

SUBSCRIPTION AGREEMENT

Last Updated: April 14, 2026

By agreeing to this Subscription Agreement (“Agreement”) or using the Services, you represent to PerformanceCentre Inc., a Delaware corporation dba Performio (“Performio”), that you have the right to bind your organization (“Customer”) to its terms and conditions. If you do not have such right you should not agree to this Agreement or use the Services.

This Agreement includes all attachments, exhibits, schedules and addenda referenced herein and is incorporated into one or more Order Forms entered into by and between Performio and the Customer identified in the Order Form. Performio and Customer shall be referred to separately as a “Party” and collectively as the “Parties.”

1. **Definitions.** Capitalized terms will have the meanings set forth below unless defined elsewhere in this Agreement or the Order Form.

- 1.1. “Affiliate” means with respect to a Party, any person or entity that controls, is controlled by, or is under common control with such Party, where “control” means ownership of fifty percent (50%) or more of the outstanding voting securities.
- 1.2. “Authorized User” has the meaning set forth in the Order Form. Different types of Authorized Users may have different access permissions and license fees as set forth on the Order Form.
- 1.3. “Customer Data” means any data that Customer submits to the Service.
- 1.4. “Documentation” means the technical documentation that describes the technical operation of the Service, as may be modified from time to time.
- 1.5. “Order Form” means the order form or other ordering document executed by Performio and Customer (or Affiliates of either party, as identified in such Order Form) that references this Agreement, which details the Services to be provided by Performio, the fees associated therewith, and any other transaction-specific terms and conditions.
- 1.6. “Services” means Performio’s software-as-a-service platform (including, where applicable, separately-charged add-on services and features) that provides incentive compensation calculation, sales performance management and related reporting, analytics and intelligence.
- 1.7. “Subscription Term(s)” means the subscription period(s) specified in an Order Form, during which Authorized Users may use and access the Services, subject to the terms of this Agreement.
- 1.8. “Support Services” means the technical support services to be provided by Performio for the Services.

2. **Rights and Restrictions.**

- 2.1. **Scope and Access Rights.** Subject to the terms of this Agreement, Performio grants Customer a limited, non-exclusive, non-sublicensable, non-transferable (except as expressly permitted in [Section 11.1](#) below) right to permit its and its Affiliates’ Authorized Users to access and use the Services and Documentation during the applicable Subscription Term solely for Customer’s internal business purposes. The Order Form will designate the number of Authorized Users that are licensed to access and use the Services pursuant to such Order Form. Any breach of this Agreement by an Authorized User or an Affiliate of Customer is deemed a breach by Customer. Performio may change, modify or update the Services at any time; provided that, (a) Performio will notify Customer of any material changes to the Services and (b) Performio will not materially decrease the functionality of the Services during Subscription Term.
- 2.2. **Use Restrictions.** Customer shall not (and shall not permit any third party to): (a) sublicense, sell, transfer, assign, distribute or otherwise grant or enable access to the Service in a manner that allows anyone to access or use the Services without an Authorized User subscription, or to commercially exploit the Service; (b) use the Service to provide, or incorporate the Services into, any product or service provided to a third party; (c) access or use the Services to develop, promote, distribute or support a similar or competing product or service; (d) reverse engineer, decompile, disassemble, or otherwise seek to obtain the source code of the Services except to the extent expressly permitted by applicable law (and then only upon advance notice to Performio); (e) copy, modify or create any derivative work of the Services or any Documentation; (f) remove or obscure any proprietary information or other notices contained in the Services; (g) allow Authorized User subscriptions to be shared or used by more than one individual Authorized User (except that Authorized User subscriptions may be reassigned to new Authorized Users replacing individuals who no longer use the Service for any purpose, whether by termination of employment or other change in job status or function); (h) publicly disseminate performance information regarding the Service including any benchmarking; or (i) access or use the Services: (1) to send or store infringing, obscene, threatening, or otherwise unlawful material, including material violative of third-party privacy rights; (2) in violation of applicable laws; (3) to send or store material containing software viruses, worms, trojan horses or other harmful computer code, files, scripts, or agents; (4) in a manner that interferes with or disrupts the integrity of the Services; (5) to disable or bypass any security measures or use the Services in excess of any license restrictions or limits set forth in the Order Form(s).

- 2.3. Optional AI Features.** As a feature of the Services, Performio may make certain artificial intelligence/machine learning features available within the Service (each an “**AI Feature**”). Performio will identify each feature that is an AI Feature. Customer is not required to use AI Features (which may be enabled or disabled through the administrative console within the Services) but acknowledges certain functionality is only available through the use of such AI Features. If Customer elects to use an AI Feature, Customer acknowledges that the AI Feature may utilize third-party services, including AI model providers, MCP connectors and other technology providers (“**Third Party Services**”), and Customer’s use of Third Party Services will be subject to such third-party’s terms and conditions to the extent presented to and accepted by Customer. To the extent Third Party Services process personal information on Performio’s behalf in connection with the Services, such Third Party Services will be treated as subprocessors under the DPA. AI Features will not use Customer inputs or Customer Data to train models. In connection with Customer’s use of the AI Feature, Customer acknowledges and agrees that (a) the information and content that Customer inputs into the AI Feature may be shared with Third Party Services as necessary to provide the AI Feature; and (b) Authorized Users will use independent judgment and discretion before relying on or otherwise using output from the Services including whether human review is appropriate or desirable before sharing or using any such output.
- 2.4. Beta Services.** Performio may, in its sole discretion, make certain features or functionality of the Services available in a pre-production release, beta or evaluation format (“**Beta Services**”). Customer is not required to use any Beta Services and such Services are made available AS-IS. Customer, its Affiliates and Authorized Users assume all risk associated with any use of Beta Services.
- 2.5. Usage Limits.** Use of the Services is subject to the usage limits identified in an Order Form, which may include limitations on Authorized Users or other features or functionality. If Customer exceeds a usage limit, Customer will pay Performio for any such additional usage at the rates set forth in the Order Form (or, if no rates are included in the Order Form, the then current list price). Performio may periodically verify that Customer’s use of the Service is within the applicable usage limits, and Customer shall promptly provide any information reasonably requested by Performio regarding Customer’s usage of the Service. Customer’s usage limits may not be reduced during the Subscription Term.
- 2.6. Data Protection.** To the extent that Performio processes any personal information as part of providing the Services and/or Professional Services hereunder, the Data Processing Addendum to the Agreement available at <https://www.performio.co/legal-documents> (the “**DPA**”) shall apply.
- 2.7. Availability and Support Services.** During the Subscription Term, Performio will make the Services available pursuant to the provide the level of Support Services set forth in the Order Form pursuant to this Agreement and the terms and conditions available at <https://www.performio.co/legal-documents>.
- 2.8. Professional Services.** Performio may perform implementation, training, consultation or other professional services as agreed to in a separately executed SOW (“**Professional Services**”). Performio will retain all right, title and interest in and to all deliverables (including any and all intellectual property rights therein) provided under each SOW (“**Deliverables**”) except to the extent that they contain any pre-existing Customer intellectual property. Customer’s rights to the Deliverables shall be the same as Customer’s rights to the Services to which such Deliverables pertain. Performio may use third party subcontractors to provide Professional Services so long as such subcontractors are identified in the applicable Order Form or SOW.
- 3. Customer Data.** Customer is solely responsible for Customer Data (including accuracy thereof) and for the acts and omissions of Authorized Users in connection with this Agreement. Customer represents and warrants that (a) Customer has or has obtained all necessary rights, licenses, consents and permissions required for Performio to collect, process, store, distribute, disclose and use Customer Data as contemplated by this Agreement; (b) the provision of Customer Data to Performio for use hereunder will not violate or infringe upon the rights of any third-party, including rights in intellectual property, publicity or privacy; and (c) that its use of the Service and the provision of Customer Data to Performio will not violate any applicable law or regulation. Customer will use reasonable measures to prevent, and will promptly notify Performio of, any known or suspected unauthorized use of Authorized User access credentials or Customer Data.
- 4. Intellectual Property Rights.**
- 4.1. Of Customer.** As between the parties, Customer shall retain all right, title and interest in and to the Customer Data, Customer Confidential Information (defined below), and any other pre-existing intellectual property rights of Customer. Subject to the terms of this Agreement, Customer hereby grants to Performio a non-exclusive, worldwide, royalty-free, non-transferrable (except as expressly permitted in Section 11.1 below) right to publish, translate, use, copy, store, transmit, modify, process, create derivative works of and display the Customer Data solely to the extent necessary to provide the Service to Customer during the Subscription Term.
- 4.2. Of Performio.** Performio owns all right, title and interest in and to the Services (including the software and technology comprising the Services), the Documentation, Performio Confidential Information, any other pre-existing intellectual property rights of Performio, and the usage data that is generated by the Services, including all derivatives, enhancements and modifications thereof. Customer hereby grants to Performio a royalty-free, worldwide, transferable, sub-licensable, irrevocable, and perpetual license to publish, translate, use, copy, store, transmit, modify, create derivative works of, display,

and otherwise exploit any suggestions, recommendations or other feedback relating to the Services as Customer may elect to provide.

4.3. Reservation of Rights. Each Party retains all rights not expressly granted under this Agreement.

5. Fees, Payment, and Taxes.

5.1. Fees and Payment. Customer agrees to pay the fees for the Services as set forth in the Order Form and/or any SOW (“Fees”). Unless otherwise agreed in the Order Form, Performio shall invoice Customer for the fees on the Effective Date of the applicable Order Form and Customer agrees to pay all undisputed invoices within thirty (30) days of date of invoice. If Customer disputes any Fees in good faith, Customer must provide written notice specifying the nature of the dispute within fifteen (15) days of invoice date, pay all undisputed portions of the invoice when due, and the Parties will promptly meet to resolve the dispute. Except as expressly set forth in an Order Form: (a) payment obligations are non-cancelable and fees are non-refundable, unless specifically provided herein; and (b) Customer may not decrease any usage or licenses referred to in the Order Form during the applicable Subscription Term. All unpaid undisputed Fees may be subject to interest at the lesser of one and one-half percent (1.5%) per month or the maximum permitted by law, plus all collection costs. Customer agrees that its purchases are not contingent on the delivery of any future functionality or features or promises related thereto.

5.2. Taxes. All Fees are exclusive of any sales tax, use tax, value added tax, gross receipts tax, or similar tax (“Taxes”). Customer is responsible for payment of Taxes, excluding taxes based solely on Performio income. Performio may invoice Taxes in accordance with the applicable law together on one invoice or a separate invoice. Performio reserves the right to determine the Taxes for a transaction based on Customer’s “bill to” or “ship to” address, or other information provided by Customer on the location of Customer’s use of the Service. Customer will be responsible for any Taxes, penalties or interests that might apply based on Performio’s failure to charge appropriate tax due to incomplete or incorrect location information provided by Customer. If Customer is required by any foreign governmental authority to deduct or withhold any portion of the amount invoiced for the delivery or use of the Service under this Agreement, Customer shall increase the sum paid to Performio by an amount necessary for the total payment to Performio equal to the amount originally invoiced.

5.3. Expenses. Unless expressly set forth in an Order Form or SOW, each party is responsible for its own expenses under this Agreement.

6. Term and Termination.

6.1. Term. This Agreement commences on the effective date of the initial Order Form and unless earlier terminated pursuant to the terms of this Agreement, the Agreement will continue for so long as there is an Order Form in effect between the Parties.

6.2. Termination. Either Party may terminate this Agreement (or any affected Order Form(s) or SOW(s)): (a) upon the other Party’s material breach that remains uncured for thirty (30) days following notice of such breach, except that in the event of a breach of Section 2.2 or 10 such cure period shall be seven (7) days; (b) immediately in the event the other Party (i) dissolves or ceases to do business, or (ii) becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors (and not dismissed within sixty (60) days thereafter); or (c) pursuant to Section 8.2(c).

6.3. Treatment of Customer Data Following Expiration or Termination. On the termination or expiration of this Agreement (or, if applicable, an Order Form(s)), Performio will deactivate Customer’s account(s) and Customer’s right to access the Services will terminate except as provided in this Section 6.3. During the thirty (30) day period following termination or expiration, Performio will grant a reasonable number of Authorized Users access to the Service for the sole purpose of retrieving Customer Data. Thereafter, Performio will delete Customer’s account and Customer Data in accordance with Performio’s data retention policies.

6.4. Effect of Termination. Upon expiration or termination of this Agreement for any reason: (a) except as otherwise expressly stated herein, all rights granted to Customer under this Agreement, and Performio’s obligation to provide Support Services and the Service will terminate; and (b) any payment obligations that accrued pursuant to this Agreement will become immediately due. The provisions of Sections 2.2, 4, 5, 6.3, 6.4, 7.3, 9, 10 and 11 will survive expiration or termination of the Agreement.

7. Warranties and Disclaimers.

7.1. Mutual Warranty. Each Party represents and warrants to the other Party that (a) such Party has all requisite authority to enter into this Agreement and to perform its obligations hereunder; and (b) this Agreement constitutes a legal, valid and binding obligation when Customer accepts this Agreement, enters into an Order Form referencing this Agreement, or accesses or uses the Services.

7.2. Performance Warranty by Performio. Performio warrants that, during the Subscription Term, the (a) Services will perform materially in accordance with the Documentation and will be free of material defect; (b) Performio and its Affiliates will not knowingly introduce into Customer systems any software viruses, worms, Trojan horses or other code, files, scripts, or agents

intended to do harm (“**Viruses**”); (c) the Professional Services will be provided in a competent, timely, and professional manner consistent with generally accepted industry standards. In the event of a breach of the foregoing warranties, Customer’s exclusive remedy shall be for Performio to diligently remedy (through Support Services) any deficiencies that cause the Services or Professional Services, as applicable, to not conform to the foregoing warranty promptly after its receipt of written notice from Customer. Performio will not be liable to the extent that any breach of the foregoing warranties are caused by (i) third-party components (including in combination with the Services) not provided by Performio; (ii) unauthorized use or modification of the Services other than in accordance with the Documentation; (iii) Customer Data or (iv) Viruses introduced by Customer or its agents (collectively, “**Exclusions**”).

7.3. Warranty Disclaimer. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, ALL OTHER REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARE HEREBY DISCLAIMED BY THE PARTIES TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. PERFORMIO IS NOT RESPONSIBLE FOR AND DISCLAIMS ALL LIABILITY RELATED TO THE RESULTS OF THE SERVICE, OR ANY DELAYS, DELIVERY FAILURES, INTERCEPTION, ALTERATION OR OTHER DAMAGE RESULTING FROM PROBLEMS INHERENT IN THE USE OF THE INTERNET, MOBILE AND PERSONAL COMPUTING DEVICES, AND TRANSMISSION OF ELECTRONIC COMMUNICATIONS OVER THE INTERNET OR OTHER NETWORKS OUTSIDE OF ITS CONTROL INCLUDING EXCLUSIONS. SERVICES OFFERED DURING A TRIAL OR AS BETA SERVICES AND THIRD-PARTY SERVICES ARE PROVIDED AS-IS.

8. Indemnification.

8.1. By Performio. Performio shall defend Customer and its Affiliates from and against any claim by a third party alleging that the Services when used as authorized under this Agreement infringes or misappropriates any intellectual property right of such third party, or that Performio’s provision of the Services violates any applicable law (“**Performio Indemnified Claim**”), and shall indemnify and hold Customer and Affiliates harmless from and against any damages and costs awarded against Customer by a court of competent jurisdiction or agreed in settlement by Performio (including reasonable attorneys’ fees) resulting from such Performio Indemnified Claim. Performio will have no obligation to indemnify Customer to the extent: (a) the Service is used or modified by any party other than as permitted by the Documentation, but solely to the extent the Performio Indemnified Claim would not have occurred but for such use or modification; (b) if the Service is combined, operated or used with any Customer Data or any Customer or third party products, services, hardware, data, content, or business processes not provided by Performio, but solely to the extent the Performio Indemnified Claim would not have occurred but for such combination, operation or use; (c) any action arising as a result of Customer Data or any third-party deliverables or components contained within the Service; (d) if Customer settles or makes any admissions with respect to a claim without Performio’s prior written consent; or (e) any Beta Service. The foregoing sets forth Performio’s sole liability and Customer’s sole remedy with respect to any claim of intellectual property infringement involving the Services.

8.2. Remedies. With respect to any indemnity claim under Section 8.1, Performio shall, at its option: (a) at Performio’s expense, procure for Customer the right to use the Service in accordance with this Agreement; (b) replace or modify the Service to make it non-infringing while maintaining materially equivalent functionality; or (c) if the options in Section 8.2(a) or (b) are commercially impractical, terminate Customer’s right to use the Service and provide Customer with a prorated refund of pre-paid fees for the remainder of the applicable Subscription Term for the terminated Services.

8.3. By Customer. Customer shall defend Performio and its Affiliates from and against any claim by a third party alleging that the Customer Data infringes or misappropriates any intellectual property or privacy right of such third party or violates any applicable law and shall indemnify and hold Performio and its Affiliates harmless from and against any damages and costs awarded against Performio or its Affiliates by a court of competent jurisdiction or agreed in settlement by Customer (including reasonable attorneys’ fees) resulting from such claim.

8.4. Indemnity Process. Each Party's indemnification obligations are conditioned on the indemnified Party: (a) promptly giving written notice of the claim to the indemnifying Party; (b) giving the indemnifying Party sole control of the defense and settlement of the claim; and (c) providing to the indemnifying Party all available information and assistance in connection with the claim, at the indemnifying Party's request and expense. The indemnified Party may participate in the defense of the claim, at the indemnified Party's sole expense (not subject to reimbursement). Neither Party may admit liability for or consent to any judgment or concede or settle or compromise any claim unless such admission or concession or settlement or compromise includes a full and unconditional release of the other Party from all liabilities in respect of such claim.

9. Limitations of Liability.

9.1. Liability Cap. EXCEPT WITH RESPECT TO: (A) EITHER PARTY’S OBLIGATIONS UNDER SECTION 8 (FOR WHICH EACH PARTY’S TOTAL AGGREGATE LIABILITY SHALL BE LIMITED TO TWICE THE ANNUAL SUBSCRIPTION FEES); AND (B) CUSTOMER’S BREACH OF SECTION 2.2 OR FAILURE TO PAY ANY FEES WHEN DUE, IN NO EVENT SHALL EITHER PARTY’S TOTAL AGGREGATE LIABILITY EXCEED THE AMOUNTS PAID OR PAYABLE BY CUSTOMER DURING THE THEN-CURRENT ANNUAL SUBSCRIPTION TERM, UNDER THE

APPLICABLE ORDER FORM(S) RELATING TO THE CLAIM (“ANNUAL SUBSCRIPTION FEES”).

- 9.2. Liability Exclusions.** EXCEPT WITH RESPECT TO A PARTY’S INDEMNIFICATION OBLIGATIONS OR BREACHES OF SECTION 10, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL, INDIRECT, PUNITIVE OR EXEMPLARY DAMAGES, INCLUDING WITHOUT LIMITATION LOST PROFITS, LOSS OF USE, BUSINESS INTERRUPTIONS, LOSS OF DATA, REVENUE, GOODWILL, PRODUCTION, ANTICIPATED SAVINGS, COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICE, IN CONNECTION WITH OR ARISING OUT OF THE PERFORMANCE OF OR FAILURE TO PERFORM THIS AGREEMENT, WHETHER ALLEGED AS A BREACH OF CONTRACT OR TORTIOUS CONDUCT, INCLUDING NEGLIGENCE, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 9.3. Limitations Fair and Reasonable.** EACH PARTY ACKNOWLEDGES THAT THE LIMITATIONS OF LIABILITY SET FORTH IN THIS SECTION 9 REFLECT THE ALLOCATION OF RISK BETWEEN THE PARTIES UNDER THIS AGREEMENT, AND THAT IN THE ABSENCE OF SUCH LIMITATIONS OF LIABILITY, THE ECONOMIC TERMS OF THIS AGREEMENT WOULD BE SIGNIFICANTLY DIFFERENT.
- 9.4. Insurance.** Performio, at its own expense, will maintain at a minimum the following insurance coverages: (a) Commercial General Liability Insurance with coverage in an amount equal to or greater than US\$1,000,000 per occurrence combined single limit, (b) Commercial Automobile Liability Insurance with coverage in an amount equal to or greater than US\$1,000,000 per occurrence/aggregate, (c) Worker's Compensation Insurance with coverage complying with at least the statutory limits of coverage within the relevant state of employment, (d) Errors and Omissions Insurance with coverage in an amount equal to or greater than US\$5,000,000 per occurrence/aggregate and (e) Umbrella/Excess Liability Insurance with coverage in an amount equal to or greater than US\$5,000,000 per occurrence/aggregate.

10. Confidential Information.

10.1. Confidentiality. “**Confidential Information**” means this Agreement or any information that pertains to a Party’s business, including, without limitation, technical, marketing, financial, employee, planning, product roadmaps and documentation, performance results, pricing, and any other information disclosed by one Party (“**Disclosing Party**”) to the other (“**Receiving Party**”) in connection with this Agreement that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Except as expressly authorized herein, the Receiving Party shall (a) hold in confidence and not disclose any Confidential Information to third parties; (b) protect the Disclosing Party’s Confidential Information in the same manner as the Receiving Party protects its own Confidential Information but with no less than a reasonable degree of care, and (c) not use Confidential Information of the Disclosing Party for any purpose other than fulfilling its obligations and exercising its rights under this Agreement. The Receiving Party may disclose Confidential Information to its employees, agents, contractors and other representatives that have a legitimate need to know such information, provided that such representatives are bound to confidentiality obligations substantially similar to those contained in this Section 10. The Receiving Party remains responsible for any breach of this Section 10 by its representatives. The Receiving Party’s confidentiality obligations shall not apply to information that: (i) was rightfully in the possession of the Receiving Party or known to the Receiving Party prior to receipt of the Confidential Information; (ii) is or has become public knowledge through no fault of the Receiving Party; (iii) is rightfully obtained by the Receiving Party from a third party without breach of any confidentiality obligation; or (iv) was independently developed by Receiving Party without reference to the Confidential Information. The Receiving Party may make disclosures to the extent required by law or court order, provided that the Receiving Party notifies the Disclosing Party in advance and cooperates in any effort to obtain confidential treatment prior to disclosure. The Receiving Party acknowledges that disclosure of Confidential Information may cause substantial harm for which damages alone would not be a sufficient remedy, and therefore that upon any such disclosure by the Receiving Party, the Disclosing Party shall be entitled to seek appropriate equitable relief in addition to any other remedies.

10.2. Sensitive data. Customer agrees that it will not submit the following types of information to the Services except with Performio’s prior written approval: government-issued identification numbers, social security numbers, consumer financial account information, bank account information, credit and payment card information, personal health information, or information deemed “sensitive” under applicable law (such as racial or ethnic origin, political opinions, or religious or philosophical beliefs). Performio agrees that such sensitive information is not required for the proper use of the Services.

11. General Terms.

11.1. Assignment. Neither Party may assign this Agreement, in whole or in part, without the prior written consent of the other Party, provided that no such consent will be required with respect to (a) assignment to an Affiliate that is able to satisfy the obligations of the assignor under this Agreement; or (b) assignment in connection with a merger, acquisition or sale of all or substantially all of the assigning Party’s assets, provided that the assignee has agreed to be bound by all of the terms of this Agreement. If Customer is acquired by, sells substantially all its assets to, or undergoes a change of control in favor of, a direct competitor of Performio, then Performio may terminate this Agreement upon thirty (30) days prior written notice.

11.2. Severability. If any provision of this Agreement shall be adjudged by any court of competent jurisdiction to be unenforceable

or invalid, that provision shall be limited to the minimum extent necessary so that this Agreement shall otherwise remain in effect.

11.3. Governing Law; Jurisdiction and Venue. This Agreement will be governed by the applicable law set forth in the table below based on the Customer location identified in the Order Form (without regard to the conflicts of law provisions of any jurisdiction), and claims arising out of or in connection with this Agreement will be subject to the exclusive jurisdiction of the corresponding jurisdiction as provided below. If no Customer location is identified in the Order Form, the applicable law and jurisdiction shall be Delaware, USA. Each Party irrevocably submits to the personal jurisdiction and venue of and agrees to service of process issued or authorized by any court in the applicable Jurisdiction in any action or proceeding. Neither the United Nations Convention of Contracts for the International Sale of Goods nor the Uniform Computer Information Transactions Act will apply to this Agreement.

Customer Location	Applicable Law	Jurisdiction
ASEAN-Australasia including Australia and New Zealand	Victoria, Australia	Melbourne, Australia
United Kingdom and European Union	England & Wales	London, UK
North America, South America, any other location	Delaware USA	New Castle County, Delaware, USA

11.4. Notice. Notices to a Party will be sent by first-class mail, overnight courier or prepaid post to the address for such Party set forth in the applicable Order Form or, for Customer, in Customer’s account profile or other contact information provided by Customer through its administrative contact, and will be deemed given seventy-two (72) hours upon confirmed delivery or receipt. Customer will address notices to Performio CEO, with a copy to legalnotices@performio.co. Either Party may from time to time change its address for notices under this Section by giving the other Party at least thirty (30) days prior written notice of the change.

11.5. Amendments; Waivers. No supplement, modification, or amendment of this Agreement shall be binding, unless executed in writing by a duly authorized representative of each Party to this Agreement. No waiver will be implied from conduct or failure to enforce or exercise rights under this Agreement, nor will any waiver be effective unless in a writing signed by a duly authorized representative on behalf of the Party claimed to have waived. No provision of any purchase order or other business form employed by Customer will supersede the terms and conditions of this Agreement, and any such document relating to this Agreement shall be for administrative purposes only and shall have no legal effect.

11.6. Entire Agreement; Interpretation. This Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes all previous written and oral agreements and communications relating to the subject matter of this Agreement. In this Agreement, headings are for convenience only and “including”, “e.g.”, and similar terms will be construed without limitation. In the event of a conflict between the terms of this Agreement and the terms of any Order Form, SOW, or other policies or addenda referenced herein, such conflict will be resolved in the following order: (a) the DPA, solely with respect to the processing of personal information; (b) the SOW; (c) the Order Form; (d) this Agreement; and (e) any other policies or addenda referenced herein. Any preprinted terms on any Customer ordering documents or terms referenced or linked therein will have no effect on the terms of this Agreement and are hereby rejected, including where such Customer ordering document is signed by Performio. The support service level may be updated from time to time upon reasonable notice to Customer to reflect process improvements or changing practices (but the modifications will not materially decrease Performio’s obligations).

11.7. Use of Aggregate Information. Performio may collect, use and analyze general information and data from all of its customers, including Customer Data, in anonymized, aggregated manner for purposes of improving and enhancing the quality and nature of the Service, or to market or publish general information and statistics, provided that the anonymized, aggregated data does not include information that identifies Customer or any individual and is not reasonably capable of being re-identified.

11.8. Use of Aggregate Information. Performio may collect, use and analyze general information and data from all of its customers, including Customer Data, in an anonymized, aggregated manner for purposes of improving and enhancing the quality and nature of the Service, or to market or publish general information and statistics, provided that the anonymized, aggregated data does not include information that identifies Customer or any individual and is not reasonably capable of being re-identified.

11.9. Independent Contractors. The parties to this Agreement are independent contractors. There is no relationship of partnership, joint venture, employment, franchise or agency created hereby between the parties. Neither Party will have the power to bind the other or incur obligations on the other Party’s behalf without the other Party’s prior written consent.

11.10. Counterparts. Order Forms and SOWs may be executed in counterparts, which taken together shall form one binding legal instrument. The Parties hereby consent to the use of electronic signatures in connection with the execution of Order Forms and SOWs, and further agree that electronic signatures to Order Forms and SOWs shall be legally binding with the same force and effect as manually executed signatures.

