

## Peritus – Terms of Service

**Effective:** February 1, 2022

Peritus.AI, Inc. (“Peritus”) owns and operates the Peritus proprietary software platform that enables better management of community forums, technical support teams and IT resources (the “Platform”). The “Services” as used through this Terms of Service Agreement (this “Agreement”) means the use of the Platform and any related services, content and/or materials provided and/or made available by Peritus in connection with the Platform. “Customer” refers to each subscriber to the Platform.

IMPORTANT — PLEASE READ THIS AGREEMENT CAREFULLY. THIS AGREEMENT SETS FORTH THE LEGALLY BINDING TERMS AND CONDITIONS GOVERNING ACCESS AND USE OF THE SERVICES. BY CREATING AN ACCOUNT FOR SERVICES, AND/OR USING OR ACCESSING THE SERVICES IN ANY MANNER, INCLUDING, BUT NOT LIMITED TO, ACCESSING OR USING THE PLATFORM: (I) YOU ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTAND, AND AGREE TO BE BOUND BY THIS AGREEMENT (INCLUDING ALL OF THE TERMS AND CONDITIONS SPECIFIED OR REFERENCED BELOW); (II) YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO ENTER INTO THIS AGREEMENT (INCLUDING ALL OF THE TERMS AND CONDITIONS SPECIFIED OR REFERENCED BELOW), ON BEHALF OF THE ON BEHALF OF THE ENTITY OR PERSON IN RESPECT OF WHOM ACCESS AND USE OF THE SERVICES WAS OBTAINED (SUCH ENTITY OR PERSON, THE “CUSTOMER”); AND (III) YOU AGREE THAT CUSTOMER IS ENTERING INTO THIS AGREEMENT (INCLUDING ALL OF THE TERMS AND CONDITIONS SPECIFIED OR REFERENCED BELOW) WITH PERITUS, INC.

IF YOU DO NOT AGREE WITH ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, OR DO NOT HAVE SUCH AUTHORITY, DO NOT CREATE AN ACCOUNT OR ACCESS OR USE THE SERVICES (OR ANY PART THEREOF). THE EFFECTIVE DATE OF THIS AGREEMENT SHALL BE THE DATE THAT CUSTOMER ACCEPTS THIS AGREEMENT AS SET FORTH ABOVE OR IN ACCORDANCE WITH SECTION 14 (THE “EFFECTIVE DATE”).

### **1. ACCESS AND USE OF SERVICES**

**1.1. Accounts.** In order to access and use certain of the Services, Customer must register for an account (“Account”) In registering an Account, Customer agrees to provide and maintain up to date information that is true, accurate, current, up to date, and complete. In addition, Customer agrees that Customer will not (i) create an Account using a false identity or fictitious name or information, and/or (ii) create an Account or use the Services if Customer has been previously removed or banned by Peritus from use of the Services, or any part thereof. Customer understands and agrees that Customer is solely responsible for maintaining the confidentiality of and protecting Customer’s password for the Account. Customer is solely responsible for any activity originating from the Account, regardless of whether such activity is authorized by Customer. Customer agrees to notify Peritus immediately of any unauthorized use of the Account. Peritus reserves the right to limit the number of Accounts that can be created from a computer or mobile device and the number of computer or mobile devices that can access an individual Account.

**1.2. Administrators; Authorized Users.** For Accounts with multiple users under the Account, Customer must designate an administrator or administrators (each, an “Administrator”) to manage and administer the Account, including, without limitation, inviting Customer’s employees, contractors, and/or agents to access and use the Services as an authorized user of the Account (“Authorized Users”). For the avoidance of doubt, “Authorized Users” as used in this Agreement, include Administrators. In addition, an Administrator may set certain permissions and access rights to each Authorized User (“Permissions”). Customer acknowledges and agrees that depending on the Permissions granted to an Authorized User, such Authorized User may (i) subsequently invite or enable other Authorized Users with the same access and ability to use the Services, and such additional Authorized User will be deemed an Authorized User of the Account; and/or (ii) have the ability to view Customer Data, Customer Content, and information and content from any Third Party Integrations (defined below in Section 1.10) that are connected to the Account. Customer acknowledges and agrees that Customer is solely responsible and liable for inviting Authorized Users and the Permissions granted to Authorized Users by the Administrator(s) of the Account. Customer agrees that it shall not permit any person other than Authorized Users to access and use the Services and will ensure that its Authorized Users use the Services solely in accordance with this Agreement. Customer acknowledges and agrees that Customer is solely responsible for the use of the Services by Authorized Users, and any breach of this Agreement and/or the Acceptable Use Policy by any Authorized User will be deemed a breach by Customer.

**1.3. Subscriptions.** Peritus will provide access to all subscription Services in accordance with the subscription plan purchased by Customer from Peritus (the “Subscription”). Each Subscription shall begin on the date Customer purchased the Subscription, or on the start date specified in the applicable order form entered into by Customer and Peritus for the purchase of a Subscription, and continue for the applicable subscription period (e.g., monthly or annually) selected by Customer for such Subscription (the “Subscription Term”). Except for time-limited beta and/or trial subscriptions, the Subscription Term shall automatically renew for successive periods equal to the initial Subscription Term, unless Customer provides Peritus with written notice of non-renewal or termination at least thirty (30) days prior to the expiration of Customer’s then-current Subscription Term. For time-limited beta and/or trial subscriptions, Customer will have the option to convert to a paid subscription plan for the agreed upon Subscription Period at the end of the trial/beta period.

**1.4. Access to the Services.** Subject to the terms of this Agreement, Peritus hereby grants Customer a personal, non-exclusive, non-transferable, non-sublicensable, revocable limited right during the Subscription Term to access and use, and permit its Authorized Users to (i) access and use, the Platform, over the internet, through the Customer portal designated and/or generated by Peritus for Customer, and (ii) access and view the Peritus Content (defined in Section 4.1), made available through the Platform, in each case, solely for Customer’s internal business purposes and in accordance with the terms of this Agreement.

**1.5. Access to Beta-Version and Features.** From time to time, Peritus, in its sole discretion, may make certain beta versions of and/or beta features and/or functionality of the Services or limited time subscription to a beta version of the Services available to Customer to try at no additional charge (collectively, “Beta Version and Features”). If Customer elects to access Beta Version and Features made available to Customer by Peritus, Peritus grants to Customer a non-exclusive, non-transferable, non-sublicensable, limited right to access and use the Beta Version and Features solely for Customer’s internal evaluation and subject to any and all technical limitations implemented in the Beta Versions and Features and/or other usage parameters or restrictions specified by Peritus for the Beta Version and Features. In addition to the restrictions set forth in Section 1.6 below, Customer shall not access and/or

use the Beta Version and Features (i) for purposes of monitoring their availability, performance or functionality, or for any other benchmarking or competitive purpose, or (ii) without the express prior written approval of Peritus if Customer is a direct competitor of Peritus. In addition, Customer acknowledges and agrees that the Beta Versions and Features and any Feedback (as defined below in Section 4.3) regarding the Beta Versions and Features are the confidential information of Peritus and Customer shall not disclose any such confidential information to any third party. BETA VERSION AND FEATURES ARE PROVIDED AS-IS, ARE NOT SUPPORTED, AND MAY BE SUBJECT TO ADDITIONAL TERMS AS SPECIFIED BY PERITUS IN WRITING AND/OR IN THE APPLICABLE DOCUMENTATION FOR THE BETA VERSION AND FEATURES. Peritus reserves the right to terminate Customer's access to any Beta Versions and Features at any time, for any reason.

**1.6. Restrictions and Prohibited Uses.** Customer agrees that Customer will not, and it will not permit any third party (including, without limitation, any Authorized User) to: (i) modify, adapt, translate or create derivative works based on the Services (or any part thereof), including, without limitation, any Beta Versions and Features, or any related documentation; (ii) reverse engineer, decompile, disassemble, or otherwise derive or determine or attempt to derive or determine the source code (or the underlying ideas, algorithms, structure or organization) of the Platform, including, without limitation, any Beta Versions and Features; (iii) distribute, license, sublicense, assign, transfer or otherwise make available to any third party the Services (or any part thereof), including, without limitation, any Beta Versions and Features, or any related documentation; (iv) remove, alter, or obscure in any way any proprietary rights notices (including copyright notices) of Peritus or its suppliers on or within the Platform, including, without limitation, any Beta Versions and Features and/or related documentation; (v) interfere with or disrupt the integrity or performance of the Services (or any part thereof), including, without limitation, any Beta Versions and Features, or any system, network or data or cause or aid in the cause of the destruction, manipulation, removal, disabling, or impairment of any portion of the Services; (vi) attempt to gain unauthorized access to the Services (or any part thereof), including, without limitation, any Beta Versions and Features, or related systems or networks; (vii) frame or utilize framing techniques to enclose the Platform and/or any Beta Versions and Features, or any portion thereof; (viii) use any meta tags, "hidden text", robots, spiders, crawlers, or other tools, whether manual or automated, to collect, scrape, index, mine, republish, redistribute, transmit, sell, license or download the Platform, including, without limitation, any Beta Versions and Features, content, or the personal information of others without Peritus's prior written permission or authorization; (ix) use the Services (or any part thereof) to hack, spam, or phish Peritus or Peritus's other users; (x) use the Services, including, without limitation, any Beta Versions and Features, to store or transmit any malicious or unsolicited code or software, or store, transmit or upload any material and/or content that is false, inaccurate, illegal, abusive, harassing, harmful to reputation, pornographic, indecent, profane, obscene, hateful, racist, infringing, libelous, tortious, or otherwise objectionable in Peritus's reasonable opinion, or to store, transmit or upload any material or content that violates any third party's intellectual property rights and/or privacy rights; (xi) impersonate any person or entity, use a fictitious name, or falsely state or otherwise misrepresent Customer's affiliation with any person or entity; (xii) access or use the Services, including, without limitation, any Beta Versions and Features to build a competitive product or service; or (xiii) violate any applicable local, state, national or international law (including, without limitation, U.S. and foreign export laws concerning the transmission of technical data and other regulated materials) in Customer's use of the Services.

**1.7. Customer Data.** Customer understands and agrees that Customer may upload data and information into Customer's Account, which may include personally identifiable information in connection with Customer's and/or its Authorized User's use of the Services, but excluding Market Insights (collectively, "Customer Data"). Customer grants to Peritus a non-exclusive, royalty-free, fully-paid, worldwide license

to use and process Customer Data as reasonably necessary for Peritus to provide Customer the Services hereunder. Customer acknowledges and agrees that as between Customer and Peritus, Customer is the data controller and Peritus is merely a data processor and/or service provider as such terms are defined pursuant to applicable data protection laws. Any personally identifiable information provided or collected through or in connection with Services shall only be used in accordance with this Agreement and the Peritus Privacy Notice located at <https://peritus.ai/privacynotice>. Customer represents and warrants that, with respect to any Customer Data (including, without limitation, any personally identifiable data), transmitted, hosted, stored or processed, or otherwise provided by Customer to Peritus in connection with Customer's and its Authorized Users' use of the Services: (i) Customer has all the rights necessary to grant the Peritus the licenses granted herein in and to Customer Data; (ii) Customer is in compliance with all applicable data laws, and (iii) Customer has made all disclosures to, and obtained all permissions and/or approvals from, each applicable data source as may be necessary or required to transmit such data through the Services. Customer shall retain all right, title, and interest in and to Customer Data. Notwithstanding the foregoing, Customer Data does not include Analytics (as defined in Section 4.2 below), and Customer acknowledges and agrees that Peritus may use and exploit any aggregated non-personally identifiable data or information collected or obtained from Customer's and/or its Authorized Users' use of the Services for any purpose.

**1.8. Customer Content.** Subject to Peritus's rights in and to the Services (including, without limitation, Peritus Content, as defined below), Customer shall retain all right, title, and interest, in and to any text, images, video, graphics, logos, trademarks, and/or any other content or materials uploaded, submitted, generated and/or created by Customer and/or its Authorized Users in connection with their use of the Services (collectively, "Customer Content"). Customer hereby grants Peritus a non-exclusive, royalty-free, fully-paid, worldwide license to reproduce, modify, incorporate, perform and otherwise use the Customer Content as reasonably necessary for Peritus to provide Customer the Services hereunder. In addition, Customer understands that the Services may contain message boards, chat rooms, company profiles, forums, bulletin boards, and other interactive features that allow users to post, submit, publish, display and/or transmit Customer Content to, and otherwise interact with, Peritus and/or other users of the Services. Any Customer Content that Customer or its Authorized Users post to public forums, message boards, or other communication tools through the Services will be considered non-confidential and non-proprietary. Customer acknowledges and agrees that Customer, not Peritus, is solely responsible for (i) any Customer Content submitted, transmitted, contributed, generated, created, and/or otherwise provided by Customer and/or its Authorized Users in connection with the use of the Services, including its legality, reliability, accuracy and appropriateness, and (ii) for determining the rights and/or permissions it grants to other users of the Services to access and view Customer Content in connection with the use of the Services. Customer represents and warrants: (a) Customer or its licensors own all right, title, and interest in and to Customer Content; (b) Customer has all necessary rights and/or authorizations to grant the licenses hereunder to Peritus to Customer Content; and (c) none of the Customer Content does or will violate this Agreement, any applicable laws, rules or regulations, or any third party's intellectual property or other proprietary rights. For the avoidance of doubt, Customer may not upload, transmit, distribute or share any Customer Content (or any part thereof) through the Services that is owned, controlled or obtained from a third party, or that is copyrighted, protected by trade secret or otherwise subject to third party proprietary rights, including patent, privacy and publicity rights, unless Customer is the owner of such rights or has valid and enforceable permission from the rightful owner to use and include the Customer Content in the Services. If Customer believes that any content or materials submitted, posted, or otherwise provided by other users of the Services violates Customer's copyright, please see Peritus's DMCA – Copyright Policy available at <https://peritus.ai/DMCA> for instructions on sending Peritus a notice of copyright infringement. Peritus grants to Peritus a non-exclusive, royalty-free, fully-paid,

worldwide license to use the application programming interface (“API”) provided to Customer by Peritus, solely for internal use to upload the Customer Content into the Platform and to access the Peritus Content for use in accordance with the terms of this Agreement.

**1.9. Disputes.** Customer understands and agrees that Customer’s and its Authorized Users’ interactions and dealings with other users of the Services, are solely between Customer and such other user. Customer acknowledges and agrees that any problems or disputes between Customer and another user with respect to any interactions, dealings, and/or communications must be resolved solely between Customer and the applicable user. Peritus is not responsible for any loss, harm or damage of any sort incurred as a result of any such interactions or dealings, and Peritus has no obligation to become involved in any resulting dispute. CUSTOMER, ON BEHALF OF ITSELF AND ITS SUCCESSORS, ASSIGNS, REPRESENTATIVES, EMPLOYEES, AGENTS, CLIENTS, AND ANYONE ELSE CLAIMING BY OR THROUGH CUSTOMER (“CUSTOMER PARTIES”), HEREBY EXPRESSLY RELEASE, DISCHARGE, AND HOLD PERITUS AND ITS EMPLOYEES, AGENTS, REPRESENTATIVES, SHAREHOLDERS, OFFICERS, DIRECTORS, AFFILIATES, CONTRACTORS, SUCCESSORS, LICENSORS OR ASSIGNEES (THE “RELEASED PARTIES”) HARMLESS FROM, AND WAIVE ANY AND ALL CLAIMS (INCLUDING BUT NOT LIMITED TO CLAIMS FOR PROPERTY DAMAGE, PERSONAL INJURY, OR DEATH), DEMANDS, AND DAMAGES OF EVERY KIND OR NATURE, KNOWN OR UNKNOWN, SUSPECTED OR UNSUSPECTED, DISCLOSED OR UNDISCLOSED, ARISING OUT OF OR IN ANY WAY RELATED TO SUCH DISPUTES. IF CUSTOMER OR ANY CUSTOMER PARTY IS A CALIFORNIA RESIDENT, CUSTOMER SHALL AND HEREBY DOES WAIVE, ON BEHALF OF ITSELF AND THE CUSTOMER PARTIES, CALIFORNIA CIVIL CODE SECTION 1542, WHICH SAYS: “A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH, IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.”

**1.10. Third Party Integrations.** The Services may contain links to, or otherwise allow Customer to integrate with and/or connect to and/or use certain third party products, services or software (including, without limitation, data products and services), which are subject to separate terms and conditions (collectively, “Third Party Integrations”). If Customer decides to access and use such Third Party Integrations, Customer’s use of Third Party Integrations is governed solely by the terms and conditions of such Third Party Integrations, and Peritus does not endorse, is not responsible for, and makes no representations as to such Third Party Integrations, their content or the manner in which they handle Customer’s data. If Customer does not agree to the applicable terms and conditions of the Third Party Integrations, Customer may not access or use the Third Party Integrations. Peritus is not liable for any damage or loss caused or alleged to be caused by or in connection with Customer’s access or use of any such Third Party Integrations, or Customer’s reliance on the privacy practices or other policies of such Third Party Integrations. PERITUS DOES NOT WARRANT, ENDORSE, GUARANTEE OR ASSUME RESPONSIBILITY FOR ANY THIRD PARTY PRODUCTS OR SERVICES ADVERTISED OR OFFERED THROUGH, OR IN CONNECTION WITH, THE SERVICE (INCLUDING, BUT NOT LIMITED TO, THIRD-PARTY INTEGRATIONS CONNECTED TO THE SERVICE), OR ANY HYPERLINKED WEBSITE OR SERVICE, AND PERITUS WILL NOT BE A PARTY TO, OR IN ANY WAY MONITOR, ANY TRANSACTION BETWEEN CUSTOMER AND THIRD-PARTY PROVIDERS OF SUCH THIRD PARTY PRODUCTS OR SERVICES AND/OR THIRD PARTY INTEGRATIONS

**1.11. Changes and Modifications.** Peritus reserves the rights to either temporarily or permanently modify, suspend or discontinue the Services (or any part thereof) with 2 week's notice. Customer is entitled to a pro-rate refund if a material portion of the Service are modified, suspended or discontinued.

## **2. FEES; PAYMENT TERMS**

**2.1. Fees.** Customer shall pay the applicable fees, if any, for the Subscription purchased by Customer. Except as otherwise set forth in this Agreement, the fees payable by Customer for the Subscription will remain fixed during the Subscription Term unless Customer (i) exceeds the permitted user seats or other applicable usage limits of the Subscription, (ii) upgrades the Subscription, and/or (iii) subscribes to additional features or products. In the event a price change applies, Customer will be charged at the start of the next billing cycle for such additional fees. For the avoidance of doubt, Customer acknowledges and agrees that any downgrade to the Subscription shall not take effect until the next renewal date of the applicable Subscription Term, regardless of Customer's billing cycle for such Subscription (i.e. for monthly Subscriptions, prior to the start of the next month, and for annual Subscriptions, prior to the start of the next year). Subscriptions Plans shall renew at Peritus's then-current pricing for such Subscription.

**2.2. Payment Terms.** All fees are due and payable by Customer in advance, unless otherwise expressly and mutually agreed to by Customer and Peritus in writing. Customer expressly agrees that Peritus is permitted to bill Customer the applicable fees, any applicable tax and any other charges Customer may incur with Peritus in connection with such Subscription, and Customer hereby authorizes Peritus to charge the fees to the credit card, or to charge using any other payment method, Customer provides at the time the Subscription is purchased, in accordance with the billing terms in effect at the time a fee or charge is due and payable. If payment is not received or cannot be charged to Customer for any reason in advance, Peritus reserves the right to suspend or terminate Customer's and its Authorized User's access to the Services, downgrade the Subscription and/or terminate this Agreement. All fees are non-refundable and non-cancellable.

**2.3. Taxes.** The fees are exclusive of any taxes, levies, duties, or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction (collectively, "Taxes"), and Customer is and shall be responsible for payment of all such taxes (other than taxes based on Peritus's income), and any related penalties and interest, arising from the payment of the fees, the delivery of the Services, or performance of any services by Peritus hereunder.

## **3. TERM; TERMINATION**

**3.1. Term.** The term of this Agreement commences on the Effective Date and will remain in effect during the Subscription Term (including any renewal thereof), or until terminated in accordance with this Agreement (whichever is sooner). Each Subscription Term shall automatically renew as set forth in Section 1.3.

**3.2. Termination.** Customer may terminate this Agreement and/or any Subscription by providing Peritus written notice of such termination at sales@peritus.ai. Customer acknowledges and agrees that notwithstanding any termination of this Agreement, the Subscription fees are non-refundable and non-cancellable. At any time, Peritus may (i) suspend or terminate Customer's and/or any Authorized User's right to access or use the Services (or any part thereof), or (ii) terminate this Agreement with

respect to Customer if Peritus, in good faith, believes that Customer has used the Services (or any part thereof) in violation of this Agreement, including any incorporated guidelines, terms or rules.

**3.3. Effect of Termination.** Upon termination of this Agreement for any reason, all outstanding fees immediately becoming due and payable, including, without limitation, any Subscription fees due and payable for the remainder of the then-current Subscription Term, and Customer's and its Authorized Users' right to access and use the Services will automatically terminate. In addition, provided that Customer has paid Peritus all amounts due and payable under this Agreement, Peritus will permit Customer to export a copy of the Customer Data and Customer Content, following Peritus's receipt of Customer's written request to export such Customer Data within thirty (30) days of the date of termination. Thereafter, Company will have no obligation to retain Customer Data. The following Sections will survive any termination or expiration of this Agreement: 1.1, 1.2, 1.6, 1.7, 1.8, 1.9, 1.10, 2, 3.3 and 4 through 15.

#### **4. OWNERSHIP; MARKET INSIGHTS; FEEDBACK**

**4.1. Ownership.** Peritus and/or its licensors shall retain all rights, title, interest, in and to and ownership of (i) any text, graphics, images, music, audio, video, works of authorship of any kind, and information or other materials that are posted, generated, provided or otherwise made available by Peritus through the Services, including, without limitation, Market Insights, but excluding Customer Content and Customer Data (collectively, the "Peritus Content"), (ii) the Services, including, without limitation, the Platform, any Beta Versions and Features, and any accompanying user manuals or documentation (the "Documentation"), and Peritus Content, and any improved, updated, modified or additional parts thereof, and (iii) all copyright, patent, trade secret, trademark and other intellectual property and proprietary rights in and to the Services, Platform, Documentation and Peritus Content. All rights that are not explicitly granted in this Agreement are reserved by Peritus and its licensors.

**4.2. Analytics; Market Insights.** Customer acknowledges and agrees that Peritus may collect, analyze and use anonymized information, metrics, analytics, and data in connection Customer's and/or its Authorized User's use of the Services and/or derived from Customer Data and Customer Content for its own business purposes, such as improving, testing, and maintaining the Services, and developing additional products and services ("Analytics"). Subject to Customer's rights in and to Customer Data and Customer Content, Peritus shall retain all right, title, and interest in and to, and shall have a perpetual right to use and distribute Analytics.

**4.3. Feedback.** To the extent that Customer and/or any Authorized Users provide or submit to Peritus any ideas, suggestions, improvements and/or other feedback regarding any aspect of the Services, Platform, Beta Versions and Features, Documentation, and/or Peritus Content including, without limitation, the functioning, features, and other characteristics thereof (collectively, "Feedback"), Customer hereby grants Peritus, its subsidiaries, affiliates and partners a worldwide, irrevocable, perpetual, royalty free, non-exclusive, sublicensable and transferable license under all Customer's intellectual property rights in the Feedback to exploit and use for any purpose, without compensation or attribution.

#### **5. INDEMNIFICATION**

**5.1. Customer shall** indemnify, defend, and hold Peritus and its affiliates and subsidiaries, and their respective officers, directors, shareholders, employees, contractors, agents, successors and assigns (collectively, "Peritus Indemnified Parties"), harmless from and against any and all liability, losses, claims, expenses (including reasonable attorneys' fees), demands or damages of any kind, arising out of or

related to third party claims (“Losses”) to the extent resulting from (i) Customer’s or any Authorized User’s breach of this Agreement or any license or other agreement applicable to any Third Party Integrations; (ii) Authorized User claims; (iii) allegations that the Customer Content, or Customer’s activities in connection with, or use of, the Services (or any part thereof), violate any applicable laws, rules or regulations, or infringe or misappropriate the intellectual property rights of any third party; (iv) Customer Data or a violation of any applicable privacy law, rule or regulation by Customer; (v) Customer’s or its Authorized Users’ use of the Services; and/or (vi) Customer’s gross negligence, fraudulent misrepresentation or willful misconduct. Peritus shall promptly notify Customer in writing of such action, give Customer sole control of the defense thereof and any related settlement negotiations, and, at Customer’s reasonable request and expense, cooperate and assist in such defense. Under no circumstances shall Customer enter into any settlement that involves an admission of liability, negligence or other culpability of any Peritus Indemnified Party or requires any Peritus Indemnified Party to contribute to the settlement without Peritus’s prior written consent. Peritus and any Peritus Indemnified Party may participate and retain its own counsel at its own expense.

**5.2. Peritus shall** indemnify, defend, and hold Customer and its affiliates and subsidiaries, and their respective officers, directors, shareholders, employees, contractors, agents, successors and assigns (collectively, “Customer Indemnified Parties”), harmless from and against any and all Losses to the extent resulting from (i) the software used to operate the Platform or the Peritus Content when used in accordance with this Agreement infringing, misappropriating, or otherwise violating the intellectual property rights of a third party; . (ii) violation of any applicable privacy law, rule or regulation by Peritus; and/or (iii) Peritus’ gross negligence, fraudulent misrepresentation or willful misconduct. Customer shall promptly notify Peritus in writing of such action, give Peritus sole control of the defense thereof and any related settlement negotiations, and, at Peritus reasonable request and expense, cooperate and assist in such defense. Under no circumstances shall Peritus enter into any settlement that involves an admission of liability, negligence or other culpability of any Customer Indemnified Party or requires any Customer Indemnified Party to contribute to the settlement without Customer’s prior written consent. Customer and any Customer Indemnified Party may participate and retain its own counsel at its own expense.

**5.3.** Peritus represents and warrants that it will use industry standard measures reasonably designed to ensure that the Platform does not contain any viruses or programming routines intended to damage, surreptitiously intercept, or expropriate any system, data or personal information. Peritus further represents and warrants that the use by Client of the Platform and the Peritus Content, each in accordance with the terms and conditions of this Agreement will not will not violate or misappropriate the intellectual property rights of any third parties.

## **6. DISCLAIMER**

EXCEPT AS EXPRESSLY PROVIDED IN THIS PARAGRAPH, THE SERVICES (AND ANY PART THEREOF), AND ANY OTHER MATERIALS OR SERVICES PROVIDED BY PERITUS AND ITS LICENSORS, ARE PROVIDED “AS IS” AND “AS AVAILABLE”. PERITUS AND ITS LICENSORS AND SUPPLIERS HEREBY EXPRESSLY DISCLAIM ANY REPRESENTATIONS, WARRANTIES OR GUARANTEES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, SATISFACTORY PURPOSE, ACCURACY, OR ANY IMPLIED WARRANTIES OF NON INFRINGEMENT UNDER THE UNIFORM COMMERCIAL CODE. PERITUS AND ITS LICENSORS AND SUPPLIERS DO NOT WARRANT OR MAKE ANY GUARANTEE THAT DEFECTS WILL BE CORRECTED OR THAT SERVICES (OR ANY PART THEREOF), OR ANY OTHER MATERIALS OR SERVICES PROVIDED BY PERITUS OR

CONTENT MADE AVAILABLE THROUGH SERVICES: (I) WILL MEET CUSTOMER'S REQUIREMENTS; (II) WILL BE COMPATIBLE WITH CUSTOMER'S NETWORK, COMPUTER OR MOBILE DEVICE, OR ANY THIRD PARTY PRODUCTS OR SERVICES INCLUDING, WITHOUT LIMITATION, ANY THIRD PARTY INTEGRATIONS; (III) WILL BE AVAILABLE ON AN UNINTERRUPTED, TIMELY, SECURE OR ERROR-FREE BASIS; OR (IV) WILL BE ACCURATE OR RELIABLE. CUSTOMER EXPRESSLY ACKNOWLEDGES AND AGREES THAT THE USE OF THE SERVICES, AND ALL RESULTS OF SUCH USE IS SOLELY AT CUSTOMER'S OWN RISK. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY CUSTOMER FROM PERITUS, ANY THIRD PARTY, OR THROUGH SERVICES, SHALL CREATE ANY WARRANTY.

## **7. LIMITATION OF LIABILITY**

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW: (I) IN NO EVENT SHALL PERITUS OR ITS LICENSORS BE LIABLE FOR ANY DIRECT, INDIRECT, CONSEQUENTIAL, PUNITIVE, SPECIAL OR INCIDENTAL OR OTHER DAMAGES RESULTING FROM, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE ACCESS, USE OF, OR INABILITY TO ACCESS OR USE THE SERVICES (OR ANY PART THEREOF), AND/OR ANY OTHER MATERIALS OR SERVICES PROVIDED BY PERITUS, EVEN IF PERITUS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES EXCEPT TO THE EXTENT SUCH DAMAGES ARISE DIRECTLY AND SOLELY FROM WILLFUL MISCONDUCT OR GROSS NEGLIGENCE ON THE PART OF PERITUS, AND (II) IN NO EVENT SHALL PERITUS'S OR ITS LICENSORS TOTAL CUMULATIVE LIABILITY ARISING FROM OR RELATED TO THIS AGREEMENT OR THE ACCESS, USE OF, OR INABILITY TO ACCESS OR USE THE SERVICES (OR ANY PART THEREOF), AND/OR ANY OTHER MATERIALS OR SERVICES PROVIDED BY PERITUS EXCEED THE GREATER OF THE SUBSCRIPTION FEES PAID OR PAYABLE TO PERITUS BY CUSTOMER HEREUNDER DURING THE TWELVE (12) MONTH PERIOD PRIOR TO THE CAUSE OF ACTION, OR ONE HUNDRED DOLLARS (\$100.00). PERITUS DISCLAIMS ALL LIABILITY OF ANY KIND OF PERITUS'S LICENSORS AND SUPPLIERS.

## **8. APPLICATION OF LIMITATIONS AND DISCLAIMERS TO CONSUMERS**

Certain states and/or jurisdictions do not allow the exclusion of implied warranties or limitation of liability for incidental or consequential damages with respect to consumers (i.e., a person acquiring goods otherwise than in the course of a business), so the exclusions set forth in Sections 6 and 7 above may not apply to Customer if Customer is a consumer. The limitations or exclusions of warranties and liability contained in this Agreement do not affect or prejudice the statutory rights of a consumer. The limitations or exclusions of warranties and remedies contained in this Agreement shall apply to Customer as a consumer only to the extent such limitations or exclusions and remedies are permitted under the laws of the jurisdiction where Customer is located.

## **9. BASIS OF THE BARGAIN**

The warranty disclaimer and limitation of liability set forth above in Section 6 and 7 are fundamental elements of the basis of the agreement between Peritus and Customer. Peritus would not be able to provide the Services on an economic basis without such limitations. The warranty disclaimer and limitation of liability inure to the benefit of Peritus's suppliers.

## **10. EXCLUSIONS**

Notwithstanding anything in this Agreement to the contrary, Peritus will have no responsibility or liability of any kind under this Agreement or otherwise, arising or resulting from: (i) problems caused by failed Internet connections or other hardware, software or equipment which is not owned, controlled or operated by Peritus; (ii) nonconformities resulting from Customer's or any Authorized User's, or any third party's misuse, abuse, negligence, or improper or unauthorized use of all or any part of the Services, or other services provided hereunder by Peritus; (iii) modification, amendment, revision, or change to the Services, or any part thereof, by any person other than Peritus; or (iv) any other factor outside of Peritus's reasonable control.

## **11. AVAILABILITY OF THE SERVICES**

Information describing the Services is accessible worldwide but this does not mean the Services, or certain portions thereof, are available in Customer's country. Peritus may restrict access to the Services, or portions thereof, in certain countries in its sole discretion. It is Customer's responsibility to make sure Customer's use of the Services is legal in Customer's country of residence. The Services may not be available or accessible in all languages. If at Peritus's reasonable determination, Customer uses the Services or any other material or services provided by Peritus to Customer in a manner that violates laws, creates an excessive burden or potential adverse impact on Peritus's systems, in addition to any of its other rights or remedies, Peritus may, without liability to Peritus, immediately suspend or terminate Customer's access to the Services.

## **12. ELECTRONIC COMMUNICATIONS**

By using the Services, Customer consents to receiving electronic communications from Peritus. These electronic communications may include notices about applicable fees and charges, transactional information and other information concerning or related to Customer's use of the Services. These electronic communications are part of Customer's relationship with Peritus and Customer receive them as part of Customer's access and use of the Services. Customer agrees that any notices, agreements, disclosures or other communications that Peritus sends Customer electronically will satisfy any legal communication requirements, including that such communications be in writing.

## **13. GOVERNING LAW AND DISPUTE RESOLUTION**

**13.1. Governing Law.** This Agreement will be governed by the laws of the State of California, United States of America without giving effect to any conflict of laws principles. The United Nations Convention on Contracts for the International Sale of Goods in its entirety is expressly excluded from this Agreement. Furthermore, this Agreement (including without limitation, the Platform and any software and services provided hereunder) will not be governed or interpreted in any way by referring to any law based on the Uniform Computer Information Transactions Act (UCITA) or any other act derived from or related to UCITA.

**13.2. Disputes.** Except as otherwise set forth in this Agreement, Customer agrees that any dispute between Customer and Peritus arising out of or relating to this Agreement, the Services (or any part thereof), including, without limitation, any Beta Versions and Features (collectively, "Disputes") shall be governed by the provisions set forth in this Section.

**13.3. Informal Resolution.** Before resorting to formal dispute resolution in accordance with this Section, Customer agrees to first contact Peritus directly at [sales@peritus.ai](mailto:sales@peritus.ai) to seek an informal resolution to any

Dispute. In the event a Dispute is not resolved within thirty (30) days after submission, Customer or Peritus may institute arbitration in accordance with the procedures set forth in this Section.

**13.4. Dispute Resolution.** Any and all Disputes that cannot be resolved through informal resolution in accordance with Section 13.3 above shall be resolved exclusively through final, binding and confidential arbitration and shall take place in Santa Clara County, California unless otherwise mutually agreed to by the parties. The arbitration shall be conducted by the American Arbitration Association (AAA) in accordance with the arbitration rules then in effect, provided that the arbitrator and the parties shall comply with the following: (i) the arbitration shall be conducted by telephone, online and/or be solely based on written submissions, the specific manner shall be chosen by the party initiating the arbitration; (ii) the arbitration shall not involve any personal appearance by the parties or witnesses unless otherwise mutually agreed by the parties; and (iii) any judgment on the award rendered by the arbitrator shall be binding, final, and confidential, and may be entered in any court of competent jurisdiction.

**13.5. Exception to Arbitration.** Notwithstanding anything in this Agreement to the contrary to the extent Customer and/or any Authorized User has in any manner violated or threatened to violate any of Peritus's intellectual property rights, Peritus may seek injunctive or other appropriate relief in any state or federal court with competent jurisdiction in any country, including in the State of California, without first engaging in arbitration or the informal dispute process set forth in this Section, and Customer hereby consents to the personal jurisdiction and exclusive venue in such courts.

#### **14. MODIFICATIONS TO THIS AGREEMENT**

Peritus reserves the right to update or modify this Agreement at any time. The revised Agreement will be posted on Peritus's website located at <https://peritus.ai/termsofservice> (the "Site"). All updates and modifications to this Agreement will be effective from the day they are posted on the Site (except as otherwise stated in this Section 14). If Peritus makes any material changes to this Agreement, Peritus will notify Customer of these changes by sending a notification to the email address Peritus has on file for Customer, or, if Peritus does not have an email address on file, by posting a notice of the changes on the Site and through the user interface of the Platform. It is Customer's responsibility to regularly visit and review this Agreement. If Customer does not agree to any updates or modifications to this Agreement, Customer may cease access and use of the Services and send notice of Customer's termination of this Agreement to [sales@peritus.ai](mailto:sales@peritus.ai). Customer's continued use of the Services after Peritus has posted the updated Agreement, or, in the event of material changes, ten (10) days following the date Peritus first notified Customer of such material changes either through email or the date Peritus posted the notice of such changes on the Site or through the user interface of the Platform, signifies Customer's acknowledgment and agreement to be bound by the revised Agreement.

#### **15. GENERAL**

Neither the rights nor the obligations arising under this Agreement are assignable by Customer, and any such attempted assignment or transfer shall be void and without effect. Any waiver of any provision of this Agreement must be in writing and executed by both parties. The failure of either party to exercise any right provided for by this Agreement shall not be deemed a waiver of that right. If any term or provision of this Agreement is determined to be illegal, unenforceable, or invalid in whole or in part for any reason, that provision shall be stricken from this Agreement and shall not affect the legality, enforceability or validity of the remainder of the provisions set forth in this Agreement. The parties acknowledge and agree that they are dealing with each other as independent contractors and nothing in this Agreement and its performance shall be construed as creating a joint venture or agency between Peritus and Customer.

This Agreement is not intended to grant rights to anyone except Customer and Peritus, and in no event shall this Agreement create any third party beneficiary rights. Peritus may delegate the performance of any services hereunder to its affiliates and contractors. This Agreement and any other policies or terms and conditions referenced herein, constitute the entire agreement between the parties regarding the subject matter, and supersedes all prior oral or written agreements or communications with regard to the subject matter described. Any notice to Customer may be provided by email. The headings of Sections of this Agreement are for convenience and are not to be used in interpreting this Agreement. As used in this Agreement, the word “including” means “including but not limited to.” Customer agrees that this Agreement will not be construed against Peritus by virtue of having drafted them. The official text of this Agreement (and any notice submitted hereunder) will be in English. The parties acknowledge that they require that this Agreement be drawn up in the English language only. In the event of any dispute concerning the construction or meaning of this Agreement, reference will be made only to this Agreement as written in English and not to any translation into another language. Any delay in performance of any duties or obligations of either party will not be considered a breach of this Agreement if such delay is caused by a labor dispute, shortage of materials, fire, earthquake, flood, telecommunications or Internet failure, or any other event beyond the reasonable control of such party.

#### **16. QUESTIONS AND ADDITIONAL INFORMATION**

Please feel free to contact Peritus at [help@peritus.ai](mailto:help@peritus.ai) if you have any questions about this Agreement.