



Aperian Master Services Agreement

Past Versions MSA

Last Updated on: June 12, 2025

Revised to clarify that affiliates are included under the Client definition, adds a definition for Professional Services in relevant order forms, and removes the reference to the Acceptable Use Policy in Section 9(a).

This **Aperian Master Services Agreement** (the “**Agreement**”) is entered into by and between Aperian Global, Inc., with its offices at 414 Fayetteville St., 4th Floor, Raleigh, North Carolina, 27601, USA on behalf of itself and its Affiliates (“**Aperian**”) and the Customer identified on a signed Order Form and its Affiliates (“**Customer**” or “**you**”). Any capitalized term used in the Agreement shall have the meaning given it in this Agreement.

- 1 Provision and Access to the Subscription Services.** Subject to the terms of this Agreement, Customer will purchase and Aperian will provide access to the Subscription Services as specified in the applicable Order Form for the Initial Term and Renewal Term (collectively, “Term”) set forth therein. Use and access of the Subscription Services is permitted only by individuals authorized by Customer to use the Subscription Services (“Users”) and shall be only for Customer’s own internal business operations (and not for the benefit of a third party). Users may also use the associated generally published technical documentation for the Subscription Services (“Documentation”) solely for internal business purposes. Customer and its Users may only use the Subscription Services in accordance with the Usage Capacity set forth in the Order Form. For the avoidance of doubt this Agreement only permits Customer to access and use the Services and Customer will not receive or have access to a copy of the code or software that underlies the Services (collectively the

“Software”) or receive a copy of the Software itself. Customer may permit its contractors and its affiliates’ employees and contractors to serve as Users, provided Customer remains responsible for compliance by such individuals with all of the terms and conditions of this Agreement, and any use of the Services by such individuals shall be for the sole benefit of Customer. An “affiliate” means any entity under the control of either Aperian or Customer where “control” means ownership of or the right to control greater than 50% of the voting securities of such entity. The Subscription Services, Learning Module Services and Professional Services (if any) shall be referred to within this Agreement as the “Services”.

- 2 **Learning Modules.** If an Order Form includes Learning Module Services then Aperian will provide the Learning Modules along with any related implementation and deployment services (if any) as further described in the applicable Order Form. If any Learning Services require the download of software (“Learning Module Software”) then, subject to the terms and conditions of this Agreement, Customer is granted a non-exclusive, non-transferable license to install and use the Learning Module Software for the duration of the subscription identified in an Order Form. If either party requests a change in the scope of the Learning Module Services, any agreed-upon changes, including changes in Module Fees and expenses, will only be binding if set forth in a Change Order. Absent the execution of a Change Order, the parties will proceed to fulfill their obligations under the applicable Order Form in accordance with its original terms.
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- 3 **Professional Services.** If an Order Form includes instructor-led training or consulting services (“Professional Services”) then Aperian will provide the Professional Services and supply the Deliverables in accordance with the Services Schedule as set forth in an applicable Order Form. Professional Services will be provided during regular business hours in the time-zone in which they are to be performed. If either party requests a change in the scope of the Professional Services, any agreed-upon changes, including changes in Services Fees and expenses, will only be binding if set forth in a writing executed by the parties (each a “Change Order”). Absent the execution of a Change Order, the parties will proceed to fulfill their obligations under the applicable Order Form in accordance with its original terms.
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- 4 **Restrictions.** Customer agrees to be (and shall cause each User to be) a good citizen when it uses the Services. Customer agrees (and shall cause each User) not to, directly or indirectly: (a) modify, translate, live-record, copy or create derivative works based on the Services or any element of the Software, (b) “frame” or “mirror” any data forming part of the Services, (c) reverse assemble, reverse compile, reverse engineer, decompile or otherwise attempt to discover the object code, source code, non-public APIs or underlying ideas or algorithms of the Services or the Software in whole or in part, except as and only to the extent this restriction is prohibited by law, (d) license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, time share or otherwise commercially exploit or make the Services available to any third party, other than as specifically contemplated by this Agreement, (e) remove or obscure any confidentiality or other notice contained in the Services, (f) use the Services in any way that violates any applicable federal, state, local or international laws or regulations, (g) use the Services or any Software for timesharing or service bureau purposes or otherwise for the benefit of a third party, (h) introduce any viruses, Trojan horses, worms, logic bombs or other material which is malicious or technologically harmful, (i) attempt to gain unauthorized access to, interfere with, damage or disrupt any parts of the Services, the server on which the Services is stored, or any server, computer or database connected to the Services, and/or (j) attempt (directly or indirectly) to do any of the foregoing.
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- 5 **Permitted Use.** Customer represents, covenants and warrants that it will use (and will cause Users, its employees and agents to use) the Services only in compliance with all applicable federal, state, local or international laws or regulations. Customer agrees that Aperian may (in its sole and absolute discretion) monitor Customer’s use of the Services and may prohibit any use it believes may be in violation of the restrictions in Section 4 (“Restrictions”) of this Agreement or Customer’s covenants, warranties or representations made herein, or suspend Customer (and its Users) access to a Service if it believes such a violation has occurred or may occur.
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- 6 **User Accounts.** As part of the registration process, each User will receive a username and password for the Customer’s account. Customer will ensure that its Users are aware of and bound by obligations and/or restrictions set forth in

this Agreement and Customer shall be responsible for breach of any obligation and/or restriction set forth herein by a User. Customer will (a) be responsible for ensuring the security of its account and confidentiality of all user IDs and passwords for the Services, (b) prevent unauthorized access to, or use of, the Services, (c) be fully responsible for monitoring and administering the various uses and Users of the Services, (d) ensure the quality and integrity of Customer Data, and (e) notify Aperian promptly of any unauthorized use of the Services or any breach, or attempted breach, of the security of the Services. Customer is responsible for all activities of its Users on the Services and is responsible for all uses of Customer's account, whether or not Customer authorizes such use.

Aperian may access Customer's User accounts, including relevant User Information (i) to respond to technical problems, (ii) in connection with providing and maintaining the Services and the development of new Services features and improvements, (iii) at Customer's request, (iv) to comply with legal or contractual requirements, and/or (v) when necessary to provide the Professional Services (as defined below).

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- 7 **Customer Equipment.** Customer 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, phones, hardware, servers, software, operating systems, networking, web servers and the like (collectively, "Equipment"). Customer shall be responsible for: (i) maintaining the security of the Equipment; and (ii) all uses of the Equipment, whether or not authorized by Customer.

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- 8 **Support Policy.** During the Term, Aperian will provide support and will operate the Services in accordance with the service levels set forth in Exhibit A ("SLA").

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- 9 **Suspension of Services.** Aperian may suspend the Services immediately upon notice to Customer for cause if: (a) Customer or a User materially breaches (or Aperian believes that Customer or a User has materially breached) any provision of this Agreement; (b) there is an unusual and material spike or increase in Customer's use of the Services and Aperian believes that such traffic or use is fraudulent or materially and negatively impacting the operating capability of the Services; or (c) Aperian determines that its provision of the Services is prohibited

by applicable law or (d) there is any use of the Services by Customer or Users that in Aperian's judgment threatens the security, integrity or availability of the Services. However, Aperian will use commercially reasonable efforts under the circumstances to (x) provide Customer with notice and an opportunity to remedy such violation or threat prior to any such suspension; (y) where practicable limit the suspension based on the circumstances leading to the suspension; and (z) remove the suspension as quickly as reasonably practicable after the circumstances leading to the suspension have been resolved.

- 10 **Changes.** Customer acknowledges that the Subscription Services are on-line, subscription-based products, and that in order to provide improved customer experience Aperian may make changes to the Subscription Services provided, however Aperian will not materially decrease the overall functionality of the Subscription Services. The SLAs and Support Policy and DPA 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 Aperian's obligations or materially reduce Customer's rights as compared to those reflected in such terms as of the Agreement Effective Date).
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- 11 **Ownership.** Aperian owns the Services and Software; all materials relating to and provided through the Aperian Services (including, without limitation, the Learning Modules and all submissions and responses associated with the Ask-an-Expert functionality); all training materials, books, manuals, templates, tools, pamphlets, binders, software presentations, video recordings, and audio recordings that were prepared by Aperian prior to or independent of this Agreement and without use of Customer Data ("Training Materials"), and any underlying infrastructure (collectively the "Aperian Materials"). Aperian Materials shall also include all Deliverables resulting from the Professional Services unless an Order Form indicates that a Deliverable has been expressly created for the Customer and that Order Form contains an assignment to Customer that expressly overrides this Section 11. Aperian hereby grants Customer a limited, non-exclusive, non-sublicensable, royalty-free license to the Training Materials for the Term, and perpetually to the Deliverables, subject to Customer using the Training Materials and Deliverables solely internally for its business purposes and not to compete with Aperian or to offer classes. Customer acknowledges and agrees that (a) the Aperian Materials are protected by United States and international copyright,

trademark, patent, trade secret and other intellectual property or confidential rights laws, (b) Aperian retains all right, title and interest (including, without limitation, all patent, copyright, trade secret and other intellectual property rights) in and to the Aperian Materials, any and all related and underlying technology, algorithms, processes, methodologies and any derivative works or modifications of any of the foregoing, (c) there are no implied licenses under this Agreement and any rights not expressly set forth in this Agreement are hereby expressly reserved by Aperian, and (d) the Software and access to the Services are licensed, not sold and Customer acquires no ownership or other interest (other than the license rights expressly stated herein) in or to the Aperian Materials. The trademarks, service marks and logos of Aperian used in the Services ("Trademarks") are Aperian's sole property, or the property of their respective owners. Customer has no right to use any such Trademarks, and nothing contained in this Agreement grants any right to use (by implication, waiver, estoppel or otherwise) any Trademarks without Aperian's prior written permission or the prior written permission of the respective owner.

12 Customer Data.

- i. *License.* In order to use the Services, Customer and its Users may add, upload, or submit information, survey responses, images, text and other data to the Services or through the Services (">Customer Data"). Customer grants Aperian and its licensors a non-exclusive, worldwide, royalty-free, paid-up, transferable right and license to use, host, cache, publish, copy, and display such Customer Data, including Customer Personal Data as this term is defined in the DPA, for the purpose of providing the Services and as further described in the DPA. Except as otherwise provided herein, Customer will own all right, title and interest in and to the Customer Data. Customer is solely responsible for the accuracy, content and legality of all Customer Data. Notwithstanding the above, any Customer data, including information or questions submitted to the Ask-an-Expert functionality of the Service (collectively, "Ask Expert Data"), shall no longer be deemed Customer Data hereunder once it has been anonymized, aggregated and/or de-identified.
- ii. *Data Processing.* This Agreement incorporates the Data Processing Addendum ("DPA") <https://aperian.com/customer-dpa/>. If there is a

conflict between the Agreement and the DPA, the DPA shall prevail. Aperian agrees to use commercially reasonable technical and organizational measures designed to prevent unauthorized access, use, alteration or disclosure of any Customer Personal Data, but in any case at least those measures set forth in the DPA. However, Aperian will have no responsibility for errors in transmission, unauthorized third-party access or other causes beyond Aperian's control. Customer acknowledges that email and SMS are insecure media that are generally not encrypted in transit and that security of information, data, or content transmitted through the Internet can never be guaranteed. Accordingly, Aperian is not responsible for any interception or interruption of any communications through the Internet or for any changes to or loss of Customer Data in connection with the Services.

13 Confidentiality.

- i. *Confidentiality and Non-use.* Each party (the "Receiving Party") understands that the other party (the "Disclosing Party") may disclose business, technical or financial information relating to the Disclosing Party's business (hereinafter referred to as the "Confidential Information" of the Disclosing Party). Aperian's Confidential Information includes non-public information regarding features, functionality and performance of the Services, Software and Learning Modules. Customer's Confidential Information includes non-public data provided by Customer to Aperian to enable the provision of the Services, including the User Information and Customer Data. The Receiving Party agrees: (i) to take reasonable precautions to protect such Confidential Information, (ii) not to use (except in performance of the Services or as otherwise permitted herein) or divulge to any third person any such Confidential Information, (iii) protect the Confidential Information disclosed to it by the Disclosing Party with at least the same degree of care as it normally exercises to protect its own proprietary information of a similar nature, but in no event less than a reasonable standard of care. The Receiving Party also agrees that, even within the Receiving Party, Confidential Information will be disseminated only to those employees, officers and directors with a clear and well-defined "need to know" purpose and who are informed of and bound by the obligations of this Agreement or a substantially similar

agreement with terms just as protective of the Disclosing Party's Confidential Information as the terms of this Agreement. The Disclosing Party agrees that the foregoing will not apply with respect to any information that the Receiving Party can document (a) is or becomes generally available to the public without breach of this Agreement, or (b) was in its possession or known by it prior to receipt from the Disclosing Party, or (c) was rightfully disclosed to it without restriction by a third party, (d) was independently developed without use of (or reference to) Confidential Information or (e) if required by a valid order issued by a court or governmental agency of competent jurisdiction (a "Legal Order") provided that prior to making any such disclosure, the Receiving Party will use commercially reasonable efforts to provide the Disclosing Party with (1) prompt written notice of such requirement so that the Disclosing Party may seek, at its sole cost and expense, a protective order or other remedy and (2) reasonable assistance, at the Disclosing Party's sole cost and expense, in opposing such disclosure or seeking a protective order or other limitations on disclosure.

- ii. *Feedback.* Customer may, from time to time, provide suggestions, comments or other feedback with respect to the Services, the Professional Services, or the support services provided hereunder ("Feedback"). Customer agrees that all Feedback is and will be given entirely voluntarily. Feedback, even if Customer designates it as confidential, will not be deemed to constitute Confidential Information or to impose any confidentiality obligations on Aperian. Customer grants Aperian a royalty-free, worldwide, perpetual, irrevocable license to use or incorporate into the Services or Professional Services any Feedback Customer or its Users provide.
- iii. *Data Collection.* As part of its Services, Aperian collects certain information relating to the use and performance of the Services. Notwithstanding anything to the contrary, Aperian will have the right to collect and analyze such data and other information relating to the provision, use and performance of various aspects of the Services and related systems and technologies and Aperian will be free (during and after the term hereof) to (i) use such information and data to improve and enhance the Services and for other development, diagnostic and

corrective purposes in connection with the Services and other of Aperian's offerings, and (ii) disclose such data solely in aggregate or other de-identified form in connection with Aperian's business. Aperian agrees that it will not use the data described in this Section in any manner that identifies Customer as a customer or user of the Services.

14 Payment Terms.

- i. *Fees.* Customer shall pay the applicable fees set in the Order Form in accordance with the terms stated on each Order Form, including, without limitation, the Subscription Fees, Services Fees, and Module Fees (collectively, the "Fees"). Except as otherwise specifically provided in this Agreement, Fees are non-refundable and non-cancellable. Aperian may modify its Fees or introduce new fees when required by changes in its business or Services offerings; any new or revised fees will become effective upon the next Renewal Term by providing Customer with written notice at least thirty (30) days before the end of the then current Term.
- ii. *Invoicing.* Aperian will invoice Customer in accordance with the schedule set forth in the applicable Order Form. Unless specified otherwise, Customer shall pay all amounts in accordance with the Payment Terms set forth on each Order Form or, if no such terms exist, within thirty (30) days after receipt of each invoice. All payments shall be in the currency defined in the corresponding Order Form and shall be made via electronic bank transfer to Aperian's account.
- iii. *Taxes.* The Fees payable hereunder are exclusive of any sales, use, excise, value added, import, or other applicable taxes, tariffs or duties ("Taxes"). Customer is solely responsible for payment of all Taxes except for any taxes based solely on Aperian's net income. If Customer is required to pay any Taxes, Customer will pay such Taxes with no reduction or offset in the Fees payable to Aperian hereunder. If Aperian has the legal obligation to pay or collect Taxes for which Customer is responsible, Customer agrees to pay such Taxes and Aperian will charge

Customer's payment instrument or invoice the appropriate amount to be paid by Customer.

- iv. *Overdue Fees.* Overdue Fees are subject to a finance charge of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is lower. If Customer fails to pay any invoices in accordance with Section 14(b) ("Invoicing"), Aperian may suspend Customer's use of and access to the Services pending payment of such overdue invoices; provided that Aperian gives Customer notice of such non-payment and ten (10) days (from the date of such notice) to remit the overdue fees in full.
- v. *Payment Disputes.* Customer will notify Aperian in writing in the event Customer disputes any fees or Taxes paid or payable by Customer under this Agreement. Where Customer is disputing any fees or Taxes, the Customer must act reasonably and in good faith and shall cooperate diligently with Aperian to resolve the dispute. Customer will provide such notice to Aperian within sixty (60) days of the date Aperian bills Customer for such fees or Taxes due that are in dispute and the parties will work together to resolve the applicable dispute promptly.

15 Term and Termination.

- i. *Term and Renewal.* This Agreement starts on the Agreement Effective Date specified in the Order Form and shall continue for the Initial Term stated on the Order Form. The Order Form and this Agreement will be automatically renewed for additional, successive terms of one year (each a "Renewal Term") at the end of the Initial Term and each Renewal Term. The Initial Term and all Renewal Terms shall be referred to herein as the "Term". Either party may elect not to renew this Agreement by giving written notice thereof to the other party 30 days prior to the end of the then current Term.
- ii. *Termination for Cause.* This Agreement may be earlier terminated by either party (a) if the other party materially breaches a provision of this

Agreement and fails to cure such breach within 10 days (immediately in the case of non-payment lasting more than 30 days after date of invoicing) after receiving written notice of such breach from the non-breaching party, or (b) immediately upon written notice, if the other party makes any assignment for the benefit of creditors, or a receiver, trustee in bankruptcy or similar officer is appointed to take charge of any or all of the other party's property, or the other party seeks protection under any bankruptcy, receivership, trust deed, creditors arrangement, composition or comparable proceeding or such a proceeding is instituted against the other party and is not dismissed within 90 days, or the other party becomes insolvent or, without a successor, dissolves, liquidates or otherwise fails to operate in the ordinary course.

- iii. *Effect of Termination.* Upon non-renewal, expiration or termination of this Agreement for any reason, all Order Forms shall terminate and Customer agrees to pay in full for the Services up to and including the last day on which the Services is provided. Upon any non-renewal, expiration or termination of this Agreement, Customer will immediately cease any and all use of and access to all Services (including any and all related Aperian Materials) and delete and/or destroy (or, at Aperian's request, return) any and all copies of the Documentation, any Aperian passwords or access codes and any other Aperian Confidential Information in its possession. An authorized officer of Customer shall certify such deletion and destruction. Customer acknowledges that following termination it will have no further access to any Customer Data input into any Services, and that Aperian may delete any such data as may have been stored by Aperian at any time. Except where an exclusive remedy is specified, the exercise of either party of any remedy under this Agreement, including termination, will be without prejudice to any other remedies it may have under this Agreement, by law or otherwise.
- iv. *Survival.* Sections 11, 12, 14, 15 (only as to amounts due and owing), 16, 18, 19, 20 and 21 will survive the expiration, non-renewal or termination of this Agreement.

- i. ***APERIAN WARRANTY.*** APERIAN WILL USE ITS REASONABLE EFFORTS CONSISTENT WITH PREVAILING INDUSTRY STANDARDS TO (A) MAINTAIN THE SERVICES IN A MANNER THAT MINIMIZES ERRORS AND INTERRUPTIONS IN THE SERVICES, (B) ADHERE TO THE SERVICE LEVELS SET FORTH IN THE SLA, (C) PROVIDE THE SERVICES IN MATERIAL COMPLIANCE WITH ANY DOCUMENTATION THAT APERIAN PROVIDES, AND (D) PROVIDE THE PROFESSIONAL SERVICES AND ANY SUPPORT RENDERED HEREUNDER IN A PROFESSIONAL AND WORKMANLIKE MANNER. THE FOREGOING LIMITED WARRANTY DOES NOT COVER ISSUES OR FAILURE RESULTING FROM ABUSE, MISUSE, ALTERATION, ACTS OF NATURE OR DISASTER, UNAUTHORIZED REPAIR OR INSTALLATION, OR USE OF THE SERVICES OR THE SOFTWARE ON OR IN CONNECTION WITH ANY HARDWARE OR SOFTWARE NOT SPECIFIED IN THE DOCUMENTATION. APERIAN'S SOLE LIABILITY (AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY) FOR ANY BREACH OF THIS WARRANTY WILL BE, IN APERIAN'S SOLE DISCRETION AND AT NO CHARGE TO CUSTOMER TO (A) USE COMMERCIALY REASONABLE EFFORTS TO PROVIDE CUSTOMER WITH AN ERROR CORRECTION OR WORK-AROUND THAT CORRECTS THE REPORTED NON-CONFORMITY IF THE BREACH OF WARRANTY CONCERNS THE SERVICES OR TO RE-PERFORM THE PROFESSIONAL SERVICES IF THE BREACH OF WARRANTY CONCERNS THE PROFESSIONAL SERVICES OR SUPPORT SERVICES OR, IF APERIAN DETERMINES (IN ITS SOLE AND ABSOLUTE DISCRETION) SUCH REMEDIES TO BE IMPRACTICABLE, (B) ALLOW CUSTOMER TO TERMINATE AND RECEIVE AS ITS SOLE REMEDY ANY PREPAID FEES FOR THE REMAINDER OF ANY THEN CURRENT TERM AFTER THE EFFECTIVE DATE OF TERMINATION. **EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, THE SERVICES ARE PROVIDED "AS IS" AND APERIAN DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. CUSTOMER FURTHER ACKNOWLEDGES THAT APERIAN DOES NOT WARRANT THAT (A) THE OPERATION OF THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE, (B) THE SERVICES WILL BE SECURE OR FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS OR (C) THAT ANY RESULTS ARE GUARANTEED AS A RESULT OF USING THE SERVICES. CUSTOMER ASSUMES ALL RISKS**

AND LIABILITY ASSOCIATED WITH RELYING ON THE SERVICES, INCLUDING THE CONTENT OF THE LEARNING MODULES AND ANY ASK-AN-EXPERT RESPONSES AND SHOULD VERIFY ALL SUCH INFORMATION INDEPENDENTLY. CUSTOMER UNDERSTANDS THAT EVEN THOUGH CUSTOMER MAY LINK TO THIRD PARTY SITES THROUGH USE OF THE SERVICES, THIRD PARTY SITES ARE NOT UNDER APERIAN'S CONTROL, AND APERIAN IS NOT RESPONSIBLE FOR THE CUSTOMER'S USE OF ANY THIRD PARTY SITES, ANY LINKS CONTAINED IN THIRD PARTY SITES, OR ANY CHANGES OR UPDATES TO THIRD PARTY SITES.

- ii. *Representations and Warranties of Customer.* Customer represents and warrants that: (i) it is either the owner of the Customer Data and all intellectual property rights therein, or it has procured all necessary rights, consents and permissions to collect, share and use all Customer Data as contemplated in this Agreement; (ii) the reproduction, use or distribution of the Customer Data under this Agreement will not violate or infringe the rights of any person or entity (including the intellectual property rights or privacy rights), and will not constitute a libel or defamation of any third party; (iii) Customer will not make any claim of ownership of the Aperian Materials (including without limitation, the Services or Software) or institute any proceedings to challenge the validity of Aperian's ownership of the Aperian Materials and or intellectual property rights therein; (iv) Customer has the full right, power and authority to enter into this Agreement and to perform the acts required of it hereunder; (v) the execution of this Agreement by Customer, and the performance by Customer of its obligations and duties hereunder, do not and will not violate any agreement to which Customer is a party or by which it is otherwise bound; and (vi) when executed and delivered by Customer, this Agreement will constitute the legal, valid and binding obligation of Customer, enforceable against such Customer in accordance with its terms.

17 Indemnity.

- i. **By Aperian.** Aperian will defend any third party claim or action brought against Customer to the extent based on the allegation that the Software

infringes any intellectual property right (patents, utility models, design rights, copyrights and trademarks or any other intellectual property right) having effect in the United States and agree to pay any settlements that Aperian agrees to in a writing signed by an authorized officer of Aperian or final (non-appealable) judgments awarded to the third party claimant by a court of competent jurisdiction. The foregoing obligations do not apply with respect to the Software or portions or components of either that are (a) not provided by Aperian, (b) combined with other products, processes or materials that are not reasonably contemplated by the Documentation where the alleged infringement relates to such combination or (c) where Customer's use of the Services is not strictly in accordance with this Agreement or the published Documentation.

- ii. **By Customer.** Customer will defend any third party claim or action brought against Aperian to the extent based on Customer's breach or alleged breach of Section 11 of this Agreement or relating to how Customer uses the Services and any results from the Services, and Customer agrees to pay any settlements that Customer agrees to in a writing signed by Customer's authorized officer or final judgments awarded to the third party claimant by a court of competent jurisdiction.
- iii. **Procedures.** Each party's indemnification obligations are conditioned on the indemnified party (a) providing the indemnifying party with prompt written notice of any claim, (b) granting the indemnifying party the sole control of the defense or settlement of the claim and (c) providing reasonable information and assistance to the indemnifying party in the defense or settlement of the claim at the indemnifying party's expense.
- iv. **Options.** If Customer's use of the Services has become, or in Aperian's opinion is likely to become, the subject of any claim of infringement, Aperian may at its option and expense, (a) procure for Customer the right to continue using and receiving the Services as set forth hereunder, (b) replace or modify the Services to make it non-infringing, (c) substitute an equivalent for the Services or (d) if Aperian, in its sole and absolute discretion, determines that options set forth above are not commercially

practicable, terminate this Agreement and refund Customer any pre-paid, unused Fees paid for use of the Services.

- v. **SOLE REMEDY.** NOTWITHSTANDING ANYTHING ELSE TO THE CONTRARY IN THIS AGREEMENT, THIS SECTION 17 STATES APERIAN'S ENTIRE RESPONSIBILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS UNDER THIS AGREEMENT.
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18 Limitation of Liability.

- i. NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, EXCEPT FOR (I) CUSTOMER'S BREACH OF SECTION 11 OR (II) EITHER PARTY'S OBLIGATIONS UNDER SECTION 18, NEITHER PARTY (NOR ANY SUPPLIER OR LICENSOR OF APERIAN) WILL BE LIABLE WITH RESPECT TO ANY CAUSE RELATED TO OR ARISING OUT OF THIS AGREEMENT, WHETHER IN AN ACTION BASED ON A CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR ANY OTHER LEGAL THEORY, HOWEVER ARISING, FOR (A) INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, (B) ANY DAMAGES BASED ON USE OR ACCESS, INTERRUPTION, DELAY OR INABILITY TO USE THE SERVICES, LOST REVENUES OR PROFITS, DELAYS, INTERRUPTION OR LOSS OF SERVICES, BUSINESS OR GOODWILL, LOSS OR CORRUPTION OF DATA, LOSS RESULTING FROM SYSTEM OR SYSTEM SERVICE FAILURE, MALFUNCTION OR SHUTDOWN, FAILURE TO ACCURATELY TRANSFER, READ OR TRANSMIT INFORMATION, FAILURE TO UPDATE OR PROVIDE CORRECT INFORMATION, SYSTEM INCOMPATIBILITY OR PROVISION OF INCORRECT COMPATIBILITY INFORMATION OR BREACHES IN SYSTEM SECURITY, OR (C) ANY DAMAGES THAT IN THE AGGREGATE EXCEED THE TOTAL FEES PAID OR PAYABLE BY CUSTOMER FOR THE SERVICE THAT IS OR THE PROFESSIONAL SERVICES THAT ARE THE SUBJECT OF THE CLAIM DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT WHICH GIVES RISE TO SUCH DAMAGES. THESE LIMITATIONS WILL APPLY WHETHER OR NOT A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND

NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

19 **Export.** In its use of the Services, Customer agrees to comply with all export and import laws and regulations of the United States and other applicable jurisdictions. Without limiting the foregoing, (i) Customer represents and warrants that it is not listed on any U.S. government list of prohibited or restricted parties or located in (or a national of) a country that is subject to a U.S. government embargo or that has been designated by the U.S. government as a “terrorist supporting” country, (ii) Customer will not (and will not permit any of its users to) access or use the Services in violation of any U.S. export embargo, prohibition or restriction, and (iii) Customer will not submit to the Services any information that is controlled under the U.S. International Traffic in Arms Regulations.

20 **General Terms.** Customer and Aperian are and at all times shall be and remain independent contractors as to each other. At no time shall either party be deemed to be the agent or employee of the other party, and no joint venture, partnership, agency, or other similar relationship shall be created or implied by virtue of this Agreement. If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect. Customer may not assign, transfer, or sublicense this Agreement or delegate or otherwise transfer any of its obligations or performance without Aperian’s prior written consent. Any purported assignment, delegation or transfer in violation of this provision is void. This Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement. All waivers and modifications must be in a writing signed by both parties, except as otherwise provided herein. Notices to be given or submitted by either party to other pursuant to this Agreement shall be in writing and directed to the address in the Order Form (in the case of the Customer) and in the preamble to this Agreement (in the case of Aperian) or otherwise provided to the other party in writing and shall be deemed to have been given (i) when delivered by hand (with written confirmation of receipt), or (ii) when received by the

addressee if sent by a nationally recognized overnight courier (receipt requested) or by certified or registered mail, return receipt requested, postage prepaid. This Agreement will be governed by the laws of the State of California without regard to its conflict of laws provisions. Any claim brought by either party against the other shall be instituted exclusively in the federal courts of the United States or the courts of the State of California in each case located in the City and County of San Francisco, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding and waives any objection based on improper venue or inconvenient forum. Aperian reserves the right to use Customer's name as a reference for marketing or promotional purposes on Aperian's website and in other communication with existing or potential Aperian customers. In the event that either party is prevented from performing, or is unable to perform, any of its obligations under this Agreement (except payment obligations) due to any cause beyond its reasonable control, the affected party shall give written notice thereof to the other party and its performance shall be extended for the period of delay or inability to perform due to such occurrence. In any action or proceeding to enforce or interpret this Agreement, the prevailing party will be entitled to recover from the other party its costs and expenses (including reasonable attorneys' fees) incurred in connection with such action or proceeding and enforcing any judgment or order obtained. Customer acknowledges and agrees that Aperian may suffer irreparable damage in the event of a breach by Customer of the terms and conditions of this Agreement and that Aperian will be entitled to seek injunctive relief (without the necessity of posting a bond) in the event of any such breach. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which together shall constitute one and the same instrument.

Exhibit A

SERVICE LEVEL AGREEMENT

Aperian will use its reasonable commercial efforts to maintain and operate the Services with commercially reasonable care and skill.

Scheduled Maintenance. While most of Aperian's maintenance can be completed without downtime, from time to time maintenance requiring downtime must be performed to maintain the integrity and security of the Services. In such cases, Aperian will provide Customer's primary point of contact (as identified in the Order Form) as much advance notice of the planned maintenance as is commercially and technically

feasible. Such scheduled maintenance windows and any period of unavailability due to maintenance for which Customer is given at least 24 hours advance notice shall be considered "Scheduled Maintenance".

Availability. Aperian's goal is to provide access to the Services at Aperian's internet gateway(s) twenty-four hours per day, seven days a week, except during Scheduled Maintenance. Aperian's service level objective is 99.5% Availability measured on a monthly basis.

Availability for the Services is measured monthly as a percentage of Scheduled Available Minutes.

"Scheduled Available Minutes" are the total minutes in a month less the number of Scheduled Maintenance minutes in the applicable month.

"Available Minutes" is the number of Scheduled Available Minutes in a month less the aggregate number of minutes the Services was unavailable outside of Scheduled Maintenance.

"Availability" is a percentage calculated as the Available Minutes in a month divided by the Scheduled Available Minutes in the month.

For example, in a 30 day month with 4 weekly Scheduled Maintenance windows of 8 hours, there are 41,280 Scheduled Available Minutes ((60 min. x 24 hrs. x 30 days)-(60 min. x 8 hrs. x 4 weeks) = 41,280). If the Services experiences an outage of two hours outside of Schedule Maintenance, there were 41,160 Available Minutes in the month (41,280 Scheduled Available Minutes – 120 minutes of unavailability). The resulting Availability percentage is $41,160 / 41,280 = 99.7\%$.

Services Credits. In the event the Services is not available 99.5% over any one month period, Aperian shall apply credits based on the actual Availability of the Services ("Services Level Credits") for the applicable period as follows:

Availability of the Services	Services Level Credit
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99.500% or greater	No Services Level Credit
99.499% -99.000%	5% of the monthly prorated Fee
98.999% -98.500%	15% of the monthly prorated Fee
98.499% -95.000%	25% of the monthly prorated Fee
Below 95.000%	35% of the monthly prorated Fee

Services Level Credits for Fees paid on an annual basis shall be based on a monthly equivalent fee. For example, a 5% service level credit on an annual subscription fee shall be 5% of 1/12 of the annual fee. Services Level Credits shall be applied to Customer's next invoice or, if Customer has paid the final invoice under this Agreement, Services Level Credits shall be paid to Customer within thirty (30) calendar days following the determination that the credit is due. The maximum credit that Customer may receive is 35% of the monthly prorated Fee. In the event the Services's availability falls below 95.000% in (i) any two consecutive month period, or (ii) three months in any twelve month period, Customer may terminate the applicable Order Form and receive a credit of any prepaid but unearned fees. The foregoing Services Level Credit, or termination right, as applicable, shall be Customer's exclusive remedy and is in lieu of all other remedies for any breach of the Downtime Warranty.

The following shall not be considered periods of unavailability for purposes of the Availability calculation:

 Outages due to factors outside of Aperian's reasonable control (for example, a network or device failure at Customer's site or between Customer's and Aperian's data centers);

 Delays in email or webmail transmission to or from the Services;

 Connectivity issues outside of Aperian's direct control (e.g. DNS issues);

 Force majeure events;



Outages attributable to the acts or omissions of Customer or Customer's employees, agents, contractors, or vendors;



Periods of down time at Customer's request;



Outages that result from Customer's equipment, software, or other technology and/or third party equipment, software or other technology (other than those which are under Aperian's direct control); and



Performance degradation due to Customer' use of the Services in excess of the scope of Customer's license, usage restrictions, or product limitations outlined in the applicable Order Form or Documentation.
