

PastPerfect Web Edition

Terms of Service

Last Updated: December 17, 2019

These Terms of Service (these “**Terms**”) set forth the terms and conditions upon which PastPerfect Software, Inc. (“**PastPerfect**”) will provide Subscriber (defined below) access to PastPerfect Web Edition, PastPerfect’s cloud-based software-as-a-service offering a database-driven solution for museum collections and contacts management, and related services provided by PastPerfect in connection therewith (collectively, the “**Service**”). These Terms, together with the Order, the Acceptable Use Policy, and the Privacy Policy (each as defined below) form a binding agreement between PastPerfect and Subscriber (collectively, the “**Agreement**”). PastPerfect and Subscriber may be referred to herein, individually, as a “**Party**” and, together, as the “**Parties**.”

PLEASE READ THESE TERMS CAREFULLY BEFORE ACCESSING THE PLATFORM (DEFINED BELOW) OR USING THE SERVICE. BY CLICKING “ACCEPT”, SUBSCRIBER ACKNOWLEDGES THAT SUBSCRIBER HAS READ, UNDERSTANDS, AND AGREES TO BE BOUND BY THESE TERMS. IF SUBSCRIBER DOES NOT AGREE TO ALL OF THESE TERMS, SUBSCRIBER MAY NOT ACCESS THE PLATFORM OR USE THE SERVICE.

THE INDIVIDUAL ACCEPTING THESE TERMS (THE “**AUTHORIZED REPRESENTATIVE**”) HEREBY REPRESENTS THAT SUCH ACCEPTANCE IS MADE ON BEHALF OF SUBSCRIBER AS AN AGENT, EMPLOYEE OR REPRESENTATIVE OF SUBSCRIBER, AND SUCH INDIVIDUAL HEREBY REPRESENTS AND WARRANTS THAT HE/SHE HAS THE AUTHORITY TO ACT ON SUBSCRIBER’S BEHALF AND BIND SUBSCRIBER TO THESE TERMS.

PastPerfect may make reasonable modifications to these Terms from time to time (each a “**Revised Version**”) in accordance with Section 2(a) (Modifications).

1. Definitions.

- (a) “**Acceptable Use Policy**” has the meaning set forth in Section 3(c).
- (b) “**Access Credentials**” has the meaning set forth in Section 3(a).
- (c) “**Aggregated Data**” has the meaning set forth in Section 10(e).
- (d) “**Authorized Representative**” has the meaning set forth above.
- (e) “**Authorized User**” means Subscriber’s employees, consultants, contractors, agents and representatives who are authorized by Subscriber, under the rights granted to Subscriber pursuant to these Terms, to access and use the Service via Access Credentials.
- (f) “**Confidential Information**” has the meaning set forth in Section 9(a).
- (g) “**Documentation**” means any user manuals, handbooks, guides and other end user materials relating to the Subscription and an Authorized User’s use of the Service, as provided by PastPerfect to Subscriber or any Authorized User, whether electronically or in hard copy form or available at museumsoftware.com or mypastperfect.com or.

(h) **“Fees”** has the meaning set forth in Section 7(a).

(i) **“Intellectual Property Rights”** means all forms of industrial and intellectual property rights and protections throughout the world, including any: (i) patents (including any patent applications, together with all reissuances, continuations, continuations-in-part, revisions, extensions, and reexaminations thereof); (ii) copyrights; (iii) Internet domain names, trademarks, service marks, and trade dress, together with all goodwill associated therewith; (iv) trade secrets; (v) rights in databases and designs (ornamental or otherwise); (vi) moral rights, rights of privacy, rights of publicity, and similar rights; and (vii) any other proprietary rights and protections, whether currently existing or hereafter developed or acquired arising under statutory or common law, including all applications, disclosures, and registrations with respect thereto.

(j) **“Order”** means the set of information comprising the (i) details of Subscriber’s Subscription to be purchased under these Terms, including but not limited to the Subscription level selected by Subscriber, the applicable Subscription Fees, and the Subscription Term; (ii) Subscriber’s contact information; and (iii) the name and information of Subscriber’s Authorized Representative, each as provided via telephone by a Subscriber representative to a PastPerfect representative. The Order is hereby incorporated by reference into, and is at all times subject to, these Terms.

(k) **“PastPerfect Technology”** means the Platform, the Service, the Documentation, the Aggregated Data, and any other Technology owned or controlled by PastPerfect, whether prior to or during the Subscription Term; any improvements to or derivatives thereof, whether made by or on behalf of PastPerfect or Subscriber, alone, jointly, or in conjunction with others; and any information, data, or other content derived from PastPerfect’s monitoring of Authorized Users’ access to or use of the Service, but excluding any Subscriber Data and Subscriber Results.

(l) **“Platform”** means, collectively, PastPerfect’s proprietary software applications via which Subscriber and Authorized Users may access the Service in accordance with these Terms.

(m) **“Privacy Policy”** means PastPerfect’s Privacy Policy applicable to the Service, as the same may be updated from time to time by PastPerfect in accordance with the terms thereof. The Privacy Policy is hereby incorporated by reference into these Terms.

(n) **“Service”** has the meaning set forth above.

(o) **“Subscriber”** means the entity or organization identified in the Order as the applicable customer.

(p) **“Subscriber Data”** means any information, data, and other content, in any form and of any type, that (i) is input directly to the Platform by an Authorized User on behalf of Subscriber; (ii) Subscriber has granted PastPerfect permission to collect via the Platform, whether directly or indirectly (e.g., through a Third-Party Service); or (iii) is submitted, posted, or otherwise transmitted to PastPerfect via the Service by an Authorized User on behalf of Subscriber, including, without limitation, in each of the foregoing cases, any such information describing or otherwise relating to (A) Subscriber’s museum collection, or (B) Subscriber’s members and their respective memberships; (C) Subscriber’s employees or volunteers and their respective roles and other terms of service; (D) Subscriber’s donors or pledgees and their respective donations or pledges, as applicable; and (E) name, contact information for any of the individuals listed in clauses (B) through (D).

(q) **“Subscriber Results”** has the meaning set forth in Section 10(d).

(r) **“Subscriber Systems”** has the meaning set forth in Section 4(b).

- (s) “**Subscription**” has the meaning set forth in Section 3(a).
- (t) “**Subscription Term**” has the meaning set forth in Section 14(a).
- (u) “**Support Services**” has the meaning set forth in Section 6.
- (v) “**Technology**” means, collectively, all software, technology, designs, formulae, algorithms, procedures, methods, discoveries, processes, techniques, ideas, know-how, research and development, technical data, tools, materials, specifications, processes, inventions (whether patentable or unpatentable and whether or not reduced to practice) apparatus, creations, inventions, improvements, works of authorship in any media, confidential, proprietary or non-public information, and other similar materials, and all recordings, graphs, drawings, reports, analyses and other writings, and other tangible embodiments of the foregoing in any form whether or not listed herein, and all technology related thereto.
- (w) “**Third-Party Services**” has the meaning set forth in Section 5(b).

2. **Modifications; Disclosures.**

(a) Modifications. PastPerfect may modify these Terms at any time with notice deemed to be reasonable under the circumstances, in PastPerfect’s sole discretion, by posting the revised version on the PastPerfect website and communicating it to Subscriber through the Service to the person listed as the Authorized Representative on the Order (each a “**Revised Version**”). The Revised Version will be effective as of the time it is posted, but will not apply retroactively. Subscriber’s continued use of the Service after the posting of a Revised Version constitutes Subscriber’s acceptance of such Revised Version. If Subscriber does not agree to a Revised Version, Subscriber and its Authorized Users may not access the Platform or use the Service. Any dispute that arose hereunder before the Revised Version went into effect will be governed by the applicable terms of the Agreement that were in place when such dispute arose.

(b) E-Disclosures. PastPerfect may provide Subscriber with disclosures and notices required by law and other information about Subscriber’s Subscription electronically, by pushing notifications through the Service, or by e-mailing it to Subscriber via the e-mail address listed for Subscriber in the Order. Electronic disclosures and notices have the same meaning and effect as if PastPerfect had provided Subscriber with paper copies. Such disclosures and notices are considered received by Subscriber within twenty-four (24) hours following the time e-mailed to Subscriber or pushed via the Service. If Subscriber wishes to withdraw consent to receiving electronic communications, Subscriber may contact support@museumsoftware.com.

3. **Access and Use.**

(a) Provision of Access. Subject to and conditioned on Subscriber’s timely payment of all Fees and compliance with all other terms and conditions of the Agreement, PastPerfect hereby grants Subscriber a non-exclusive, non-transferable (except in compliance with Section 15(f)) right to access and use the Service during the Subscription Term, solely for Subscriber’s internal business purposes and to authorize Authorized Users to access and use the Service for the same purposes (the “**Subscription**”). PastPerfect will provide to Subscriber the necessary passwords and network links or connections to allow Subscriber to access the Service and to set up usernames and passwords for Authorized Users (collectively, the “**Access Credentials**”).

(b) Documentation License. Subject to Subscriber’s compliance with all terms and conditions of the Agreement, PastPerfect hereby grants to Subscriber a non-exclusive, non-sublicensable (other than to Authorized Users), non-transferable (except in compliance with Section 15(f)) license to use the Documentation during the Subscription Term solely for

Subscriber's internal business purposes in connection with its use of the Service.

(c) Acceptable Use. Subscriber will at all times, and will ensure that its Authorized Users at all times, abide by the terms of Past Perfect's Acceptable Use Policy applicable to the Service (the "**Acceptable Use Policy**"), which is hereby incorporated into these Terms by reference. Upon accessing the Service for the first time, the Authorized Representative and each Authorized User will be required to review and agree to the Acceptable Use Policy.

(d) Use Restrictions. Subscriber will not use the Service for any purpose beyond the scope of the access granted to Subscriber under these Terms or in any manner that is inconsistent with the terms of the Acceptable Use Policy. Without limiting the generality of the foregoing, Subscriber shall not, and will ensure that its Authorized Users do not, directly or indirectly, at any time, (i) copy, modify, or create derivative works of the Service or Documentation, in whole or in part; (ii) rent, lease, lend, sell, license, sublicense, assign, distribute, publish, transfer, or otherwise make available the Service or Documentation, including in connection with any time-sharing, service bureau, software as a service, cloud, or other technology or service; (iii) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to any software component of the Service, in whole or in part; (iv) bypass or breach any security device or protection used by the Service or the Platform or access or use the Service or the Platform other than through the use of then-valid Access Credentials; (v) remove any proprietary notices from the Service or Documentation; (vi) input, upload, transmit, or otherwise provide to or through the Service or PastPerfect Systems any Subscriber Data or other information or materials that (A) contains, transmits, or activates any harmful code, or (B) is unlawful, abusive, malicious, harassing, tortious, defamatory, vulgar, obscene, libelous, invasive of another's privacy right or right of publicity, or racially or ethnically objectionable, or (C) infringes upon or violate the Intellectual Property Rights of any third party; (vii) use the Service or Documentation in any manner or for any purpose that infringes, misappropriates, or otherwise violates any Intellectual Property Right or other right of any third party or that violates any applicable law; or (viii) access or use the Service, Platform, or Documentation for purposes of competitive analysis of the Service, Platform, or Documentation, the development, provision, or use of a competing service or product, or any other purpose that is to PastPerfect's detriment or commercial disadvantage.

(e) Reservation of Rights. Except for the limited rights and licenses expressly granted under these Terms, nothing herein is intended or will be construed to grant, by implication, waiver, estoppel, or otherwise, to Subscriber or any third-party any Intellectual Property Rights or other right, title, or interest in or to the PastPerfect Technology, and PastPerfect reserves all other rights.

(f) Suspension. Notwithstanding anything to the contrary in the Agreement, PastPerfect may temporarily suspend Subscriber's and any Authorized User's access to any portion or all of the Service (i) if PastPerfect reasonably determines that (A) there is a threat or attack on the Platform or any other PastPerfect Technology; (B) Subscriber's or any Authorized User's use of the Service disrupts or poses a security risk to the Platform or any other PastPerfect Technology or to the rights or property of any other customer or vendor of PastPerfect; (C) Subscriber, or any Authorized User, is using the Service in violation of the Acceptable Use Policy; (D) Subscriber, or any Authorized User, is using any other PastPerfect Technology for fraudulent or illegal activities; (E) subject to applicable law, Subscriber has ceased to continue its business in the ordinary course, made an assignment for the benefit of creditors or similar disposition of its assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution, or similar proceeding; or (F) PastPerfect's provision of the Service to Subscriber or any Authorized User is prohibited by applicable law; or (G) any vendor of PastPerfect has suspended or terminated PastPerfect's access to or use of any third-party services or products required to enable Subscriber to access the Service; or (ii) in accordance

with Section 14(b) (Termination) (any such suspension, a “**Service Suspension**”). PastPerfect shall use commercially reasonable efforts to provide Subscriber with written notice of any Service Suspension and to provide updates regarding any anticipated resumption of access to the Service following any Service Suspension. PastPerfect shall use commercially reasonable efforts to resume providing access to the Service as soon as reasonably possible after the event giving rise to the Service Suspension is cured. PastPerfect will have no liability for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that Subscriber or any Authorized User may incur as a result of any Service Suspension.

4. Subscriber Obligations.

(a) Use of the Service. Subscriber is responsible and liable for all uses of the Service and Documentation resulting from any user access provided by Subscriber, including but not limited to Authorized User access, whether directly or indirectly, and whether such access or use is permitted by or in violation of any term of the Agreement. Without limiting the generality of the foregoing, (i) Subscriber is responsible for all acts and omissions of its Authorized Users, by or through the Subscriber Systems or Subscriber’s Access Credentials, and (ii) any act or omission by an Authorized User that would constitute a breach of any term of the Agreement if taken by Subscriber will be deemed a breach of the Agreement by Subscriber. Subscriber shall use reasonable efforts to make all Authorized Users aware of the Agreement’s provisions as applicable to such Authorized Users’ use of the Service, and shall cause Authorized Users to comply with such provisions.

(b) Subscriber Systems; Subscriber Data. Subscriber shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Services, including, without limitation, modems, hardware, servers, software, operating systems, networking, web servers and the like (collectively, “**Subscriber Systems**”). Subscriber will retain sole control over the operation, maintenance, management, and security of, and all access to and use of, the Subscriber Systems. Subscriber is further exclusively responsible for (i) all Subscriber Data, including its use, accuracy, quality, and reliability; (ii) all information, instructions, and materials provided to PastPerfect by or on behalf of Subscriber in connection with the Service; (iii) the Subscriber Systems; and (iv) the security and use of Subscriber’s Access Credentials. PastPerfect is not liable for any loss or damage arising from Subscriber’s failure to protect its any of the foregoing.

(c) Corrective Action and Notice. If Subscriber becomes aware of any actual or threatened activity prohibited by the Acceptable Use Policy or by Section 3(d) (Use Restrictions), Subscriber shall, and shall cause its Authorized Users to, immediately (i) notify PastPerfect of such actual or threatened activity, and (ii) take all reasonable and lawful measures within their respective control that may be reasonably necessary or appropriate to stop the activity or threatened activity and to mitigate its effects.

5. Third-Party Links; Third-Party Services.

(a) Third-Party Links. Portions of the Service may contain links to websites operated by third parties. Such links are provided for Subscriber’s convenience only, and if Subscriber accesses any such linked websites Subscriber does so at its own risk. PastPerfect is not responsible for the content of any such websites, or the products and services sold on them, nor is PastPerfect responsible or liable for any loss or damage that may arise from Subscriber’s use of such websites. When Subscriber visits a linked website, Subscriber should read the terms and conditions and privacy policy that govern that particular website. Links to third-party websites do not imply PastPerfect’s endorsement of any content, advertising, products, services, or other materials on or available through such websites.

(b) Third-Party Services. The Service is designed to interface with certain services provided by third parties in order for the Service to operate as intended, in accordance with the Documentation (collectively, "**Third-Party Services**"). For example, PastPerfect uses Amazon Web Services (AWS) to provide hosted facilities and certain other specified services, and Microsoft SQL Server to provide database management services. PastPerfect reserves the right to change or add to the Third-Party Services on or in connection with which the Service operates. Subscriber acknowledges and agrees that some providers of Third-Party Services may, from time to time, (i) not allow PastPerfect access thereto, or (ii) make changes to their websites or other Third-Party Services, with or without notice to PastPerfect, that may affect the overall performance of the Service, including without limitation preventing or delaying certain functionalities of the Service. Subscriber further acknowledges and agrees that PastPerfect has no control over the performance, reliability, or availability of any Third-Party Services, and that PastPerfect will have no liability whatsoever for the Third-Party Services or any actions or inactions on the part of the providers thereof that may result in Subscriber's inability to access or use the Service as intended.

6. Support Services. Subject to the terms and conditions of the Agreement, during the Subscription Term, PastPerfect will provide Subscriber with reasonable technical and operational support services as follows (the "**Support Services**").

(a) Subscriber may request Support Services via telephone at 1-800-562-6080 or via e-mail at support@museumsoftware.com.

(b) PastPerfect's support office is open during the hours of 9:00 am through 5:30 pm Eastern time, Monday through Friday, with the exclusion of U.S. holidays.

(c) PastPerfect will use commercially reasonable efforts to respond to all support requests within one (1) business day following PastPerfect's receipt thereof.

7. Fees and Payment.

(a) Fees. As consideration for PastPerfect's provision of the Service, Subscriber shall pay PastPerfect, in U.S. Dollars, without offset or deduction, the annual fees due for the Subscription level chosen by Subscriber, as set forth in the Order (the "**Fees**").

(b) Payment of Fees Upon Renewal. By failing to provide PastPerfect with notice of non-renewal prior to the expiration of the Initial Term or any Renewal Term, as set forth in Section 14(a), Subscriber agrees to pay the Fees due for the subsequent Renewal Term. If Subscriber fails to make any payment when due, without limiting PastPerfect's other rights and remedies, (i) PastPerfect may, at its option, suspend Subscriber's and its Authorized Users' access to any portion or all of the Service or any Customer Data until such amounts are paid in full, without incurring any liability to Subscriber; (ii) PastPerfect may charge interest on the past due amount at the rate of one and one half percent (1.5%) per month, calculated daily and compounded monthly or, if lower, the highest rate permitted under applicable law; (iii) Subscriber shall reimburse PastPerfect for all reasonable costs incurred by PastPerfect in collecting any late payments or interest, including reasonable attorneys' fees, court costs, and collection agency fees; and (iv) if such failure continues for thirty (30) days or more, PastPerfect may, at its option, permanently revoke Subscriber's access to the Service and permanently delete all Customer Data therefrom, without incurring any liability to Subscriber.

(c) Taxes. All Fees and other amounts payable by Subscriber under the Agreement are exclusive of taxes and similar assessments. Subscriber is responsible for all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, or local governmental or regulatory authority on any amounts payable by Subscriber hereunder, other than any taxes imposed on PastPerfect's income.

8. Subscriber Data.

(a) Subscriber Representations. Subscriber hereby represents, warrants, and covenants to PastPerfect that Subscriber owns or otherwise has (and, prior to PastPerfect's receipt thereof, will have) the necessary rights and consents in and to all Subscriber Data, so that PastPerfect's receipt, storage, and processing of Subscriber Data in accordance with the Agreement does not and will not infringe, misappropriate, or otherwise violate any Intellectual Property Rights or other rights of any person or entity or any applicable law.

(b) Prohibited Data. Subscriber acknowledges that the Service is not designed with security and access management for processing the following categories of information: (i) any personal information that imposes specific data security obligations on PastPerfect for the processing of such data, including any "nonpublic personal information" as defined under the Gramm-Leach-Bliley Act, "protected health information" as defined under the Health and Insurance Portability and Accountability Act of 1996, and other similar information, however described, as defined under applicable law; (ii) data that is classified and/or used on the United States Munitions list, including software and technical data; (iii) articles, services, and related technical data designated as defense articles or defense services; and (iv) ITAR (International Traffic in Arms Regulations) related data (each of the foregoing, "**Prohibited Data**"). Subscriber shall not, and shall not permit any Authorized User or other person or entity to, provide any Prohibited Data to, or process any Prohibited Data through, the Service or PastPerfect Systems. Subscriber is solely responsible for reviewing all Subscriber Data and shall ensure that no Subscriber Data constitutes or contains any Prohibited Data.

(c) Data Backup. The Service does not replace the need for Subscriber to maintain regular data backups or redundant data archives. PASTPERFECT HAS NO OBLIGATION OR LIABILITY FOR ANY LOSS, ALTERATION, DESTRUCTION, DAMAGE, CORRUPTION, OR RECOVERY OF SUBSCRIBER DATA.

(d) Privacy Policy. All Subscriber Data and any other information PastPerfect collects through Subscriber's or Authorized Users' access or use of the Service is subject to the Privacy Policy. Subscriber hereby consents to all actions taken by PastPerfect with respect to such information in compliance with the Privacy Policy.

9. Confidentiality.

(a) Confidential Information. From time to time during the Subscription Term, either Party may disclose or make available to the other Party information about its business affairs, products, Technology, trade secrets, third-party confidential information, and other sensitive or proprietary information, whether orally or in written, electronic, or other form or media/in written or electronic form or media, whether or not marked, designated or otherwise identified as "confidential" (collectively, "**Confidential Information**"). Confidential Information does not include information that, at the time of disclosure is (i) in the public domain; (ii) known to the receiving Party at the time of disclosure; (iii) rightfully obtained by the receiving Party on a non-confidential basis from a third party; or (iv) independently developed by the receiving Party.

(b) Nondisclosure and Nonuse. The receiving Party shall not disclose the disclosing Party's Confidential Information to any person or entity, except to the receiving Party's employees who have a need to know such Confidential Information, and will use the Confidential Information of the other Party only as and to the extent necessary for the receiving Party to exercise its rights or perform its obligations hereunder. Each Party's obligations of non-disclosure and nonuse with regard to Confidential Information hereunder are effective as of the Effective Date and will expire five (5) years from the date first disclosed to the receiving Party; provided, however, that, with

respect to any Confidential Information that constitutes a trade secret (as determined under applicable law), such obligations of non-disclosure will survive the termination or expiration of the Agreement for as long as such Confidential Information remains subject to trade secret protection under applicable law.

(c) Compelled Disclosures. Notwithstanding anything to the contrary in Section 9(b), each Party may disclose Confidential Information to the limited extent required (i) in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the Party making the disclosure pursuant to the order shall first have given written notice to the other Party and made a reasonable effort to obtain a protective order; or (ii) to establish a Party's rights under the Agreement, including to make required court filings.

(d) Return or Destruction of Confidential Information. On the expiration or termination of the Agreement, the receiving Party shall promptly return to the disclosing Party all copies, whether in written, electronic, or other form or media, of the disclosing Party's Confidential Information, or destroy all such copies and certify in writing to the disclosing Party that such Confidential Information has been destroyed.

10. Intellectual Property.

(a) PastPerfect Technology. Subscriber acknowledges that (i) as between Subscriber and PastPerfect, PastPerfect owns and retains all right, title, and interest, including all Intellectual Property Rights, in and to the PastPerfect Technology; and (ii) with respect to Third-Party Services, the applicable third-party providers own and retain all right, title, and interest, including all Intellectual Property Rights, in and related to their respective Third-Party Services.

(b) Subscriber Data. PastPerfect acknowledges that, as between PastPerfect and Subscriber, Subscriber owns all right, title, and interest, including all Intellectual Property Rights, in and to the Subscriber Data. Subscriber hereby grants to PastPerfect (i) a non-exclusive, royalty-free, worldwide license to reproduce, distribute, and otherwise use and display the Subscriber Data and to perform all acts with respect to the Subscriber Data as may be necessary for PastPerfect to provide the Service to Subscriber, and (ii) a non-exclusive, perpetual, irrevocable, royalty-free, worldwide license to reproduce, distribute, modify, and otherwise use and display Subscriber Data as incorporated within the Aggregated Data, for PastPerfect's internal business purposes.

(c) Feedback. If Subscriber or any of its employees or contractors sends or transmits any communications or materials to PastPerfect by mail, e-mail, telephone, or otherwise, suggesting or recommending changes to the Platform, Service, or any other PastPerfect Technology, including without limitation, new features or functionality relating thereto, or any comments, questions, suggestions, or the like ("**Feedback**"), PastPerfect is free to use such Feedback irrespective of any other obligation or limitation between the Parties governing such Feedback. Subscriber hereby assigns to PastPerfect on Subscriber's behalf, and on behalf of its employees, contractors and/or agents, all right, title, and interest in, and PastPerfect is free to use, without any attribution or compensation to any party, any ideas, know-how, concepts, techniques, or other Intellectual Property Rights contained in the Feedback, for any purpose whatsoever, although PastPerfect is not required to use any Feedback.

(d) Subscriber Results. Subscriber will own all right, title and interest in and to any data that is based on or derived from the Subscriber Data and provided to Subscriber as part of the Service (collectively, the "**Subscriber Results**"). If any Subscriber Results incorporate any PastPerfect Technology, in whole or in part, PastPerfect hereby grants to Subscriber a limited,

non-exclusive, irrevocable, perpetual license to such incorporated PastPerfect Technology, to use solely to the extent necessary to enable Subscriber to use such Subscriber Results as contemplated under these Terms.

(e) PastPerfect Use of Subscriber Data and Subscriber Results; Aggregated Data. Notwithstanding anything to the contrary in the Agreement, PastPerfect will have the right, in connection with its business, and in accordance with the Privacy Policy to (i) monitor Subscriber's use of the Service and collect and compile any Subscriber Data, Subscriber Results, and other information relating to the provision, use and performance of various aspects of the Service and related systems and technologies; and (ii) use the Subscriber Data, Subscriber Results, and such other data and information to improve and enhance the Service and for other development, diagnostic and corrective purposes in connection with the Service and other offerings of PastPerfect, or for purposes of security and operations management, to create statistical analyses, whether for Subscriber or for internal purposes or another party, or research and development; and (iii) disclose such Subscriber Data, Subscriber Results, and other data and information, provided that the foregoing is in aggregate or other de-identified form (the "**Aggregated Data**"). Subscriber acknowledges that the Aggregated Data does not constitute Subscriber Data or Subscriber Results, and that, as between Subscriber and PastPerfect, PastPerfect will exclusively own and retain all right, title, and interest in and to the Aggregated Data, including but not limited to all Intellectual Property Rights therein. PastPerfect will be free to (A) make the Aggregated Data publicly available in compliance with applicable law, and (B) use the Aggregated Data to the extent and in the manner permitted under applicable law, provided that such Aggregated Data does not identify Subscriber, any Authorized User, or any other employees, representatives, or customers of Subscriber, or any of their respective Confidential Information.

11. Limited Warranty; Warranty Disclaimers.

(a) Limited Warranty. During the Subscription Term, PastPerfect will use commercially reasonable efforts, consistent with prevailing industry standards, to provide and maintain the Service in a manner that minimizes errors and interruptions thereto and to provide the Support Services in accordance with Section 6. Subscriber acknowledges that the Service may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by PastPerfect or by its third-party service providers, or because of other causes beyond PastPerfect's reasonable control. PastPerfect will use reasonable efforts to provide Subscriber with advance notice (e-mail suffices) of any scheduled disruption to the Service.

(b) Warranty Disclaimer. EXCEPT AS SET FORTH IN SECTION 11(A), THE SERVICE AND OTHER PASTPERFECT TECHNOLOGY ARE PROVIDED "AS IS" AND "AS AVAILABLE", AND PASTPERFECT HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. PASTPERFECT SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. PASTPERFECT MAKES NO WARRANTY OF ANY KIND THAT THE PASTPERFECT TECHNOLOGY, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET SUBSCRIBER'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR FREE.

(c) No Professional Advice. The information provided on or through any of the Service is for informational purposes only and should not be construed as legal, financial, accounting, or

other professional advice. Subscriber should seek independent professional advice from a person who is licensed or otherwise knowledgeable in the applicable area before acting upon any information provided on or through the Service.

12. Indemnification.

(a) PastPerfect Indemnification.

(i) PastPerfect shall defend and hold harmless Subscriber from and against any and all third-party claims, suits, actions, or proceedings (each a “**Third-Party Claim**”) alleging that the Service, or any use of the Service in accordance with these Terms, infringes or misappropriates a valid U.S. patent, copyright, or trade secret in effect as of the Effective Date, and will indemnify Subscriber for any and all losses, damages, liabilities, costs (including reasonable attorneys’ fees) (collectively, “**Losses**”) incurred by Subscriber in connection with any such Third-Party Claim, provided that Subscriber promptly notifies PastPerfect in writing of the claim, cooperates with PastPerfect, and allows PastPerfect sole authority to control the defense and settlement of such claim.

(ii) Notwithstanding Section 12(a)(i), in the event such a Third-Party Claim is made or appears possible, Subscriber agrees to permit PastPerfect, at PastPerfect’s sole discretion, to (A) modify or replace the Service, or component or part thereof, to make it non-infringing, or (B) obtain the right for Subscriber to continue use of the Service. If PastPerfect determines that neither alternative is reasonably available, PastPerfect may terminate Subscriber’s Subscription, in its entirety or with respect to the affected component or part, effective immediately on written notice to Subscriber.

(iii) This Section 12(a) will not apply to the extent that the alleged infringement arises from: (A) use of the Service in combination with data, software, hardware, equipment, or technology not provided by PastPerfect or authorized by PastPerfect in writing; (B) modifications to the Service not made by PastPerfect; (C) Subscriber Data ; or (D) Third-Party Services.

(iv) THIS SECTION 11(A) SETS FORTH SUBSCRIBER’S SOLE REMEDIES AND PASTPERFECT’S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED, OR ALLEGED CLAIMS THAT THE SERVICE INFRINGES, MISAPPROPRIATES, OR OTHERWISE VIOLATES ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

(b) Subscriber Indemnification. Subscriber shall indemnify and hold harmless PastPerfect for any Losses resulting from, and, at PastPerfect’s option, will defend PastPerfect from and against, any Third-Party Claim (i) alleging that the Subscriber Data, or any use of the Subscriber Data in accordance with these Terms, infringes or misappropriates a valid U.S. Intellectual Property Right; or (ii) based on Subscriber’s or any Authorized User’s (A) negligence or willful misconduct; (B) use of the Service in a manner not authorized by these Terms; (C) use of the Service in combination with data, software, hardware, equipment or technology not provided by PastPerfect or authorized by PastPerfect in writing; or (D) modifications to the Service not made by PastPerfect. Subscriber may not settle any Third-Party Claim against PastPerfect unless PastPerfect consents to such settlement, and PastPerfect will have the right, at its option, to defend itself against any such Third-Party Claim or to participate in the defense thereof by counsel of its own choice.

13. Limitations of Liability. IN NO EVENT WILL PASTPERFECT BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT

LIABILITY, AND OTHERWISE, FOR ANY: (A) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES; (B) INCREASED COSTS, DIMINUTION IN VALUE OR LOST BUSINESS, PRODUCTION, REVENUES, OR PROFITS; (C) LOSS OF GOODWILL OR REPUTATION; (D) USE, INABILITY TO USE, LOSS, INTERRUPTION, DELAY OR RECOVERY OF ANY DATA, OR BREACH OF DATA OR SYSTEM SECURITY; OR (E) COST OF REPLACEMENT GOODS OR SERVICES, IN EACH CASE REGARDLESS OF WHETHER PASTPERFECT WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE. IN NO EVENT WILL PASTPERFECT'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE EXCEED THE TOTAL AMOUNTS PAID TO PASTPERFECT UNDER THIS AGREEMENT DURING THE SIX (6) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM, WHICHEVER IS LESS. THE LIMITATIONS OF LIABILITY SET FORTH HEREIN ARE A FUNDAMENTAL ELEMENT OF THE BASIS OF THE BARGAIN AND REFLECT A FAIR ALLOCATION OF RISK BETWEEN THE PARTIES. THE SERVICE WOULD NOT BE PROVIDED WITHOUT SUCH LIMITATIONS, AND SUBSCRIBER AGREES THAT THE LIMITATIONS OF LIABILITY AND DISCLAIMERS SPECIFIED HEREIN WILL SURVIVE AND APPLY EVEN IF FOUND TO HAVE FAILED OF THEIR ESSENTIAL PURPOSE.

14. Subscription Term; Termination.

(a) Subscription Term. The initial term of Subscriber's Subscription will commence on the date the Authorized Representative accepts and agrees to these Terms, and unless terminated earlier in accordance with the express provisions in these Terms, will continue in effect for one (1) year or such other number of years as may be set forth in the Order, provided that Subscriber has paid the total Fees owed for all such years (as applicable, the "**Initial Term**"). Prior to expiration of the Initial Term and any Renewal Term (defined below), PastPerfect will notify Subscriber that the Subscription will automatically renew upon such expiration. Unless, prior to such expiration, Subscriber provides notice of intent not to renew the Subscription, the term of the Subscription will automatically renew upon such expiration for an additional term of one (1) year, or such other number of years as may be set forth in the Order, provided that Subscriber has paid the total Fees owed for all such years (each a "**Renewal Term**" and together with the Initial Term, the "**Subscription Term**"). The Agreement will terminate in its entirety upon termination of the Subscription Term.

(b) Termination. In addition to any other express termination right set forth in these Terms:

(i) PastPerfect may terminate the Subscription, effective on written notice to Subscriber, if Subscriber breaches any of its obligations under the Acceptable Use Policy or Section 3(c) or Section 9;

(ii) either Party may terminate the Subscription, effective on written notice to the other Party, if the other Party materially breaches the Agreement, and such breach either (A) is incapable of cure; or (B) being capable of cure, remains uncured thirty (30) days after the non-breaching Party provides the breaching Party with written notice of such breach; and

(iii) the Agreement will terminate automatically if the other Party (A) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (B) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any

domestic or foreign bankruptcy or insolvency law; (C) makes or seeks to make a general assignment for the benefit of its creditors; or (D) applies for or has appointed a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

(c) Effect of Expiration or Termination. Upon any expiration or earlier termination of the Subscription, PastPerfect may disable Subscriber's and its Authorized Users' access to the Service, and Subscriber shall, and shall instruct its Authorized Users to, immediately cease using the Service and all other PastPerfect Technology. In addition, without limiting Subscriber's obligations under Section 9, Subscriber shall delete, destroy, or return all copies of any PastPerfect Technology then in its possession or control and certify in writing to the PastPerfect that such PastPerfect Technology has been deleted or destroyed. The expiration or termination of the Agreement shall not (i) prejudice or affect any right of action or remedy that has accrued or will accrue to either Party due to the other Party's acts or omissions prior to the effective date of the termination or expiration; (ii) relieve Subscriber of its obligation to pay any Fees that have accrued or have become payable to PastPerfect under the Agreement as of the date of such expiration or termination; or (iii) entitle Subscriber to any refund of Fees paid up to such date.

(d) Survival. This Section 14(d) and Sections 1, 6, 7, 8, 9, 10, 11, 12, 13 and 15 will survive any termination or expiration of the Agreement.

15. Miscellaneous.

(a) Entire Agreement. The Agreement (including these Terms, the Order, the Privacy Policy, Acceptable Use Policy and any other documents incorporated into these Terms by reference) constitutes the sole and entire agreement of the Parties with respect to the subject matter of the Agreement and supersedes all prior and contemporaneous understandings, agreements, and representations and warranties, both written and oral, with respect to such subject matter. In the event of any conflict between these Terms, the Order, the Privacy Policy, the Acceptable Use Policy and any other documents incorporated herein by reference, the following order of precedence governs: (i) first, these Terms; (ii) second, the Acceptable Use Policy, (iii) third, the Privacy Policy; (iv) fourth, the Order; and (v) fifth, any other documents incorporated by reference into these Terms.

(b) Notices. All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "**Notice**") must be in writing and addressed to the Parties as follows (or to such other address that may be designated by the Party giving Notice from time to time in accordance with this Section 15(b)): (i) if to Subscriber, at the address provided on in the Order, and (ii) if to PastPerfect, at the following address:

PastPerfect Software, Inc.
300 N. Pottstown Pike, Suite 200
Exton, PA 19341
Attn: Richard Hilton

All Notices must be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), e-mail (with confirmation of transmission), or certified or registered mail (in each case, return receipt requested, postage pre-paid). Except as may be otherwise provided in the Agreement, a Notice is effective only (A) upon receipt by the receiving Party; and (B) if the Party giving the Notice has complied with the requirements of this Section 15(b).

(c) Force Majeure. In no event shall either Party be liable to the other Party, or be deemed to have breached the Agreement, for any failure or delay in performing its obligations under the Agreement (except for any obligations to make payments), if and to the extent such

failure or delay is caused by any circumstances beyond such Party's reasonable control, including but not limited to acts of God, flood, fire, earthquake, explosion, war, terrorism, invasion, riot or other civil unrest, strikes, labor stoppages or slowdowns or other industrial disturbances, or passage of law or any action taken by a governmental or public authority, including imposing an embargo.

(d) Amendment and Modification; Waiver. No amendment to or modification of the Agreement is effective unless it is in writing and signed by an authorized representative of each Party. No waiver by any Party of any of the provisions hereof will be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as may be otherwise expressly set forth in the Agreement, (i) no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from the Agreement will operate or be construed as a waiver thereof; and (ii) no single or partial exercise of any right, remedy, power, or privilege hereunder will preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

(e) Severability. If any provision of the Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other term or provision of the Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the Parties shall negotiate in good faith to modify the Agreement so as to effect their original intent as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

(f) Governing Law; Submission to Jurisdiction. This Agreement is governed by and construed in accordance with the internal laws of the State of Texas without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any jurisdiction other than those of the State of Texas. Any legal suit, action, or proceeding arising out of or related to the Agreement or the rights granted hereunder will be instituted exclusively in the federal courts of the United States or the courts of the State of Texas in each case located in the city of Austin, County of Travis, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.

(g) Assignment. Subscriber may not assign any of its rights or delegate any of its obligations hereunder, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without the prior written consent of PastPerfect. Any purported assignment or delegation in violation of this Section 15(g) will be null and void. No assignment or delegation will relieve the assigning or delegating Party of any of its obligations hereunder. This Agreement is binding upon and inures to the benefit of the Parties and their respective permitted successors and assigns.

(h) Export Regulation. The Service utilize software and technology that may be subject to US export control laws, including the US Export Administration Act and its associated regulations. Subscriber shall not, directly or indirectly, export, re-export, or release the Service or the underlying software or technology to, or make the Service or the underlying software or technology accessible from, any jurisdiction or country to which export, re-export, or release is prohibited by law, rule, or regulation. Subscriber shall comply with all applicable federal laws, regulations, and rules, and complete all required undertakings (including obtaining any necessary export license or other governmental approval), prior to exporting, re-exporting, releasing, or otherwise making the Service or the underlying software or technology available outside the US.

(i) US Government Rights. Each of the Documentation and the software components that constitute the Service is a "commercial item" as that term is defined at 48 C.F.R. § 2.101,

consisting of “commercial computer software” and “commercial computer software documentation” as such terms are used in 48 C.F.R. § 12.212. Accordingly, if Subscriber is an agency of the US Government or any contractor therefor, Subscriber only receives those rights with respect to the Service and Documentation as are granted to all other end users, in accordance with (i) 48 C.F.R. § 227.7201 through 48 C.F.R. § 227.7204, with respect to the Department of Defense and their contractors, or (ii) 48 C.F.R. § 12.212, with respect to all other US Government users and their contractors.

(j) Equitable Relief. Each Party acknowledges and agrees that a breach or threatened breach by such Party of any of its obligations under Section 9 or, in the case of Subscriber, Section 3(c), would cause the other Party irreparable harm for which monetary damages would not be an adequate remedy and agrees that, in the event of such breach or threatened breach, the other Party will be entitled to equitable relief, including a restraining order, an injunction, specific performance and any other relief that may be available from any court, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity or otherwise.

(k) Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement.