
- (b) immediately if the other Party files for bankruptcy, becomes insolvent, or makes an assignment for the benefit of creditors, or otherwise materially breaches its confidentiality obligations under this Agreement;

10.3. Effect of Termination or Expiration. Upon termination or expiration of the Agreement or any Order Form:

- (a) Customer’s right to use the Perceptyx Services will terminate immediately; and
- (b) Each Party will return or destroy the other Party’s Confidential Information and Intellectual Property in its possession.
- (c) Upon termination for cause by Customer, Perceptyx will refund Customer any prepaid fees for the remainder of the applicable term after the effective termination date. Upon any termination for cause by Perceptyx, Customer will pay any unpaid fees covering the remainder of the applicable term of all Order Forms after the effective date of termination. In no event will any termination relieve Customer of the obligation to pay any fees payable to Perceptyx for the period prior to the effective date of termination.

11. Ownership

11.1. Perceptyx Ownership. Perceptyx, Perceptyx’s Affiliates or licensors own all Intellectual Property Rights in and related to the Perceptyx Services, design contributions, related knowledge or processes, and any derivative works of them. All rights not expressly granted to Customer are reserved to Perceptyx and its licensors. Subject to Perceptyx's obligations with respect to Customer's Confidential Information, Perceptyx and its Affiliates are free to use any ideas, concepts, techniques, and know-how developed pursuant to this Agreement for themselves and for other customers. Customer hereby assigns and agrees to assign to Perceptyx all right, title and interest in and to such Perceptyx Services, including without



limitation all the Intellectual Property Rights therein, without the necessity of any further consideration. Customer covenants, on behalf of itself and its successors and assigns, not to assert against Perceptyx and its Affiliates or licensors, any rights, or any claims of any rights, in any Perceptyx Services.

11.2. Customer Ownership. Customer retains all rights in and related to its own Intellectual Property existing prior to this Agreement, any Intellectual Property it creates unrelated to this Agreement, and to the Customer Data. Perceptyx may use Customer-provided trademarks solely to provide and support the SaaS Service.

12. Miscellaneous

12.1. Independent Contractors. The Parties are independent contractors. This Agreement does not create any partnership, joint venture, agency, or any other form of legal association that would impose liability upon one Party for the act or failure to act of the other Party.

12.2. Press Releases; Publicity. Neither Party will use the name of the other Party for marketing or publicity purposes without the prior written consent of the other Party.

12.3. Non-Solicitation. During the term of this Agreement and for a period of twelve (12) months following the termination or expiration thereof, the Parties agree that they will not, without the prior written consent of the other Party, directly solicit for employment any of the other Party's personnel who have been involved in the direct provision of SaaS Service under the applicable Order Form. The foregoing will not preclude or limit either Party's ability to conduct a general, good faith, solicitation for employment on a national or regional basis that does not individually target such personnel, or to hire such personnel who apply for a position as a result of a general solicitation.

12.4. No Waiver. No delay or omission by either Party in exercising any right under this Agreement will be construed as a waiver of that right. Even if either Party waives a breach or default under this Agreement, that Party is not deemed to have waived any later or similar breach or default. No waiver will be effective unless in writing and signed by the Party waiving the right.

12.5. Compliance with Laws. Each Party will comply with all applicable federal, state, local and foreign laws, regulations and rules in the performance of its obligations under this Agreement, including but not limited to laws and regulations relating to privacy and export control. Neither Party will use the Perceptyx Services for any unlawful purpose.

12.6. Governing Law. This Agreement, and any issues arising under or in any way relating to this Agreement, will be governed by and construed in accordance with the laws of the State of New York, USA, without regard to conflicts of law principles.

12.7. Notices. Any notice required to be given in writing under this Agreement will be sent to Perceptyx at legal@perceptyx.com and to Customer at the email address specified in the Order Form.

12.8. Assignment; Delegation. Neither Party has the right, without the prior written consent of the other Party, to assign or transfer this Agreement except in the case of merger, reorganization, change of control, consolidation, or sale of all or substantially all the Party's assets.

12.9. Force Majeure. Notwithstanding anything to the contrary in this Agreement, neither Party will be deemed to be in default of any provision of this Agreement for any interruption of performance due to any act of God, terrorism, war, insurrection, riot, or other labor or civil disturbance, interruption of power service, interruption of communications services, problems with the Internet, epidemic, act of any other



person not under the control or direction of either Party, or other similar cause beyond such Party's reasonable control. In the event of a force majeure event lasting thirty (30) or more days, then either Party may thereafter terminate this Agreement, in which event Customer will remain liable for SaaS Service received through the effective date of termination and be provided a refund by Perceptyx of the prepaid, unused fees paid for the terminated SaaS Service for the period following the effective date of termination with no further liability by Customer.

12.10. No Third-Party Beneficiaries. Nothing in this Agreement is to be deemed to create any right or benefit in any person not a party to the Agreement, including under the Contracts (Rights of Third Parties) Act 1999.

12.11. Insurance. Each Party will maintain insurance in amounts commensurate with their respective industries from established and reputable insurers.

12.12. Section Headings. The section headings in this Agreement are for reference only, and do not form part of this Agreement.

12.13. Construction; Severability. This Agreement is not to be more strongly construed against either Party, regardless of who is more responsible for its preparation. If any provision of this Agreement is held to be unenforceable, unlawful, or invalid in any respect, then that provision will not invalidate any of the remaining provisions of this Agreement.

12.14. Entire Agreement; Order of Precedence. This Agreement represents the complete agreement of the Parties and supersedes all prior or contemporaneous agreements, proposals, understandings, representations, conditions, and communications (oral or written), as well as the terms of all existing or future purchase orders and acknowledgments unless signed by the Parties' authorized representatives. Any other terms, conditions, supplements, modifications, or amendments to this Agreement will not be binding upon either Party unless expressly set forth in a writing signed by authorized representatives of each Party.

12.15. Data Processing Agreement. If Perceptyx is processing personal data subject to data processing regulations on behalf of Customer, the Data Processing Agreement located at <https://go.perceptyx.com/dataprocessing> will govern the processing of such personal data.

12.16. Survival. The following provisions of this Agreement will survive expiration or termination of this Agreement: section 1 (Definitions), section 3.2 (Restrictions), section 3.3 (Reservation of Rights), section 5 (Protection of Confidential Information; Security), section 6.5 (Disclaimer), section 8 (Limitation of Liability), section 9 (Payment Terms), section 10.3 (Effect of Termination or Expiration), section 11 (Ownership), and section 12.17 (Survival).

