



SOFTWARE AS A SERVICE (“SAAS”) TERMS OF SERVICE FOR END-USERS

(the “End User Agreement”)

You (“Customer,” “You,” “Your” or related terms) are acquiring a subscription to a Service (as defined below) of Perspectium from an unrelated third party authorized to sell such subscriptions (“Managed Service Provider” or “MSP”) under a separate agreement with Perspectium (“MSP Agreement”). In addition to any terms and conditions related to Your use of the Service pursuant to any agreement by and between You and the MSP, this End User Agreement contains the terms and conditions that govern Your access to and use of the Service. Perspectium is an express beneficiary of this End User Agreement, and in acquiring a subscription to the Service, You expressly acknowledge and agree that Perspectium shall have the right to enforce this End User Agreement against You. This End User Agreement constitutes the entire agreement and supersedes any and all prior agreements between You and Perspectium with regard to Your subscription to the Service or Your access to or use thereof under this End User Agreement. MSP is also an express beneficiary of this End User Agreement and will also have full rights to enforce this End User Agreement against You. By accepting this End User Agreement, either by accessing or using a Service, or authorizing or permitting any Agent or End-User to access or use a Service, You agree to be bound by this End User Agreement. If You are entering into this End User Agreement on behalf of a company, organization or another legal entity (an “Entity”), You are agreeing to this End User Agreement for that Entity and representing that You have the authority to bind such Entity and its Affiliates to this End User Agreement. If You do not have such authority, or if You do not agree with this End User Agreement, You must not accept this End User Agreement and may not use any of the Services. PLEASE READ THE END USER AGREEMENT CAREFULLY. BY CLICKING ON "I ACCEPT", YOU WILL INDICATE YOUR AGREEMENT TO ITS TERMS EFFECTIVE AS OF THE DATE OF ACCEPTANCE.

1. Definitions.

1.1. "Authorized Users." The number of identifiable unique persons consisting of your personnel and outside consultants who are authorized to access and use the Services.

1.2. "Affiliate." With respect to you, any parent or subsidiary corporation, and any corporation or other business entity controlling, controlled by or under common control with you, which agrees to be bound by all your obligations hereunder.

1.3. "Customer Data." Customer’s information or other data processed, or transmitted by, in or through the Services, including without limitation, personal information relating to the Customer’s personnel, customers, and prospective customers such that the identity of such persons is apparent or can reasonably be determined from such personal information.

1.4. “Instances” The number of identifiable instances or applications identified for use of the Services as stated in the applicable order form and not exceeding the maximum number of instances or applications paid for.

1.5. "Proprietary Rights." Any and all rights, whether registered or unregistered, in and with respect to patents, copyrights, confidential information, know-how, trade secrets, moral rights, contract or licensing rights, confidential and proprietary information protected under contract or otherwise under law, trade



names, domain names, trade dress, logos, animated characters, trademarks, service marks, and other similar rights or interests in intellectual or industrial property.

1.6. "Services." means the Perspectium products and services that are ordered by the MSP on Your behalf via an order form pursuant to the MSP Agreement, and made available online by Perspectium, via the applicable subscriber login link and other web pages designated by Perspectium, including, individually and collectively, the applicable Perspectium technology and Software necessary to deploy and serve the Services, updates, and any documentation, that are provided under this End User Agreement. "Services" exclude (i) Third Party Services as that term is defined in this End User Agreement; and (ii) any services that are not provided by Perspectium or otherwise, under this End User Agreement.

1.7. "Service Provider" Perspectium and the MSP will be referred to collectively as the Service Provider, and both will have full rights to enforce this End User Agreement.

1.8. "Site." Perspectium's www.perspectium.com website including any Services offered through the perspectium.com domain name.

1.9. "Software" means software products that are licensed to you under this End User Agreement in connection with the Services, including, but not limited to, any related components provided with the Software, application programming interfaces, and any updates and releases thereto.

1.10. "Third Party Services" means third party products, applications, services, software, products, networks, systems, directories, websites, databases and information which i) may be provided by the MSP; or ii) other products or services which You may connect to or enable.

2. Agreement. This End User Agreement consists of the End User Agreement and the respective Privacy Policies of the Service Provider. These can be viewed at their websites. Perspectium's Privacy Policy can be viewed at www.perspectium.com.

3. Modification of the Agreement. Perspectium reserves the right to modify this End User Agreement at any time by posting an amended End User Agreement that is always accessible through links placed on one of the Services or login pages and/or by giving you prior notice of a modification. You should check this End User Agreement periodically for modifications by scrolling to the bottom of this page for a listing of material modifications and their effective dates. **IF ANY MODIFICATION IS UNACCEPTABLE TO YOU, YOUR ONLY RECOURSE IS TO TERMINATE THIS END USER AGREEMENT. YOUR CONTINUED USE OF THIS SITE AND THE PERSPECTIUM SOLUTIONS OR PRODUCTS FOLLOWING OUR POSTING OF AN AMENDED AGREEMENT OR PROVIDING YOU NOTICE OF A MODIFICATION WILL CONSTITUTE BINDING ACCEPTANCE.**

4. Eligibility. Services are not available to minors under the age of 18 years of age and any user that has been suspended or removed from the system.

5. Services. Services consist of the applicable subscribed to Services provided by Perspectium and/or its website. Perspectium reserves the right to update and modify the Services from time to time.

6. Use and Restrictions.



6.1. Subject to the terms and conditions of this End User Agreement, you may access and use the Services only through the login protocols and direct access URLs provided to you, for your own internal purposes and for the number of instances, applications and/or records specified in any order form. All rights not expressly granted in this End User Agreement are reserved by Perspectium and its licensors. Perspectium products subscribed to herein are subject to usage restrictions which are based on the number of Instances and/or records.

6.2. You will be granted authorized login protocols for the Services, and you agree not to use the Services in excess of any usage limits. You agree not to access (or attempt to access) the Services by any means other than through the login protocols and direct URL access we provide. You agree not to access (or attempt to access) the Services through any automated means (including use of scripts or web crawlers), and you agree to comply with the instructions set out in any robots.txt file present on the Services.

6.3. You are not authorized to (i) resell, sublicense, transfer, assign, or distribute the Services or content; (ii) modify or make derivative works based upon the Services or content; (iii) "frame" or "mirror" the Services or content on any other server or Internet- enabled device, or (iv) reverse engineer, decompile the Services or their enabling software for any purpose.

6.4. You are not authorized to use our Services or servers for the propagation, distribution, housing, processing, storing, or otherwise handling in any way lewd, obscene, or pornographic material, or any other material which we deem to be objectionable. The designation of any such materials is entirely at our sole discretion.

7. Inquiries Regarding Services and Support. You agree to make all inquiries regarding the Services and any requests for technical support directly to the MSP. Perspectium is not obligated to provide support in any form, technical or otherwise to You. To the extent Perspectium provides any support it may do so at its sole discretion.

8. Ownership. The Software and technology used to generate and provide the Services are protected by law, including, but not limited to, United States copyright law and international treaties. Ownership of the Proprietary Rights embodied in the Site, Services, and Perspectium Software shall remain exclusively vested in and be the sole and exclusive property of Perspectium and its licensors. Except for the limited rights granted herein, all other rights are reserved. In addition, Customer hereby transfers and assigns to Perspectium any rights Customer may have to any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by Customer personnel relating to the Service. The www.perspectium.com domain name, product names and logos associated with the Services are trademarks of Perspectium or third parties, and no right or license is granted to use them.

9. Your Account-Related Responsibilities. You are responsible for maintaining the confidentiality of your login protocols, direct access URLs, and any additional information that we may provide regarding accessing the Services. If you knowingly share your login protocols or access URLs with another person who is not authorized to use the Services, this End User Agreement is subject to termination for cause. You agree to immediately notify us of any unauthorized use of your login protocols or any other breach of security.



10. Mutual Exchange of Confidential Information. The parties anticipate that each may disclose confidential information to the other. Accordingly, the parties desire to establish in this Section terms governing the use and protection of certain information one party ("Owner") may disclose to the other party ("Recipient").

10.1. Definition of Confidential Information. For purposes hereof, "Confidential Information" means (i) the terms and conditions hereof, (ii) non-public aspects of Perspectium's Site and the operation thereof, Perspectium, and the Services and additional services provided by Perspectium, and Perspectium's business and technical information, and data, including without limitation, any pricing, marketing methodology, and business processes; and (iii) Customer Data, and non-public aspects of Customer's technology, computer programs, and business and technical information, and data. In addition, Confidential Information includes information which, although not related to the Services or this End User Agreement, is nevertheless disclosed hereunder, and which, in any case, is disclosed by an Owner or its affiliate to Recipient in document or other tangible form bearing an appropriate legend indicating its confidential or proprietary nature, or which, if initially disclosed orally or visually is identified as confidential at the time of disclosure and a written summary hereof, also marked with such a legend, is provided to Recipient within fifteen (15) days of the initial disclosure.

10.2. Restrictions on Use and Disclosure. Recipient may use Confidential Information of Owner only for the purposes of this End User Agreement and shall protect such Confidential Information from disclosure to others, using the same degree of care used to protect its own proprietary information of like importance, but in any case, using no less than a reasonable degree of care. Recipient may disclose Confidential Information received hereunder only as reasonably required to perform its obligations under this End User Agreement and only to its employees who have a need to know for such purposes and who are bound by signed, written agreements to protect the received Confidential Information from unauthorized use and disclosure.

10.3. Exclusions. The restrictions of this End User Agreement on use and disclosure of Confidential Information shall not apply to information that: (i) is in the possession or control of Recipient at the time of its disclosure hereunder; (ii) is, or becomes publicly known, through no wrongful act of Recipient; (iii) is received by Recipient from a third party free to disclose it without obligation to Owner, (iv) is independently developed by a party as evidenced by its written and dated records and without any breach of this End User Agreement; or (v) is the subject of a written permission to disclose provided by Owner. The Recipient may disclose Confidential Information of Owner pursuant to the requirements of a governmental agency or by operation of law, provided that such Recipient gives Owner written notice thereof as soon as practicable and reasonably cooperates with Owner to contest such disclosure.

11. Third Party Services. If You decide to enable, access or use services provided by other parties be advised that Your access and use of such Third Party Services is governed solely by the terms and conditions of such Third Party Services, and We do not endorse, are not responsible or liable for, and make no representations as to any aspect of such Third Party Services, including, without limitation, their content or the manner in which they handle, protect, manage or process data or any interaction between You and the provider of such Third Party Services. You irrevocably waive any claim against Perspectium with respect to such Third-Party Services. We are not liable for any damage or loss caused or alleged to be caused by or in connection with Your enablement, access or use of any such Third-Party Services, or Your reliance on the privacy practices, data security processes or other policies of such Third-Party Services.

11.1 Disclaimer of Actions of Third Parties, Internet Services. Perspectium does not and cannot control the flow of data to or from Perspectium's technology and other portions of the Internet. Such flow of data



depends on the performance of internet services provided or controlled by third parties. At times, actions or inactions of such third parties can impair or disrupt customer's connections to the Internet (or portions thereof). Although Perspectium will use commercially reasonable efforts to take all actions it deems appropriate to remedy and avoid such events, Perspectium cannot guarantee that such events will not occur. Perspectium DISCLAIMS ANY AND ALL LIABILITY RESULTING FROM OR RELATED TO THE PERFORMANCE OR NONPERFORMANCE OF INTERNET SERVICES PROVIDED OR CONTROLLED BY THIRD PARTIES.

12. Onward Transfer of Personal Information outside Your Country of Residence. Unless otherwise stated, any personal information which we may collect on the Services will usually be stored and processed in our servers located in the United States of America. If you reside outside of the United States, you consent to the transfer of personal information outside your country of residence to the United States of America. To the extent Customer Data constitutes Personal Data, You and Perspectium hereby agree that You shall be deemed to be the data controller and Perspectium shall be deemed to be the data processor as those terms are understood under the applicable Data Protection Law's of the European Union. In providing the Services, Perspectium may engage authorized service providers to provide hosting services in connection with Customer Data, including and without limitation, any associated Personal Data pursuant to this End User Agreement within the EEA, or the United States. Under no circumstances will Perspectium be deemed a data controller with respect to Customer Data under applicable Data Protection Law or any relevant law or regulation of any Member State of the European Union as defined in applicable Data Protection Law.

13. Export Control. We provide Services and use software and technology that may be subject to United States export controls administered by the U.S. Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, and other U.S. agencies and the export control regulations of Switzerland and the European Union. You acknowledge and agree that the Services shall not be used in, and none of the underlying information, software, or technology may be transferred or otherwise exported or re-exported to, countries to which the United States, Switzerland and/or the European Union maintains an embargo (collectively, "Embargoed Countries"), or to or by a national or resident thereof, or any person or entity on the U.S. Department of Treasury's List of Specially Designated Nationals or the U.S. Department of Commerce's Table of Denial Orders (collectively, "Designated Nationals"). The lists of Embargoed Countries and Designated Nationals are subject to change without notice. By using the Services, you represent and warrant that you are not located in, under the control of, or a national or resident of an Embargoed Country or Designated National. You agree to comply strictly with all U.S., Swiss and European Union export laws and assume sole responsibility for obtaining licenses to export or re-export as may be required.

14. Registration Data. Registration is required for you to establish an account for the Services. You agree (i) to provide certain current, complete, and accurate information about you as prompted to do so by our online registration form ("Registration Data"), and (ii) to maintain and update such Registration Data as required to keep such information current, complete and accurate. You warrant that your Registration Data is and will continue to be accurate and current, and that you are authorized to provide such Registration Data. You authorize us to verify your Registration Data at any time. If any Registration Data that you provide is untrue, inaccurate, not current or incomplete, we retain the right, in its sole discretion, to suspend or terminate rights to use your account. Solely to enable us to use information you supply us internally, so that we are not violating any rights you might have in that information, you grant to us a nonexclusive license to (i) convert such information into digital format such that it can be read, utilized and displayed by our computers or any other technology currently in existence or hereafter developed capable of utilizing



digital information, and (ii) combine the information with other content provided by us in each case by any method or means or in any medium whether now known or hereafter devised.

15. Monitoring. We reserve the right to monitor your access and use of the Services without further notification to you in order to verify that Your use of the Service complies with the purchased Services and the terms of this End User Agreement. Should We discover that Your use of the Service is not in compliance with the purchased Services You will be liable for all additional subscription fees.

16. Security. You shall be solely responsible for acquiring and maintaining technology and procedures for maintaining the security of your link to the Internet. You are also responsible for encryption of the Customer Data prior to its transmission via the Service. As part of the Services, the Perspectium shall implement reasonable and appropriate security procedures consistent with prevailing industry standards to protect data from unauthorized access by physical and electronic intrusion; provided, however, unless resulting from the failure of Perspectium to perform the forgoing obligations, the parties agree that Perspectium shall not, under any circumstances, be held responsible or liable for situations (i) where data or transmissions are accessed by third parties through illegal or illicit means, or (ii) where the data or transmissions are accessed through the exploitation of security gaps, weaknesses, or flaws unknown to Perspectium at the time. Perspectium will promptly report to you any unauthorized access to your data promptly upon discovery by Perspectium, and Perspectium will use diligent efforts to promptly remedy any breach of security that permitted such unauthorized access. In the event notification to persons included in your data is required, you shall be solely responsible for any and all such notifications at your expense.

17. Term; Termination.

17.1. Term. Subject to the termination rights of this End User Agreement, the initial term and any subsequent renewals of the Service are for a period of one year, unless specified otherwise.

17.2. Cancellation. Except as otherwise stated herein, either You or Perspectium may elect to cancel or terminate Your subscription to the Service when there are no active subscriptions or open orders for Services.

17.3. Termination Rights. You agree that We may terminate your account and access to the Services for cause without prior notice, upon the occurrence of any one of the following: (i) any material breach of this End User Agreement by You, or (ii) termination of the MSP Agreement; or (iii) failure to receive payment by MSP of any subscription license fee due and payable to Perspectium, or (iv) requests by law enforcement or other government agencies. Termination includes (i) removal of access to all Services, and (ii) deletion of your login protocols. Further, you agree that all terminations contained herein shall be made in our sole discretion, and that we will not be liable to you or any third-party for any termination of your account or access to Services and/or data that you lose access too. Your rights to access and use the Service, and remove, disable and discard any of Your Data Unless legally prohibited from doing so, Perspectium will use commercially reasonable efforts to contact You directly via email to notify You when taking any of the foregoing actions. Perspectium shall not be liable to You or any other third party for any such modification, suspension or discontinuation of Your rights to access and use the Service. Any suspected fraudulent, abusive, or illegal activity by You or Your agents may be referred to law enforcement authorities at Our sole discretion.



17.4 Notwithstanding the foregoing, no refunds or credits for subscription charges or other fees or payments will be provided to You if You elect to terminate Your subscription to the Service prior to the end of Your then effective subscription term or for termination pursuant to Section 17.3.

17.5 Return of Materials. Within ten (10) days of the expiration or termination of this End User Agreement, each party shall return to the other any hard copy materials provided and shall return or destroy any Confidential Information. Any materials retained on electronic systems or as a result of legal obligations or record keeping requirements shall be subject to the Confidentiality restrictions of this End User Agreement.

18. Purchase of Additional Services. You may elect to purchase rights for additional Instances, Services and/or any other Perspectium products or services from time to time. Such additional purchases or subscriptions shall be governed by the terms and conditions of a separate written agreement.

19. Subscription Fees. You shall pay periodic subscription fees for the Services as stated in the applicable order form of the Service Provider.

20. Taxes. All fees are exclusive of taxes or duties. If Service Provider is required to pay or collect any federal, state, local, value added, tax or duty on any fees charged under this End User Agreement, or any other similar taxes or duties levied by any governmental authority, excluding taxes levied on Perspectium's or MSP's net income or payroll withholding taxes, then such taxes and/or duties shall be billed to and paid by You immediately upon receipt of invoice and supporting documentation for the taxes or duties charged.

21. Technical Support, Training, and Consulting Services. During the Term hereof, the MSP shall be solely responsible for the provision of all technical or other support of any nature and shall provide technical or other support. If additional services are required by Perspectium the parties will enter into a separate written agreement.

22. Customer Representations and Warranties.

22.1. Customer represents and warrants that (i) the performance of its obligations and use of the Services (by Customer and its Authorized Users) will not violate any applicable laws, or regulations, including without limitation any and all laws and regulations regarding the transfer of personal information of residents of the European Union outside the European Union, or (ii) cause a breach of any agreements with any third parties or unreasonably interfere with the use by other Perspectium customers of Perspectium services.

22.2. Customer acknowledges that (i) Perspectium does not monitor the content of the information passing through the Services for purposes of verifying accuracy or legal compliance, and (ii) Customer will use commercially reasonable efforts to ensure that the information it and its Authorized Users transmit thereby complies with all applicable laws and regulations, whether now in existence or hereafter enacted and in force.

22.3. In the event of any breach by Customer of any of the foregoing representations or warranties, in addition to any other remedies available at law or in equity, Perspectium will have the right to suspend immediately any Services if deemed reasonably necessary by Perspectium to prevent any harm to Perspectium and its business. Perspectium will provide notice to Customer and an opportunity to cure, if

practicable, depending on the nature of the breach. Once cured, Perspectium will promptly restore the Services.

23. **Warranty Disclaimers.** EXCEPT AS MAY BE PROVIDED IN ANY SEPARATE WRITTEN AGREEMENTS SIGNED BY THE PARTIES, THE SERVICES ARE PROVIDED "AS-IS", AND NEITHER WE NOR ANY OF OUR LICENSORS MAKE ANY REPRESENTATION OR WARRANTY WITH RESPECT TO SUCH THE SERVICES. THE SERVICE PROVIDERS AND ITS LICENSORS SPECIFICALLY DISCLAIM, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, RELATING TO THE SERVICES, INCLUDING BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, COMPLETENESS, TIMELINESS, CORRECTNESS, NONINFRINGEMENT, OR FITNESS FOR ANY PARTICULAR PURPOSE. THE SERVICE PROVIDERS AND ITS LICENSORS DO NOT REPRESENT OR WARRANT THAT THE SERVICES: (A) WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE OR OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM OR DATA, (B) WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS, OR (C) WILL BE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. THESE DISCLAIMERS CONSTITUTE AN ESSENTIAL PART OF THIS AGREEMENT. IF IMPLIED WARRANTIES MAY NOT BE DISCLAIMED UNDER APPLICABLE LAW, THEN ANY IMPLIED WARRANTIES ARE LIMITED IN DURATION TO THE PERIOD REQUIRED BY APPLICABLE LAW. SOME STATES OR JURISDICTIONS DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY MAY LAST, SO THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU. FURTHER, CUSTOMER ACKNOWLEDGES AND AGREES THAT PERSPECTIUM HAS NO CONTROL OVER THE INTERNET, AND THAT PERSPECTIUM IS NOT LIABLE FOR THE DISCONTINUANCE OF OPERATION OF ANY PORTION OF THE INTERNET OR POSSIBLE REGULATION OF THE INTERNET WHICH MIGHT RESTRICT OR PROHIBIT THE OPERATION OF THE SERVICES.

24. **Intellectual Property Indemnity.** Except for third party software, including without limitation, open source software, Perspectium will indemnify, defend and hold harmless Customer and its Affiliates from and against any lawsuit, liabilities, loss, cost or expense arising out of a third- party claim made against Customer that the Perspectium technology or Services infringe on any U.S. intellectual property right of a third party; provided, however, that Perspectium is notified in writing of such claim promptly after such claim is made upon Customer. Perspectium shall have no liability or obligation if the claim arises from (i) any alteration or modification to the Perspectium technology or Services other than by Perspectium, (ii) any combination of the Perspectium technology or Services by Customer with other programs or data not furnished by Perspectium, or (iii) any use by Customer of the Perspectium technology or Services that is prohibited by this End User Agreement or otherwise outside the scope of use for which the Perspectium technology or Services are intended.

25. **Options for Infringement Claims.** If any party is enjoined from using the Perspectium technology, or if Perspectium believes that the Perspectium technology may become the subject of a claim of intellectual property infringement, Perspectium, at its option and expense, may: (i) procure the right for Customer to continue to use the Services; (ii) replace or modify the Perspectium technology so as to make it non-infringing; provided, however, that the Services continue to conform to the descriptions in the documentation; or (iii) terminate this End User Agreement, in which case Perspectium shall refund to Customer a pro-rated amount of any and all subscription fees paid in advance by Customer for those Services not provided by Perspectium. This Section and the preceding Section sets forth the entire liability of Perspectium to Customer for any infringement by the Perspectium Software or technology or Services of any intellectual property right of any third party. Notwithstanding the foregoing, this Section does not apply to third party software including without limitation open source software.



26. **LIMITATION OF LIABILITY.** IN NO EVENT SHALL THE SERVICE PROVIDER AND/OR ITS LICENSORS BE LIABLE TO ANYONE FOR ANY DIRECT, INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES OF ANY TYPE OR KIND (INCLUDING LOSS OF DATA, REVENUE, PROFITS, USE OR OTHER ECONOMIC ADVANTAGE) ARISING OUT OF, OR IN ANY WAY CONNECTED WITH THE WEB SERVICES, INCLUDING WITHOUT LIMITATION THE USE OR INABILITY TO USE THE SERVICES, OR FOR ANY CONTENT OBTAINED FROM OR THROUGH THE SERVICES, ANY INTERRUPTION, INACCURACY, ERROR OR OMISSION, REGARDLESS OF CAUSE, EVEN IF THE PARTY FROM WHICH DAMAGES ARE BEING SOUGHT OR SUCH PARTY'S LICENSORS HAVE BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

27. **Liability Cap.** Except for Perspectium's indemnity expressly provided herein and Perspectium's confidentiality obligations, in no event shall Perspectium's aggregate liability, if any, including liability arising out of contract, negligence, strict liability in tort or warranty, or otherwise, shall not exceed the total of subscription fees payable by Customer to MSP for the Services for the twelve (12) months immediately preceding the claim for such liability.

28. **Assignment.** Customer shall not assign this End User Agreement or any right or interest under this End User Agreement, nor delegate any work or obligation to be performed under this End User Agreement, without Perspectium's prior written consent. Any attempted assignment or delegation in contravention of this Section shall be void and ineffective.

29. **Force Majeure.** We shall not be liable for damages for any delay or failure of delivery arising out of causes beyond our reasonable control and without our fault or negligence, including, but not limited to, Acts of God, acts of civil or military authority, fires, riots, wars, embargoes, Internet disruptions, hacker attacks, or communications failures.

30. **Relationship of the Parties.** The parties are independent contractors. This End User Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.

31. **Notices.** All notices provided by Perspectium to You under this End User Agreement may be delivered in writing (a) by nationally recognized overnight delivery service ("Courier") or U.S. mail to the contact mailing address provided by You on any order form or your corporate office; or (b) any electronic mail to the electronic mail address provided for Your Account owner. You must give notice to Perspectium in writing by Courier or U.S. mail to 10301 Meanley Drive, #250, San Diego, California 92131 U.S.A. Attn: Legal Department. All notices shall be deemed to have been given immediately upon delivery by electronic mail, or if otherwise delivered upon receipt or, if earlier, two (2) business days after being deposited in the mail or with a Courier as permitted above.

32. **Arbitration.** Except for actions to protect intellectual property rights and to enforce an arbitrator's decision hereunder, all disputes, controversies, or claims arising out of or relating to this End User Agreement or a breach thereof shall be submitted to and finally resolved by arbitration under the rules of the American Arbitration Association ("AAA") then in effect. There shall be one arbitrator, and such arbitrator shall be chosen by mutual agreement of the parties in accordance with AAA rules. The arbitration shall be conducted by telephone or online. The controversy or claim shall be arbitrated on an individual



basis, and shall not be consolidated in any arbitration with any claim or controversy of any other party. The findings of the arbitrator shall be final and binding on the parties, and may be entered in any court of competent jurisdiction for enforcement. Should either party file an action contrary to this provision, the other party may recover attorney's fees and costs up to \$1000.00.

33. **Governing Law and Venue.** Except for any disputes subject to Section 32, this End User Agreement shall be governed by the laws of the State of California, without reference to conflict of laws principles. Subject to Section 32, any disputes under this End User Agreement shall be resolved in a court of general jurisdiction in San Diego County, California and You hereby expressly agree to submit to the exclusive personal jurisdiction of this jurisdiction for the purpose of resolving any dispute relating to this End User Agreement or access to or use of the Services by You.

34. **U.S. Government End-Users.** We provide the Services, including related software and technology, for ultimate federal government end use solely in accordance with the following: Government technical data and software rights related to the Services include only those rights customarily provided to the public as defined in this End User Agreement. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If a government agency has a need for rights not conveyed under these terms, it must negotiate with us to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum specifically conveying such rights must be included in any applicable contract or agreement. Unpublished-rights reserved under the copyright laws of the United States.

35. **Survival.** Those clauses the survival of which is necessary for the interpretation or enforcement of this End User Agreement shall continue in full force and effect in accordance with their terms notwithstanding the expiration or termination hereof, such clauses to include, without limitation, the following: Warranty Disclaimers, Limitation of Liability, Confidential Information, Security, Notices, Arbitration, Jurisdiction and Venue, Severability, Force Majeure, and Miscellaneous.

36. **Miscellaneous.** This End User Agreement constitutes the entire understanding of Perspectium with respect to the subject matter of this End User Agreement and the end user of the Services and merges all prior communications, understandings, and agreements. This End User Agreement may be modified only by a written agreement signed by the parties. The failure of either party to enforce at any time any of the provisions hereof shall not be a waiver of such provision, or any other provision, or of the right of such party thereafter to enforce any provision hereof. The application the United Nations Convention of Contracts for the International Sale of Goods is expressly excluded. This End User Agreement is written in English, and English is its controlling language.