

PREFECT SOFTWARE AS A SERVICE (SaaS) AGREEMENT

PLEASE READ THIS PREFECT SOFTWARE AS A SERVICE (SAAS) AGREEMENT ("**TERMS**") CAREFULLY BEFORE USING THE SERVICES OFFERED BY PREFECT TECHNOLOGIES, INC. ("**PREFECT**"). BY USING THE SERVICES, SIGNING AN ORDER FORM, OR CLICKING ON THE "ACCEPT" BUTTON, YOU ("**CLIENT**") ARE CONSENTING TO BE BOUND BY AND ARE BECOMING A PARTY TO THESE TERMS. THESE TERMS INCLUDE AND INCORPORATE ANY APPLICABLE WRITTEN ORDER FORM (EACH, AN "**ORDER FORM**") AND PREFECT'S PRICING TERMS LOCATED AT [HTTPS://WWW.PREFECT.IO/LEGAL/PREFECT-CLOUD-PRICING-DOCUMENT](https://www.prefect.io/legal/prefect-cloud-pricing-document) ("**PRICING DOCUMENT**"). YOU AGREE TO BE BOUND BY THESE TERMS (TOGETHER WITH ALL EXHIBITS, ORDER FORMS AND THE PRICING TABLE, THE "**AGREEMENT**") TO THE EXCLUSION OF ALL OTHER TERMS. IN ADDITION, ANY ONLINE ORDER FORM WHICH YOU SUBMIT VIA PREFECT'S STANDARD ONLINE PROCESS AND WHICH IS ACCEPTED BY PREFECT SHALL BE DEEMED TO BE MUTUALLY EXECUTED. YOU REPRESENT AND WARRANT THAT YOU HAVE FULL LEGAL AUTHORITY TO ENTER INTO THIS AGREEMENT, UNDER ALL APPLICABLE LAWS AND ON BEHALF OF CUSTOMER. IF THE TERMS OF THIS AGREEMENT ARE CONSIDERED AN OFFER, ACCEPTANCE IS EXPRESSLY LIMITED TO SUCH TERMS.

1. DEFINITIONS

As used in this Agreement, the definitions below shall apply. Definitions for other defined terms are set forth elsewhere in this Agreement.

1.1 "Documentation" means any and all then current Prefect standard documentation relating to the Software provided by Prefect from time to time, if any.

1.2 "Effective Date" means the date on which Client accepts this Agreement.

1.3 "Hosting Site" means the Internet-connected hosting facility from which the System and Software are accessed.

1.4 "Intellectual Property Rights" means, on a worldwide basis, any and all: (i) rights associated with works of authorship, including copyrights, moral rights, database rights and mask-works; (ii) trademarks; (iii) trade secret rights; (iv) patents, designs, utility models, algorithms, inventions; (v) other intellectual and industrial property rights of every kind and nature, however designated, whether arising by operation of law, contract, license or otherwise; and (vi) registrations, applications, renewals, extensions, continuations, divisions or reissues thereof now or hereafter in force (including any rights in any of the foregoing); whether or not any of the foregoing are registered, and whether or not any of the foregoing are owned or licensed.

1.5 "New Products" means, individually and collectively, any and all works based and/or derived from any Confidential Information of Prefect, Materials, trademarks, or any Intellectual Property Rights therein.

1.6 "Prefect Content" means any and all content, including data, program code, both source and executable, images, text and videos provided by Prefect, if any.

1.7 "Services" means the access to the Materials that Prefect agrees to provide to Client, as well as the hardware and software infrastructure for providing such access and any Discretionary Offerings and/or Professional Services (capitalized terms defined below) rendered in connection with this Agreement.

1.8 "Software" means software owned and/or licensed by Prefect and/or its affiliates, as currently existing and as hereafter modified, developed, prepared, customized, purchased, licensed, acquired or otherwise received, conceived, made or suggested, including individually or jointly by Prefect or its representatives, including all such developments as are originated or conceived during the Term but are completed or reduced to practice thereafter. The Software is accessed by Client over its internet connection through communication with the Hosting Site.

1.9 “System” means the hardware, configuration, systems software, applications software, software utilities, firmware, embedded software, telecommunications equipment and connectivity, Hosting Sites and other facilities that Prefect hosts, maintains and uses to provide Users with access to and use of the Software.

1.10 “Users” are employees and agents of Client, or any individuals otherwise authorized by Client, that have been designated or permitted by Client to access the System on behalf of Client.

2. PREFECT SERVICES

2.1 Services. Prefect shall provide the Services described in this Agreement and in the Order Form (as applicable) or Pricing Document

2.2 System Changes; Services Updates. Prefect will use commercially reasonable efforts to resolve any failure, malfunction, defect, problem, or non-conformity in the Systems identified by Client or otherwise brought to Prefect’s attention. Prefect will not knowingly make any changes to the System that are likely to have a materially adverse impact on Client’s access to or use of the Systems or significantly increase Client’s costs; provided that Prefect may make changes required by any emergency if Prefect is unsuccessful in contacting Client despite reasonable efforts to provide notice to Client. Notwithstanding the foregoing, Prefect may, from time to time, provide upgrades, patches, enhancement, fixes or other modifications to the Software or System generally without additional charge, including but not limited to the launch of Prefect 2.0 (“Updates”), and such Updates will become part of the Services and be subject to this Agreement. Client hereby acknowledges that Prefect may cease supporting old versions or releases of the Services at any time in its sole discretion; provided that Prefect shall use commercially reasonable efforts to give Client reasonable notice of any major changes. Client further acknowledges and agrees to promptly update or accept all such Updates on its system following the launch thereof, to receive the latest version of the Software and/or System.

2.3 Security and Access. With regard to the System and those locations where any Client Data (as defined below) is stored under the control of Prefect, Prefect will use commercially reasonable efforts to maintain and enforce safety, as well as physical and digital security procedures that are at least equal to industry standards for such types of service locations. Prefect will use commercially reasonable efforts to secure the System against breach of security measures it deploys and will rectify any such breaches that occur of which Prefect is aware.

2.4 Professional Services. To the extent an Order Form specifies any professional services (“Professional Services”) to be provided by Prefect, the terms set forth in Exhibit A shall apply, the terms of which are incorporated into this Agreement. If there is a conflict between the terms of Exhibit A and the terms of this Agreement, the terms of Exhibit A will control solely as they relate to Professional Services.

2.5 Discretionary Offerings; POC Period. Prefect may, in its sole discretion, provide Client upgraded service offerings and/or features (including, but not limited to (i) beta releases of the Services, (ii) proof of concept trial periods for premium services not available to similarly situated customers of Prefect that have purchased the same tier of Services as Client (a “POC Period”), and/or (iii) temporary access to other premium features of Services not provided to similarly situated customers of Prefect that have purchased the same tier of Services as Client) (collectively, “Discretionary Offerings”). The terms of this Section 2.5 shall apply and control solely as they relate to Discretionary Offerings and any and all such Discretionary Offerings are subject to all of the terms set forth in the Agreement. Prefect may remove access to any Discretionary Offerings at any time, in its sole discretion. Except to the extent otherwise specified by Prefect in writing to Client, all POC Periods shall remain in effect for a period of thirty (30) days, unless earlier terminated in accordance with the terms and conditions of this Agreement. Following the POC Period, Client will have an option to enter into a full enterprise SaaS agreement relationship; provided that there is no binding obligation on either party to enter into any such agreement. Prefect may extend any POC Period in its sole discretion in the event Prefect and Client are negotiating such enterprise SaaS agreement relationship. For the avoidance of doubt, any and all Discretionary Offerings, including but not limited to the terms and provisions thereof, are deemed to be “Confidential Information” and subject to Section 6 of the Agreement.

3. CLIENT’S UNDERTAKINGS AND ACKNOWLEDGMENTS

3.1 Privacy; Data Processing. Client acknowledges that Prefect’s use of personal information is governed by the Prefect Privacy Policy (located at <https://www.prefect.io/legal/privacy-policy>), as amended or supplemented from time to time by publication to Client. Client shall be responsible for all acts and omissions by its Users. Client hereby accepts the terms of Prefect’s Data Processing Agreement (located at

<https://www.prefect.io/legal/data-processing-agreement/>), as amended or supplemented from time to time by publication to Client.

3.2 Proprietary Rights. Client acknowledges that the System, Software, Documentation, Prefect Content and accompanying materials, if any (collectively, with the System, Software and Documentation, the "Materials"), embody valuable confidential and proprietary information, and constitute the intellectual property of Prefect. Client agrees that the Materials and all Intellectual Property Rights therein and thereto are the exclusive property of Prefect, or of third parties from whom Prefect has obtained rights to use certain portions contained therein. Prefect and such third parties shall retain all right and title, to the extent of their respective interests, to all proprietary rights in the Materials. Client therefore agrees that (i) it shall not remove or modify any proprietary markings or restrictive legends placed in or generated by the Materials; (ii) it shall treat and keep the Materials in strict confidence; (iii) it shall not use, copy, create derivative works of the Materials, or disclose the same, nor permit any of its personnel or agents to do so, except as specifically authorized by this Agreement; (iv) it shall use reasonable care to safeguard the confidentiality of the Materials; and (v) it shall not permit any third party (including any User) to do any of the foregoing. Except for the limited rights of use as expressly granted herein, the ownership and all right, title and interest in and to the Materials reside in and with Prefect. Client further acknowledges that except as expressly provided herein, this Agreement transfers to Client no right, title or interest in, and Client does not acquire any rights, express or implied in, the Materials, Prefect trademarks, New Products or the Intellectual Property Rights therein and will not take any action to oppose or otherwise interfere with the issuance of any patents relating thereto or take any action to challenge the validity of any issued patents relating to any of the foregoing. For avoidance of doubt (1) proprietary rights to Code (as defined therein in Exhibit A) in connection with the Professional Services will be governed by Exhibit A; and (2) no Code shall be considered Materials hereunder.

3.3 Feedback. All Client (a) suggestions for correction, change or modification to the Services or Materials or (b) evaluations, feedback, information and reports provided to Prefect hereunder (collectively, "Feedback") will be the property of Prefect and Client will and hereby does assign any rights in such Feedback to Prefect. Client will further assist Prefect, at Prefect's expense, to further evidence, record and perfect any such assignments, and to perfect, obtain, maintain, enforce and defend any such rights assigned.

4. LICENSE; LIMITS ON USE

4.1 Limited License to Client. Prefect hereby grants Client a personal, non-exclusive, non-transferable, non-sublicensable, non-assignable, limited, revocable license during the Term of this Agreement, under all of Prefect's applicable intellectual property, to access and use the Materials in accordance with the Agreement.

Prefect may modify the Materials in its sole discretion, provided such modifications do not remove any functionality set forth in an applicable Order Form.

4.2 Limits on Use of Materials. Client shall not, and shall cause its Users not to:

(a) create or enable the creation of derivative works, modifications, or adaptations of the Materials, or attempt to recompile, reverse engineer, decompile, disassemble or otherwise attempt to obtain, discover or derive the source code or non-public APIs or algorithms of the Materials, or the underlying ideas or trade secrets therein, except to the extent that such restrictions are expressly prohibited by applicable statutory law (and then only upon advance written notice to Prefect);

(b) use any robot, spider, other automatic device or program or manual process to monitor, copy or reproduce the Services or Materials or portions or content thereof (except as made available by Prefect as features of the Services);

(c) interfere with the functionality of the Services or Materials or otherwise use in ways that would reasonably likely to disrupt or pose a security risk to Prefect or to any other customers or vendors of Prefect, including by:

(i) uploading, storing, e-mailing, posting, linking or otherwise transmitting, distributing, publishing or disseminating any material that contains software viruses, Trojan horses, worms, time bombs, or any other computer code, file or program designed to interrupt, destroy or limit the functionality of the System;

(ii) modifying the Materials, or interfering or attempting to interfere with the proper operation of the Services or the use of the Services by third parties, including through the use of any device, software or routine; or

(iii) using the System to disrupt the servers or networks connected thereto.

- (d) violate (intentionally or unintentionally) any applicable local, state, national or international law or regulation, including, but not limited to, laws regarding the transmission to or receipt from the System of technical data or software exported from the United States, and all local laws and regulations regarding online conduct and acceptable content;
- (e) copy or use the Materials or any Intellectual Property Rights thereto for any reason other than expressly set forth in this Agreement;
- (f) encumber, sublicense, rent, loan, lease, time-share or otherwise use the Materials in any service bureau arrangement or otherwise for the benefit of any third party; or
- (g) remove or alter any of Prefect's trademarks or trade names, from the Materials.

5. FEES; TAXES; PAYMENTS

5.1 Fees. The fees and payment terms are set forth on the Pricing Document. Prefect reserves the right to deny Client access to the System upon its failure to pay any amount due, which failure persists after the cure period set forth in Section 7.3, except where

- (i) there is a bona fide dispute over the amount due; and
- (ii) Client has paid all undisputed amounts in full, as due.

5.2 Taxes. Fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including but not limited to value-added, sales, use or withholding taxes, assessable by any local, state, provincial, federal or foreign jurisdiction (collectively, "Taxes"). Client is responsible for paying all Taxes associated with the Services under this Agreement and all Order Forms or the Pricing Document (as applicable), excluding Taxes based solely on Prefect's net income. If Prefect is deemed to have the legal obligation to pay or collect Taxes for which Client is responsible under this paragraph, the appropriate amount shall be invoiced to and paid by Client, unless Client provides Prefect with a valid tax exemption certificate.

5.3 Payments. Except as otherwise set forth in any Order Form or the Pricing Document, payments hereunder from Client to Prefect shall be made without offset or deduction of any kind.

Amounts not received within thirty (30) days when due and not the subject of a bona fide good faith dispute shall be subject to a late charge of the larger of prime plus two percent (2%) per month or two percent (2%) per month of the delinquent amount, calculated from the due date until paid ("Late Charges"). Prefect shall be entitled to recover from Client the costs and expenses incurred in connection with collecting Late Charges (including without limitation costs of investigation and reasonable attorneys' fees). For the avoidance of doubt, any breach of this Paragraph 5 will constitute a material breach of this Agreement. The following sections (a) through (f) also apply:

(a) Prefect uses a third-party payment processor, Stripe, Inc. ("Stripe") to bill such Clients through a payment account linked to such Clients' accounts. The processing of payments is subject to the terms, conditions and privacy policy of Stripe, in addition to this Agreement. Client may access Stripe's Terms of Service at <https://stripe.com/us/checkout/legal> and Stripe's Privacy Policy at <https://stripe.com/us/privacy>. Prefect is not responsible for any error by, or other acts or omissions of, Stripe. By choosing to be a month-to-month Client, Client agrees to pay Prefect, through Stripe, all charges at the prices then in effect for any use of the Services in accordance with the applicable payment terms, and Client authorizes Prefect, through Stripe, to charge Client's chosen payment provider (the "Payment Method"). Client agrees to make payment using that selected Payment Method. Prefect reserves the right to correct any errors or mistakes that Stripe makes even if it has already requested or received payment.

(b) The terms of Client's payment will be based on Client's Payment Method and may be determined by agreements between Client and the financial institution, credit card issuer or other provider of Client's chosen Payment Method. If Prefect, through Stripe, does not receive payment from Client, Client agrees to pay all amounts due on for Client's use of the Services upon demand.

(c) Client hereby acknowledges that the Services have a recurring payment feature, and Client accepts responsibility for all recurring charges prior to cancellation. PREFECT MAY SUBMIT PERIODIC CHARGES (E.G., MONTHLY) WITHOUT FURTHER AUTHORIZATION FROM CLIENT, UNTIL CLIENT PROVIDES PRIOR NOTICE (RECEIPT OF WHICH IS CONFIRMED BY PREFECT) THAT CLIENT HAS TERMINATED THIS AUTHORIZATION OR WISHES TO CHANGE CLIENT'S PAYMENT METHOD. SUCH NOTICE WILL NOT AFFECT CHARGES SUBMITTED

BEFORE PREFECT REASONABLY COULD ACT. TO TERMINATE CLIENT'S AUTHORIZATION OR CHANGE CLIENT'S PAYMENT METHOD, CLIENT MUST GO TO ITS ACCOUNT SETTINGS OR OTHERWISE NOTIFY PREFECT IN WRITING.

(d) CLIENT MUST PROVIDE CURRENT, COMPLETE AND ACCURATE INFORMATION FOR CLIENT'S ACCOUNT. CLIENT MUST PROMPTLY UPDATE ALL INFORMATION TO KEEP CLIENT'S ACCOUNT CURRENT, COMPLETE AND ACCURATE (SUCH AS A CHANGE IN BILLING ADDRESS, CREDIT CARD NUMBER, OR CREDIT CARD EXPIRATION DATE), AND CLIENT MUST PROMPTLY NOTIFY PREFECT OR STRIPE IF CLIENT'S PAYMENT METHOD IS CANCELED (E.G., FOR LOSS OR THEFT) OR IF CLIENT BECOMES AWARE OF A POTENTIAL BREACH OF SECURITY, SUCH AS THE UNAUTHORIZED DISCLOSURE OR USE OF CLIENT'S PASSWORD. IF CLIENT FAILS TO PROVIDE ANY OF THE FOREGOING INFORMATION, CLIENT AGREES THAT PREFECT MAY CONTINUE CHARGING CLIENT FOR ANY USE OF SERVICES UNDER CLIENT'S ACCOUNT UNLESS CLIENT HAS TERMINATED THE SERVICES AS SET FORTH ABOVE.

(e) If the amount to be charged to Client's account varies from the amount Client preauthorized (other than due to the imposition or change in the amount of state sales taxes), Client has the right to receive, and Prefect shall provide, notice of the amount to be charged and the date of the charge before the scheduled date of the transaction. Any agreement Client has with Client's payment provider will govern Client's use of Client's Payment Method. Client agrees that Prefect may accumulate charges incurred and submit them as one or more aggregate charges, including during or at the end of each billing cycle.

(f) Unless Client opts out of auto-renewal, which can be done through Client's account settings, use of the Services will be automatically extended for successive renewal periods of one month. To change or resign the month-to-month Services at any time, go to account settings. If Client terminates the month-to-month Services, Client may use its task runs until the end of Client's then-current term, and Client's account will not be renewed after Client's then-current term expires. However, Client will not be eligible for a prorated refund of any portion of task runs purchased but not used for the then-current monthly period, and agrees to make all payments for task runs used at the end of the term. If Client does not want to continue to be charged on a recurring monthly basis, Client must cancel the Agreement through Client's account settings or by contacting Prefect in writing before the end of the recurring monthly term. Month-to-month accounts cannot be terminated before the end of the monthly period, and Prefect will not refund any fees that Client has already paid. Client's non-termination or continued use of the Services reaffirms that Prefect is authorized to charge Client's Payment Method for the Services. Prefect may submit those charges for payment and Client will be responsible for such charges. This does not waive Prefect's right to seek payment directly from Client. Client's charges shall be payable at the end of the month on a per task run usage basis.

6. CONFIDENTIALITY; OWNERSHIP OF SYSTEM/CLIENT RECORDS

6.1 System. The System and Software are the exclusive and confidential property of Prefect; Client has no right to use or access the System for any purpose other than utilizing the Software as set forth herein.

6.2 Client Data. All Client records and data in whatever form (the "Client Data") are the property of Client. Client hereby grants (and shall cause each User to grant) to Prefect a worldwide, non-exclusive, royalty-free license to use, copy, access, process, reproduce, perform, display, modify, distribute and transmit the Client Data for the purpose of providing the Services to Client and to improve the System, Software and/or Services. Prefect shall treat such Client Data as Confidential Information as contemplated under the Agreement, and will not disclose the Client Data, other than to employees on a need-to-know basis and to its third-party providers (e.g., its Hosting Site) under obligations of confidentiality. Prefect shall use industry standard security measures to maintain the security of the Client Data. Client hereby grants Prefect a perpetual, worldwide, non-exclusive, irrevocable right and license to use, store, copy, create derivatives, archive Client Data (i) to create anonymized compilations and analyses of Client Data that is combined with data from numerous other clients ("Aggregate Data"), (ii) to create reports, evaluations, benchmarking tests, studies, analyses and other work product from Aggregate Data ("Analyses") and (iii) to create, develop, enhance algorithms, machine learning and other generally available tools in connection with the Software using anonymous Client Data. Prefect retains all right, title and interest in and to such Aggregate Data and Analyses for any purpose, including but not limited to product improvement and marketing to other clients of the Services; provided, however, that Prefect shall not distribute Aggregate Data and Analyses in a manner that is identifiable as Client Data; and provided further, that for purposes of Prefect's rights in the Aggregate Data and Analyses, "Client Data" shall be limited to Client's metadata resulting from Client's use of the Services, such as the number of task runs the Client performs, the number of flow runs the Client performs, or

Client login history, and does not refer to or include the Client's business data (e.g., customer data records, code, etc.).

6.3 Confidentiality.

(a) "Confidential Information" means any confidential or proprietary information obtained by a receiving party from or on behalf of a disclosing party, whether orally, electronically or in physical form, that relates to the past, present or future business activities of the disclosing party or its subsidiaries or affiliates, technologies, products or services in connection with this Agreement that is marked or otherwise identified as "confidential" or "proprietary" at the time of disclosure or disclosed in such a manner or of such a nature that a reasonable person would understand such information to be confidential or proprietary. Confidential Information does not include information that the receiving party can demonstrate:

(i) is currently in the public domain or becomes generally known in the industry through no act or omission on the part of the receiving party;

(ii) was previously known to the receiving party without restriction;

(iii) was independently developed by the receiving party without any access to or use of Confidential Information of the disclosing party; or

(iv) is rightfully obtained by the receiving party from a third party lawfully in possession of the Confidential Information and who is not bound by confidentiality obligations to the disclosing party.

(b) The receiving party will hold all Confidential Information of the disclosing party in trust and confidence for the disclosing party and, except as set forth in this Agreement or as otherwise may be authorized by the disclosing party in writing, the receiving party will not disclose to any person, firm or enterprise, or use for its own benefit, any Confidential Information of the disclosing party. The receiving party will treat all Confidential Information of the disclosing party with the same degree of care that the receiving party treats its own confidential or proprietary information, but in no event less than reasonable care.

(c) The receiving party may disclose Confidential Information of the disclosing party to the receiving party's employees, and to any of the receiving party's contractors who are bound to the receiving party by confidentiality obligations substantially equivalent to those set forth in this Section, solely as required in order for the receiving party to perform under this Agreement, or in the case of Client, in order to access and use materials.

(d) At the request and option of the disclosing party and in the event of termination or expiration of this Agreement (or any part thereof), the receiving party agrees to promptly return or destroy any Confidential Information to the disclosing party.

(e) The receiving party may disclose Confidential Information of the disclosing party if required to do so under applicable law, rule or order provided that the receiving party, where reasonably practicable and to the extent legally permissible, provides the disclosing party with prior written notice of the required disclosure so that the disclosing party may seek a protective order or other appropriate remedy, and provided further that the receiving party discloses no more Confidential Information of the disclosing party than is reasonably necessary in order to respond to the required disclosure.

7. TERM; TERMINATION; DEFAULT; REMEDIES

7.1 Term. Any reference to the "Term" refers to one (1) month, with automatic one (1) month renewals, unless otherwise specified in writing by Prefect (including with respect to any POC Period).

7.2 Defaults. Each of the following shall constitute a default:

(i) Client's failure to pay any undisputed sum due hereunder;

(ii) a party's failure to perform any of its obligations hereunder; or

(iii) a party making a representation or warranty that is materially false or misleading when made.

7.3 Termination; Other Remedies. Notwithstanding anything else, (i) with respect to a default under Section 7.2(i), upon Client's failure to cure such default within ten (10) days after written notice of default, or (ii) with respect to all other defaults, upon the either party's failure to cure such default within thirty (30) days after written notice of default, either party (as applicable) may take any or all of the following actions:

(a) terminate this Agreement and/or access to any of the Services upon written notice,

- (b) declare all amounts due to be immediately due and payable, and/or
- (c) exercise any of its other rights or remedies hereunder and under applicable law (except to the extent expressly excluded hereunder).

In addition, either party may terminate upon written notice to the other party hereto in the event that:

- (x) such other party becomes insolvent, liquidated or dissolved without a successor; or
- (y) a receiver or trustee is appointed for all, or substantially all, of the property or assets of such other party in 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.

In the event that Client elects to terminate this Agreement prior to the expiration of its then current term, and such termination is not permitted by this Agreement, then Prefect shall not be obligated to refund any portion of the fees already paid by Client for the then-current term. The remedies contained in this Section 7 are cumulative and in addition to all other rights and remedies available hereunder, by operation of law, or otherwise, except as expressly excluded hereunder. The termination of the Agreement for any reason shall not affect or impair any rights, obligations or liabilities of either party that may accrue prior to such termination or that, under the terms of the Agreement, continue after termination.

7.4 Actions Due Upon Termination. Upon termination of the Agreement for any reason:

- (i) Client shall immediately pay to Prefect all outstanding amounts due and shall return copies of all Documentation or other Materials;
- (ii) all rights granted by Prefect under this Agreement shall cease and Client shall immediately cease access to the System and any use of the Services;
- (iii) no Party hereto shall be relieved from any liability for a breach of this Agreement prior to such expiration or termination;
- (iv) Client acknowledges that certain Client Data may remain in storage systems or media that are not easily removed and are subject to reasonable security and agrees that Prefect shall have no obligation to remove or destroy such Client Data during or after any Term, provided however, that Prefect shall (i) not use such retained Client Data for any purpose, and (ii) treat any such Client Data as Confidential Information; and
- (v) Client shall certify compliance with 7.4(i) and (ii) in writing if requested by Prefect.

8. WARRANTIES; LIMITATION OF LIABILITY AND DISCLAIMERS

8.1 Mutual Warranties. Each of the Parties represents and warrants to the other that:

- (i) it is duly constituted, organized and validly existing under the laws of the place of its incorporation or formation;
- (ii) it has the legal right and full power and authority to execute and deliver, and to exercise its rights and perform its obligations under, this Agreement and all the documents which are to be executed by it as contemplated by this Agreement;
- (iii) nothing contained in this Agreement shall result in a breach of any provision of its organizational documents or result in a breach of any agreement, license or other instrument, order, judgment or decree of any court, governmental agency or regulatory body to which it is bound; and
- (iv) in the case of Prefect, the System, and in the case of Client, the Client systems, software and hardware used by Client in connection with the Software, are designed to be free from and are periodically scanned to detect and eliminate viruses.

8.2 Client Warranty. Client represents and warrants that: (i) Client is trained as to the operation of the Software and Services prior to first use, understands the risks associated therewith, and possess any and all software licenses, approvals, permissions and authorizations necessary to use the Services, (ii) it will maintain an Internet connection with sufficient bandwidth to support communication connections between Prefect and the Hosting Site and (iii) Client owns or otherwise has the valid right, by contract or otherwise to deliver to Prefect the Client Data and Prefect may use the Client Data as contemplated by this Agreement without violating any applicable law, rule or regulation or the proprietary rights of any third party, including patents, copyrights, trade secrets, or any license, sublicense, covenant or contract with any third party.

8.3 Prefect Warranty. Prefect represents and warrants that the System will contain the functions and perform substantially as described in the Documentation. Prefect's only liability, and Client's exclusive remedy, for any breach of the foregoing warranties is that, if reported to Prefect in writing, Prefect will attempt a good faith effort to correct such reported defect.

8.4 Misuse of Passwords. Client shall maintain the confidentiality of its passwords, regularly change such passwords, take all commercially reasonable efforts to prevent unauthorized misuse or misappropriation and, in the event of such, be responsible therefor and promptly notify Prefect thereof.

8.5 Limitation of Liability; Exclusion of Consequential Damages. IN NO EVENT (EXCEPT WITH RESPECT TO SECTION 3) WILL EITHER PARTY (OR ITS OFFICERS, DIRECTORS, EMPLOYEES, MEMBERS, MANAGERS OR AGENTS) BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, LOST DATA, BUSINESS INTERRUPTION, LOSS OF REPUTATION OR COSTS OF SUBSTITUTE SERVICES) THAT THE OTHER PARTY MAY INCUR OR EXPERIENCE ARISING OUT OF OR RELATING TO THE SOFTWARE, THE SERVICES, THE SYSTEM, THIS AGREEMENT OR ITS TERMINATION, EVEN IF ADVISED OF THE POSSIBILITY THEREOF. FURTHER, THE SOLE LIABILITY OF PREFECT (AND ITS OFFICERS, DIRECTORS, MEMBERS, MANAGERS, EMPLOYEES AND AGENTS, AND AFFILIATES THEREOF) TO CLIENT FOR DAMAGES FOR ANY CAUSE WHATSOEVER NOTWITHSTANDING THE FORM OF SUCH CLAIMS (INCLUDING NEGLIGENCE) SHALL BE LIMITED TO AN AMOUNT NOT EXCEEDING THE TOTAL FEES PAID BY CLIENT TO PREFECT DURING THE TWELVE (12) MONTHS PRECEDING THE DATE ON WHICH THE CLAIM AROSE.

8.6 Warranty Disclaimers. EXCEPT AS SPECIFICALLY PROVIDED FOR HEREIN, THE SYSTEM, ITS INTERFACES, ANY RELATED EQUIPMENT, THE SERVICES AND ANY MATERIALS ARE PROVIDED "AS IS". PREFECT AND ANY THIRD-PARTY PROVIDERS SPECIFICALLY DISCLAIM, WITHOUT LIMITATION, ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR THOSE WARRANTIES ARISING FROM A COURSE OF PERFORMANCE, A COURSE OF DEALING OR TRADE USAGE. EXCEPT AS EXPRESSLY PROVIDED HEREIN, PREFECT MAKES NO REPRESENTATION OR WARRANTY (I) AS TO THE SYSTEM OR THE SERVICES; (II) AS TO THE RESULTS TO BE ATTAINED BY CLIENT OR ANY THIRD PARTY FROM THE SERVICES OR FROM ACCESS TO OR USE OF THE SYSTEM; (III) AS TO THE LIFE OF ANY URL USED IN THE SYSTEM; (IV) THAT ACCESS TO THE HOSTING SITE OR THE SERVICES WILL BE UNINTERRUPTED, SECURE, COMPLETE, ACCURATE OR ERROR-FREE; OR (V) THAT ALL USES THAT CAN BE MADE OF THE SYSTEM OR SERVICES COMPLY WITH APPLICABLE LAW. CLIENT ACKNOWLEDGES THAT CERTAIN SOFTWARE AND EQUIPMENT USED BY IT MAY NOT BE CAPABLE OF SUPPORTING CERTAIN FEATURES OF THE SYSTEM.

9. INJUNCTION; INDEMNIFICATION

9.1 Injunctive Relief. Each party acknowledges that violation of the provisions of this Agreement may cause the other party hereto and/or its respective affiliates irreparable injury not fully compensable by money damages and for which such other party and/or its respective affiliates will not have an adequate remedy at law. Accordingly, each party shall be entitled to seek injunctive relief, specific performance or other equitable relief as may be necessary to enjoin, prevent or curtail any breach thereof, threatened or actual, without the posting of any bond. The foregoing shall be in addition to, and not in lieu of, and without prejudice to or limitation on, any other rights or remedies the parties may have under this Agreement, at law or in equity, including the right to seek preliminary injunctive relief for violations of provisions of this Agreement other than those listed above.

9.2 Client Indemnification of Prefect. Client agrees to indemnify and hold harmless Prefect, its affiliates, and its and their respective partners, members, directors, officers, and representatives from any and all claims, judgments, causes of action, liabilities, obligations, damages, losses, deficiencies, costs, penalties, interest and expense (including the reasonable fees and expenses of counsel), in each case as incurred (collectively, "Losses") arising from or in connection with (i) the Client Data, Client system, processing conducted by Client using the Materials, or access or use of any of the foregoing, (ii) any breach by Client of this Agreement, and/or (iii) Client's violation of any applicable law or third party rights, excluding to the extent arising from Prefect's willful misconduct.

9.3 Conditions for Indemnification. The party seeking indemnification under this Section 9 ("Indemnified Party") shall promptly notify the other party ("Indemnifying Party") of any claim, suit or proceeding for which indemnification may be sought; provided, however, that any failure by the Indemnified Party to provide prompt written notice as required by this Section shall excuse the Indemnifying Party only to the extent that it is prejudiced thereby. The Indemnified Party shall (unless prohibited by law, regulation or a court proceeding) cooperate with

the Indemnifying Party with regard to the defense of any suit or threatened suit. The Indemnifying Party shall have full control of any such claim, proceeding or suit and the authority to settle or otherwise dispose of any such suit or threatened suit, and to appeal any adverse judgment that may be entered, except that it may not settle the matter in a manner that imposes any material duty or restriction on the Indemnified Party without its consent, not to be unreasonably withheld. Notwithstanding the foregoing, the Indemnified Party may, at its option and its own expense, hire its own counsel to advise it with respect to any such claim, subpoena or suit.

10. GENERAL

10.1 Assignment. This Agreement shall be binding upon each party's successors and permitted assigns. Either party (the "Seller") may assign its rights hereunder to the purchaser or surviving entity (the "Purchaser") in any stock, assets, merger or other transaction in which all or substantially all of the business of the Seller (or, in the case of Prefect, substantially all of the assets of the portion of its business relating to the Services) is transferred, regardless of the form such transaction may take; provided that the Purchaser is not insolvent or otherwise unable to pay its debts as they become due. Except as expressly authorized in the preceding portion of this Section, neither this Agreement nor any right or obligation arising under it may be assigned, licensed, sublicensed, sold, mortgaged, pledged or otherwise disposed of (collectively, a "Disposition") by Client without the prior written consent of Prefect, and any attempted Disposition shall be null and void.

10.2 Governing Law; Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware applicable to contracts to be performed entirely within Delaware. Any action or proceeding to enforce or arising out of this Agreement shall be commenced in the state and federal courts located in Delaware. The parties hereto consent to the exclusive jurisdiction of such courts, agree that venue will be proper in such courts and waive any objections based upon forum non conveniens. The choice of forum set forth in this Section 10.2 will not be deemed to preclude the enforcement of any judgment obtained in such forum or the taking of any action under this Agreement to enforce such judgment in any other jurisdiction.

10.3 Force Majeure. Neither party shall be liable for any failure or delay in the performance of any of their respective obligations (other than the payment of fees) if prevented from doing so by a cause or causes beyond its reasonable control (a "Force Majeure Event"). Without limiting the generality of the foregoing, such Force Majeure Events include fires, floods, terrorism, strikes, blackouts, war, restraints of government, utility or communications failures or interruptions, failures of third party vendors, Internet slow-downs or failures, equipment failures, computer hackers, pandemics or other causes that are beyond a party's reasonable control. Failure to meet due dates or time schedules resulting from a Force Majeure Event shall extend the due dates or time schedules for reasonable periods of time as determined by Prefect in good faith; provided that if any such delay or excuse shall exceed thirty (30) days, the non-affected party may, at its option, terminate this Agreement upon notice to the affected party.

10.4 Export Control Restrictions. Client warrants that its use of the Services and access to the System shall comply with all export control laws and Client agrees to indemnify, defend and hold Prefect harmless from any liability, claim, loss or expense suffered or incurred by Prefect as a result of a breach of this warranty.

10.5 Entire Agreement; Modifications. This Agreement, which includes the Order Forms, Pricing Document, exhibits and schedules attached to these Terms, constitute the entire Agreement of the parties with respect to the subject matter hereof, supersedes any and all existing agreements relating to the subject matter hereof. No change, consent or waiver under this Agreement will be effective unless in writing and signed by the party against which enforcement is sought. No failure or delay in exercising any right, power or remedy under the Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right under this Agreement preclude any other or further exercise thereof or the exercise of any other right.

10.6 Notices. All notices under this Agreement will be in writing and delivered to the parties at their respective addresses stated herein or at such other address designated by written notice. Notices will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile; the day after being sent, if sent for next day delivery by recognized overnight delivery service; upon receipt, if sent by certified or registered mail, return receipt requested; or the following business day, if transmitted via electronic mail. All such electronic mail notices to Prefect should be sent with copy to: legal@prefect.io.

10.7 Severability. If any provision of this Agreement shall be held to be illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall apply only to such provision and shall not in any manner affect or render illegal, invalid or unenforceable any other provision of this Agreement, and this Agreement shall be

reformed, construed and enforced to the fullest extent as if any such illegal, invalid or unenforceable provision were not contained herein.

10.8 Publicity. Prefect is permitted to include Client in any lists of customers it makes available, including over the Internet, as well as in any promotional literature or advertising. In addition, Prefect shall have the right to refer to Client as a customer during the Term of this Agreement and may make use of Client's name and logos in marketing. Client further agrees to include in all of its promotional literature and other advertising in which the capabilities of the Software are explicitly or implicitly mentioned or referred to a phrase indicating that the Software is a proprietary product of Prefect. Client is permitted to include the Prefect name and any logos for use in a press release announcing this Agreement or the relationship between the Parties.

Client shall not have any right to use the trademarks, logos or other Intellectual Property Rights of Prefect outside of the rights explicitly granted by way of this Agreement.

10.9 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but together shall constitute one and the same instrument.

10.10 Independent Contractors. This Agreement shall create an independent contractor relationship between Prefect and Client. Neither party shall have any authority to act in any way as a representative or agent of the other, or to bind the other to any third party, except as specifically set forth herein, and the parties shall not be deemed to be partners, joint ventures or the like by virtue of the provisions hereof.

10.11 Headings. The headings preceding the various paragraphs and subparagraphs of this Agreement are intended solely for the convenience of the parties and shall not be deemed relevant in the construction of this Agreement or its terms.

10.12 Survival. The obligations under Sections 3, 4.2, 5, 6, 7.4, 8.5, 8.6, 9, and 10, as well as any other provision that by its nature is intended to survive, shall survive the termination or expiration of this Agreement.

EXHIBIT A

ADDITIONAL TERMS AND CONDITIONS FOR PROFESSIONAL SERVICES

The following additional terms and conditions apply to Professional Services, if any, that are made the subject of an Order Form.

1. SERVICES, ORDER FORMS, AND CHANGE ORDERS

1.1 Professional Services. If and as set out in an Order Form, and subject to the terms and conditions of the Agreement (including this Exhibit A), Prefect will perform certain Professional Services for Client, as part of the overall Services provided under this Agreement.

1.2 Order Form. The specific details of the Professional Services to be performed will be determined on a per-project basis, and the details for each project will be described in an Order Form that is executed by both parties. If there is a conflict between this Exhibit A, the terms of this Agreement, and the terms of an Order Form, the terms of this Exhibit A will control solely as they relate to Prefect's Professional Services unless either the Agreement or the Order Form states that a specific provision of this Exhibit A will be superseded by a specific provision of the Order Form. To the extent the Client does not utilize the Professional Service hours set forth in the applicable Order Form within the applicable Term, such Professional Service hours shall automatically expire and be of no further force or effect at the end of such Term.

1.3 Change Orders. Unless otherwise specified in an Order Form, Client may reasonably request in writing that revisions be made with respect to the Professional Services or deliverables set forth in that Order Form ("Change Order"). Within 10 business days after Prefect's receipt of the Change Order, Prefect will deliver to Client a written, revised Order Form reflecting Prefect's reasonable determination of the revised Professional Services, deliverables, delivery schedule, payment schedule, and adjusted fees or fee estimates, if any, that will apply to the implementation of the revisions. If Client approves the revised Order Form, then the parties will execute it, and upon execution, the revised Order Form will supersede the then-existing Order Form. If Client does not approve the revised Order Form within 10 business days after its receipt by Client, the then-existing Order Form will remain in full force and effect, and Prefect will have no further obligation with respect to the applicable Change Order.

2. PREFECT SERVICES

2.1 Fees; Project Management. Client will pay Prefect for Professional Services at rates and under payment terms described in the applicable Order Form ("Professional Fees"). Unless otherwise agreed in the applicable Order Form, Professional Fees will be invoiced in total on the Effective Date of the Order Form.

2.2 Performance Standard. Prefect warrants to Client that the Professional Services will be performed in accordance with standard industry practice and the applicable Order Form. Prefect will complete the Professional Services, including the delivery of any deliverables, in accordance with the schedule of times and milestones (as applicable) specified in the Order Form.

3. TERM AND TERMINATION OF ORDER FORMS

Each Order Form will commence on the specified effective date and will continue until each party's obligations under the Order Form have been fulfilled or the Order Form is terminated as provided in the Order Form. If any Order Form is terminated in accordance with terms contained in the applicable Order Form, then Client will pay to Prefect any Professional Fees and all other payment obligations accrued and payable for the Professional Services performed under the terminated Order Form through the effective date of the termination. If an Order Form is terminated for any reason other than for material breach by Prefect, Customer will pay to Prefect all Professional Fees due under the Order Form had the Order Form not been terminated and had the Professional Services been fully performed in accordance with the schedule then in effect.

4. PROPRIETARY RIGHTS

4.1 Client Data. Any information and data provided by Client to Prefect for the provision of the Professional Services ("Client Data") will be used and disclosed solely as required to perform the Professional Services. Client represents and warrants that all Client Data will be accurate, complete and provided in a timely manner in order to ensure timely performance by Prefect under this Agreement. Client shall, at all times, retain ownership of Client Data.

4.2 Inventions. Client acknowledges that the Professional Services will include the creation of source code for both creative and data management elements of the Professional Services (the "Code"); and Client shall, at all times, retain ownership of the Code, and Prefect hereby assigns the Code to the Client. Except for the limited rights and licenses expressly granted hereunder concerning any deliverables, no other use of any deliverable is permitted, no license to any other Prefect intellectual property is granted (by implication, estoppel or otherwise) and Prefect (and its licensors) shall own and retain all rights, title and interests (including all intellectual property and proprietary rights) in and to all deliverables and all information, ideas, inventions, know-how, methods, processes, software, templates, tools, works of authorship, trade secrets and technologies that are owned or developed by Prefect prior to the Effective Date or separate and apart from the Services, or that are in-licensed by Prefect from a third party, including any changes or extensions.

4.3 General Data. Client agrees that Prefect is free to reuse all generalized knowledge, experience, know-how and technologies (including ideas, concepts, processes and techniques) acquired during performance of the Professional Services (including without limitation, that which it could have acquired performing the same or similar services for another customer).

4.4 Company Data. Except as expressly permitted in this Agreement, Client shall not directly or indirectly (a) use any Prefect Confidential Information to create any software, documentation or services that is similar to any Code or Professional Service, (b) disassemble, decompile, reverse engineer or use any other means to attempt to discover any source code or underlying ideas, algorithms or organization of any Code or Prefect intellectual property (except and only to the extent these restrictions are expressly prohibited by applicable statutory law), (c) encumber, sublicense, transfer or distribute any Code or deliverable, (d) copy, create derivative works of or otherwise modify any Code or deliverable or (e) permit any third party to do so. Client will promptly notify Prefect in writing of any unauthorized use, reproduction or distribution of any Code or deliverable.

5. MISCELLANEOUS

5.1 Equipment. The parties acknowledge and agree that Prefect is not providing any equipment to Client as part of the Professional Services; and that each party shall be responsible for purchasing and maintaining any equipment necessary for that party to perform its obligations under this Agreement.

5.2 Third-Party Software. Any software used with the Professional Services will be governed by the written terms and conditions applicable to such software. Title to software remains with either Prefect or its supplier/licensor. Client must comply with all such terms and conditions and they take precedence over this Agreement with respect to Client's access and use of such software. Client shall be responsible for the user monthly and/or annual licensing fees for such software (the "Platform Costs"); and said estimated Platform Costs shall be set forth on each respective Order Form or accompanying pricing document.