

PERCEPTION POINT –EULA

1.0 Definitions. For purposes of this Agreement and all Exhibits thereto, the following capitalized terms shall have the following meaning:

1.
 1. 1 “**Intellectual Property Rights**” means all worldwide, whether registered or not (a) patents, patent applications and patent rights; (b) rights associated with works of authorship, including copyrights, copyright applications, copyright restrictions, mask work rights, mask work applications and mask work registrations; (c) trademarks, trade names, service marks, logos, domain names, goodwill and trade dress; (d) trade secrets and confidential information; (e) rights analogous to those set forth herein and any other proprietary rights relating to intangible property; and (f) divisions, continuations, renewals, reissues and extensions of the foregoing (as applicable) now existing or hereafter filed, issued, or acquired.
 2.
 1. 2 “**Solution**” means Perception Point’s secure email gateway software solution, including maintenance and support services, and all updates and upgrades, from time to time, that are generally made available for free by Perception Point to all of its customers.
 3. 3 “**Affiliate**” means, with respect to a party, a person or entity that controls, is controlled by, or is under common control with, such Party.

2. License. Subject to and in accordance with all the terms and conditions of this Agreement, Perception Point hereby grants to Customer a limited, worldwide, non-assignable (except as otherwise provided in Section 11.3), non-exclusive, non-transferable, non-sublicensable right to use the Solution internally within the Customer’s, during the Term (as defined below) (the “**License**”).

3. Limitations on Use. Customer shall not: (i) directly or indirectly, take any action to contest Perception Point’s Intellectual Property Rights or infringe them in any way; (ii) access or use the Solution through any unauthorized means, services or tools, including, without limitation, any data mining, robots, or similar automated means or data gathering and extraction tools, including, without limitation, in order to extract for re-utilization of any parts of the Solution; (iii) penetrate or circumvent or attempt to penetrate or circumvent any technical restrictions or limitations included in the Solution or its servers; or (iv) use or register any trademarks, trade names, domain names or symbols similar to Perception Point’s registered trademarks and logos.

4. Undertakings. Each party undertakes to comply with all applicable laws and regulations (including with limitation those applicable to privacy), including any registration requirements and obtain all applicable licenses, permits, authorizations, approvals and consents (including

without limitation from a party's personnel) required under any applicable law for Perception Point to provide and for Customer to use the Solution in accordance therewith.

5. Warranties and Representations. Each party warrants and represents to the other party that it has the full corporate power and authority required to enter into this Agreement and to carry out its undertakings and obligations hereunder. In addition, Perception Point warrants and represents to the Customer that (i) Perception Point owns, or has obtained a license (as may be applicable) to, all rights in and to the Solution and the License granted to Customer hereunder does not infringe the Intellectual Property Rights of any third party, and (ii) the Solution shall be in workmanlike condition, free of any errors or bugs and Customer's sole and exclusive remedy for failure of this warranty shall be to terminate this Agreement and receive a pro-rata refund.

6. Service Levels and Support. During the Term, Perception Point shall provide Customer with support services and service levels in accordance with its Service Level and Support Policy, the current version of which is available at <http://perception-point.io/service-level-and-support-description/>.

7. Ownership. Perception Point or its licensors (as applicable) owns all right, title, and interest in and to the Solution, including without limitation any and all data, computer code, user interface, design and structure, and all modifications, enhancements and derivatives thereof and all Intellectual Property Rights related thereto ("**Perception Point IPR**"). Customer acknowledges that, except for the limited License to the Solution set forth in Section 2 above, Customer did not and shall not acquire any rights in any part of the Perception Point IPR. Customer owns all data which it provides or which Perception Point receives from Customer which is processed by or through the Solution, including, but not limited to all emails sent or received by Customer, backup files, and other electronic files processed by the Solution as part of the services provided by Perception Point ("**Customer Data**").

8.0 Confidential Information and Privacy.

8.1 All data and information related to each party, its affiliates and its shareholders, employees, directors and agents and/or to its business, products and services are confidential information of the disclosing party ("**Confidential Information**"). Except for Customer Data, which shall remain confidential at all times, "Confidential Information" does not include information: (i) that is or becomes part of the public domain through no act or omission of the receiving party; (ii) that is lawfully received by the receiving party from a third party without restriction on use or disclosure and without breach of this Agreement or any other agreement without knowledge by the receiving party of any breach of fiduciary duty, or (iii) that the receiving party lawfully had in its possession prior to the date of this Agreement. The receiving party agrees to protect the Confidential Information in accordance with good industry practices and keep confidential and not disclose, disseminate, allow access to or use any Confidential Information except as required for exercising its rights or fulfilling its obligations herein. Either party shall restrict disclosure of Confidential Information to those of its employees and consultants with a reasonable need to know such information and which are bound by written confidentiality obligations no less restrictive than those set out herein. Without derogating from the foregoing, either party may

disclose this Agreement in connection with a merger, sale or issuance of all or substantially all of the shares or assets of such party.

8.2 Customer acknowledges that all emails sent and received by Customer will be processed and monitored by the Solution solely for the purpose of providing the service to Customer and in accordance with the Perception Point Privacy Policy available at: <http://perception-point.io/privacy-policy/>. Customer shall, as and to the extent required by law, ensure that the users in its organization consent to the provision to and processing by Perception Point of their emails as set forth herein.

9.0 Indemnification; Limitation of Liability.

9.1 Perception Point shall indemnify and hold Customer and its Affiliates and their respective stockholders, directors and officers, harmless against any and all claims, damages, losses, expenses and costs, finally awarded in judgment or settlement and arising out of a third party allegation that the Solution infringes its intellectual property rights. Perception Point's indemnification obligation shall be subject to provision of prompt written notice of the claim to Perception Point, rendering full control over the defense and settlement of the claim to Perception Point and that Customer shall provide reasonable assistance in the defense to Perception Point.

9.2 EXCEPT FOR BREACHES OF CONFIDENTIAL INFORMATION AND INDEMNIFICATION UNDER SECTION 9.1, AND EXCEPT FOR CLAIMS BASED ON A PARTY'S WILLFUL MISCONDUCT: (A) UNDER NO CIRCUMSTANCES WILL EITHER PARTY AND ITS AFFILIATES, AND ITS AND THEIR SHAREHOLDERS, DIRECTORS, AGENTS, EMPLOYEES, LICENSORS OR SUPPLIERS BE LIABLE UNDER ANY CONTRACT, STRICT LIABILITY, NEGLIGENCE OR OTHER LEGAL OR EQUITABLE THEORY, FOR ANY INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH THIS AGREEMENT AND/OR THE SOLUTION EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, INCLUDING WITHOUT LIMITATION LOST PROFITS; AND (B) EITHER PARTY'S AND ITS AFFILIATES' AGGREGATE LIABILITY IN CONNECTION WITH THIS AGREEMENT, THE SOLUTION OR OTHERWISE SHALL NOT EXCEED THE PAYMENTS MADE TO PERCEPTION POINT BY CUSTOMER DURING THE TWELVE (12) MONTHS PRECEDING THE EVENT THAT GAVE RISE TO SUCH CLAIM.

10. Term and Termination.

10.1 Unless earlier terminated pursuant to Section 10.2 below, the term of the Agreement shall be as set forth in the purchase order (the "**Term**").

10.2 Either party may terminate this Agreement in accordance with the following terms: (i) upon breach by the other party of any of its obligations herein and the breaching party's failure to cure the breach within fourteen (14) days, or, in the event of a materials breach, failure to cure the breach within seven (7) days, of written notice from the other party, to the extent any such breach is curable; (ii) by delivering written notice to the other party upon the occurrence of any

of the following events: (a) a receiver is appointed for either party or its property; (b) either party makes a general assignment for the benefit of its creditors; (c) either party commences, or has commenced against it, proceedings under any bankruptcy, insolvency or debtor's relief law, which proceedings are not dismissed within thirty (30) days; or (d) either party is liquidated or dissolved or has undertaken any measures to commence such liquidation or dissolution.

10.3 Upon expiration or termination of this Agreement for any reason: (i) all of Customer's rights and licenses hereunder shall immediately terminate and Customer shall immediately cease using the Solution; (ii) the receiving party shall promptly erase/delete or return to the disclosing party (at the disclosing party's election), all of disclosing party's confidential information, held or controlled by the receiving party, in any form or media, and, with respect to Perception Point, Perception Point IPR held or controlled by Customer. The following Sections shall survive termination/expiration hereof: 1, 3, 4, 5, 7-9, 10.3, and 11.

11. General. (11.1) **Waiver; Remedies.** Failure of a party to insist upon the performance by the other party of any term hereof shall not be deemed a waiver of the rights of the first-mentioned party with respect thereto. All waivers must be in writing. (11.2) **Notices.** All notices and other communications required or desired to be communicated by one party to the other shall be in writing and shall be deemed delivered immediately when sent by fax or e-mail (with automatic confirmation of receipt), or delivered by hand or ten (10) days after mailing by registered mail to the respective addresses set forth at the head of the Agreement. Provided, however, that any notice of change of address shall be effective only upon receipt. (11.3) **Assignment.** Customer shall not assign or transfer any of its rights or obligations hereunder, whether by contract or by operation of law, except to a subsidiary or affiliate thereof or with as part of an assignment carried out as part of a merger, restructuring, or reorganization, or as a sale or transfer of all or substantially all of Customer's assets or with Perception Point's prior written consent. Perception Point may assign and transfer any rights and obligations under this Agreement at its sole discretion, provided that Perception Point shall notify Customer of such assignment and that such assignment shall not derogate from any of Customer's rights hereunder. (11.4) **Relationship of the Parties.** The relationship established between Perception Point and Customer by this Agreement is solely that of independent contractors. Customer is not the agent or legal representative of Perception Point nor is Perception Point the agent or legal representative of Customer, and no employee of Customer shall be considered to be an employee of Perception Point for any purposes whatsoever and no employee of Perception Point shall be considered to be an employee of Customer for any purposes whatsoever. Except as set forth under this Agreement, neither party shall be liable for any expenses incurred by the other party which arise out of or in connection with the Agreement. (11.5) **Entire Agreement; Modification.** This Agreement, including the Exhibits hereto, sets forth the entire agreement and understanding between the parties hereto with respect to the subject matter hereof, and supersedes all prior discussions, agreements, representations and understandings between them. This Agreement shall not be modified except by a written instrument signed by both parties. (11.6) **Governing Law and Jurisdiction.** This Agreement and any action related thereto shall be governed, controlled, interpreted and defined by and under the laws of the State of Israel without regard to the conflict of law provisions thereof. The exclusive jurisdiction and venue of any action with respect to the subject matter of this Agreement shall be the competent courts of Tel-Aviv-Jaffa, Israel and each of the parties hereto submits itself to the exclusive jurisdiction and

venue of such courts for the purpose of any such action. The United Nations Convention for the International Sale of Goods is expressly excluded from this Agreement. (11.7) **Remedies.**

Notwithstanding Section 11.6 above, each party acknowledges that in the event of breach or threatened breach of any provision of this Agreement by the other party, such party could suffer significant and irreparable harm that could not be satisfactorily compensated in monetary terms, and that the remedies at law available to such party may otherwise be inadequate and such party shall be entitled, in addition to any other remedies to which it may be entitled to under law or in equity, to the immediate ex parte issuance of an equitable relief, including without limitation an injunctive relief, in any jurisdiction worldwide. (11.8) **Severability.** Any provision of this Agreement prohibited by, or unenforceable under, applicable law shall be ineffective and shall be replaced by an enforceable provision to the same or the nearest possible equivalent effect.

Notwithstanding the foregoing, the other provisions hereof shall continue in effect. (11.9) **Force Majeure.** Neither party shall be liable to the other for delays or failures in performance resulting from unforeseeable causes and which are beyond the reasonable control of that party, including, but not limited to, acts of God, labor disputes or disturbances, material shortages or rationing, or riots. (11.10) **No Third Party Beneficiaries.** No provisions of this Agreement are intended or shall be construed to confer upon or give to any person or entity other than Customer (and its employees) and Perception Point any rights, remedies or other benefits under or by reason of this Agreement