

SOFTWARE LICENSE AGREEMENT (Brightspot)

This Software License Agreement (“Agreement”), dated and effective as of _____, 2021 (the “Effective Date”), is entered into by and between Perfect Sense Inc., a Delaware corporation, d/b/a Brightspot, whose principal office is at 12120 Sunset Hills Road, the 6th Floor, Reston, VA 20190 (“Licensor”), and _____ whose principal office is at _____ **[entity]** (“Licensee”). Each of Licensor and Licensee may be referred to as a “Party” and collectively, the “Parties”.

In consideration of the mutual promises and covenants hereinafter set forth, the Parties hereto agree as follows:

1. **Definitions.** As used in this Agreement, the following terms have the meanings ascribed to them in this Section 1 and terms defined elsewhere in this Agreement shall have the meanings set forth as defined herein.

“Authorized Experience(s)” means the infrastructure serving as the production environments for the Licensee web experiences listed in Exhibit A.

“Authorized Users” means Licensee’s employees authorized to access the Software pursuant to the terms of this Agreement.

“Bankruptcy Event” means the occurrence of any of the following: (i) Licensor becomes insolvent or bankrupt, (ii) Licensor makes an assignment for the benefit of creditors, (iii) Licensor consents to a trustee or receiver appointment related to insolvency or bankruptcy proceedings, (iv) a trustee or receiver is appointed for Licensor or for a substantial part of its property without its consent in connection with insolvency or bankruptcy proceedings, (v) Licensor voluntarily initiates bankruptcy or insolvency proceedings, or is the subject of involuntary bankruptcy or insolvency, or (vi) Licensor whether directly or through a successor intends to cease operating in the software business.

“Documentation” means all documents and related materials that are normally supplied by Licensor to its commercial licensees of the Software on an on-premises/locally installed basis consisting of (i) technical specifications, and (ii) training guides and user manuals.

“Licensee Materials” means all materials, content, data, files, information and other information and items input or uploaded to the Software, including information related to the Authorized Users who access the Authorized Experience(s).

“Permitted Use” means the use of the Software solely for Licensee’s internal purposes and support of Licensee’s business operated on the Authorized Experience(s) in the normal course and not for any commercial distribution or other commercial use outside of such Authorized Experiences.

“Software” means Licensor’s proprietary software known as the Brightspot Platform, in object code and Source Code form, for which the Licensee has acquired the right to use under this Agreement and which Licensor provides to Licensee hereunder.

“Source Code” means and includes human-readable computer programming code, associated procedural code, listings, flow charts, logic diagrams, software tools, executables, libraries, scripts and related and supporting documentation corresponding to the Software and all subsequent versions which Licensor may from time to time elect to make available to Licensee in its sole discretion.

“Third Party Software” means any software, code, libraries or other technology that is not owned by Licensor, including, without limitation, any open source software (including the open source software set forth in Exhibit B).

2. **License.**

- a. **License and Use.** During the Term (as defined below) and subject to the terms and provisions of this Agreement, Licensor hereby grants to Licensee a non-exclusive, non-transferable (except as provided in Section 15(a)), non-sublicensable right and license to, and to permit Authorized Users to: (1) install, access and use the Software for the Permitted Use only, (2) make a reasonable number of additional copies of the Software solely for internal support and maintenance, archival or back-up purposes, and (3) internally use the Documentation in connection with the use of the Software. Licensee shall only be permitted to access and use the Source Code comprising the Software solely to support and maintain Licensee’s deployment and use of the Software in connection with the Permitted Use and for no other purposes, subject to Section 2(e).

b. Services. Licensor will use commercially reasonable efforts to provide Licensee any consulting, installation, training, support, maintenance or other services from time to time mutually agreed upon by the Parties in a written Statement of Work (collectively, "Services"), and Licensee shall pay Licensor the fees set forth in the applicable Statement of Work (a "SOW" or a "Statement of Work") for such Services (which are in addition to any other Software license fees set forth herein). For the avoidance of doubt, Licensor has the right to (a) control and direct the means, manner and method by which the Services are performed, and (b) perform the Services at any place or location and at such time as Licensor may reasonably determine. Any terms and conditions associated with the acceptance or testing of the Services or related work product, and/or relating to ownership of work product and deliverables arising from the Services, shall be as mutually agreed to and set forth in the applicable SOW. For clarity, unless expressly set forth in this Agreement or in a SOW, Licensor shall not provide any Services to Licensee with respect to the Software.

c. Authorized Users. All Licensee personnel are Authorized Users entitled to access and use the Software hereunder. Licensor shall provide the user access credentials (username, password, etc.) to each Authorized User. Licensee may add or remove Authorized Users by giving written notice to Licensor. Licensor shall have the right to monitor and request information regarding use of the Software and user credentials. Licensee and each Authorized User are responsible for maintaining the confidentiality of usernames and passwords. Licensee agrees to immediately notify Licensor of any unauthorized use of the Software of which Licensee becomes aware. Each Authorized User accessing the Software shall be required to have a separate Authorized User account and sharing of accounts or passwords is not permitted. Licensee shall be fully responsible for all of its Authorized Users and their compliance with the terms and conditions of this Agreement and, without limiting the foregoing, hereby agrees to be liable for all acts and omissions of the Authorized Users with respect to the Software to the same extent as if Licensee had engaged in such acts or omissions itself.

e. Source Code Use. The Source Code comprising the Software is accessible at Licensor's GitHub repository and may be updated in accordance with Licensor's standard practices throughout the Term of this Agreement. During the Term and subject to the terms and provisions of this Agreement, Licensor hereby grants to Licensee a non-exclusive, non-transferable, non-sublicensable right and license to, and to permit Authorized Users to use the Source Code only to (i) support and maintain the Software consistent with the Permitted Use and (ii) create customizations or modifications to the Software consistent with the Permitted Use. The Source Code, and any customizations, modifications or derivatives thereto, shall at all times be the intellectual property and Confidential Information of Licensor or its successor in interest. Licensee shall be required to, and hereby agrees to, preserve the confidentiality of the Source Code and related Documentation for so long as such information is maintained as a protectable trade secret under applicable law notwithstanding the expiration or termination of this Agreement. In the event that Licensor experiences a Bankruptcy Event as confirmed by Licensor, Licensee's right to access and use the Source Code shall automatically without the necessity of any further action by either Party become perpetual and Licensee shall have a perpetual right to use the Source Code solely to maintain and support its use of the Software for the Permitted Use in each case consistent with the terms and conditions of this Agreement.

3. Support. During the Term and subject to the terms and provisions of this Agreement, Licensor shall provide Licensee with the following support for the Software: (i) reasonable e-mail support related to use of the Software, including using reasonable efforts to respond to e-mailed support requests within one business day; (ii) reasonable technical support for any material errors or bugs in the Software comprising of (1) workarounds or (2) software patches and fixes for such errors or bugs, once Licensor has determined that such error or bug is a fault in the Software; and (iii) any other support service mutually agreed upon from time to time in a SOW. Support services shall not include any services related to any errors, bugs or issues resulting from: (a) any alteration or modification to the Software made by any person other than Licensor; (b) minor defects in the Software which clearly do not affect or impair the use of the Software; (c) any improper use of the Software; (d) failure to implement Licensor recommendations in respect of any solutions or workarounds to errors previously advised by Licensor; (e) errors or problems caused mainly by Licensee Materials (as defined below) or any Authorized User inputs; and (f) the use of the Software for any purpose for which it was not designed or that is not permitted by the documentation for the Software (all of the foregoing, collectively "Exclusions"). Additional fees may apply to any services that Licensor elects to provide related to the foregoing Exclusions. Licensor may during the Term make available updates or upgrades to the Software that it makes generally available at no charge to its other similarly situated customers provided that Licensee shall not install or provide any services whatsoever with respect to such updates and upgrades and Licensee shall be solely responsible for implementing such updates and upgrades unless the Parties have entered into a SOW with respect to the provision of any specific updates or upgrades or services to be provided by Licensor with respect thereto.

4. No Other Services. Except as otherwise set forth in Section 3 or in a written SOW, Licensor has, and shall

have, no obligation whatsoever to provide any maintenance, support or other services to Licensee with respect to the Software or pursuant to this Agreement, and Licensee shall be solely responsible for maintaining and supporting the Software following the Effective Date. Licensor makes no commitments as to availability, uptime or similar performance or access standards with respect to the Software on Licensee's computing environment, and Licensee assumes sole responsibility therefor. Licensee is solely responsible for deploying, hosting and securing the Software and for performing all back-ups of the Software and Licensee Materials.

5. **Licensee Agreements.**

a. **Requirements and Restrictions.** Except as expressly set forth herein, Licensee and its Authorized Users shall not: (a) copy the Software; (b) loan, rent, or lease the Software or otherwise transfer or assign the right to use the Software, including but not limited to posting or otherwise making the Software available on the Internet including as a service bureau or application service provider; (c) itself, nor permit or encourage others to, reverse engineer, decompile, decipher, disassemble, translate or otherwise decrypt or discover the source code of all or any portion of the Software; (d) modify, adapt or write or develop any derivative works based on the Software or use the Software in any manner except as expressly provided in this Agreement; (e) interfere with or disrupt the integrity or the operation of the Software; (f) copy any features, functions, screens, interfaces or graphics of the Software; or (g) transmit or store in or through the Software (or any portion thereof) any infringing, libelous, or otherwise unlawful or tortious material, or material in violation of third party privacy rights or in a manner that violates applicable law. Unless otherwise agreed in writing by Licensor on a case by case basis, under no circumstances shall Licensee allow other commercial entities (including, without limitation, Licensee's affiliates, clients, contractors, vendors, sub-agencies, departments or business partners) to access or use the Software without Licensor's prior written consent. In the event that the Parties agree in writing that other third parties will be permitted to access the Software ("Authorized Third Party"), then Licensee acknowledges and agrees that: (1) the Authorized Third Party and their users will be treated as Authorized Users for purposes of this Agreement; (2) Licensee shall be fully and completely responsible and liable to Licensor for all acts and omissions of each Authorized Third Party with respect to their use of the Software, to the same extent as if Licensee had engaged in such acts or omissions itself, including, without limitation, responsibility for each Authorized Third Party and its users' compliance with all applicable terms and conditions of this Agreement; (3) all Authorized Third Parties shall agree in writing to terms at least as protective of Licensor and the Software as the terms and provisions of this Agreement, and (4) such use and access shall require additional fees. Licensee covenants and agrees that it shall: (i) perform those tasks and assume those responsibilities required of it by Licensor in order for Licensor to deliver the Software; (ii) comply with all applicable laws and regulations, when using the Software; and (iii) ensure that only Authorized Users use the Software and only as intended and in accordance with the terms of this Agreement and any provided documentation. Licensee acknowledges that the Software includes Third Party Software including the open source software set forth in Exhibit B.

b. **Modifications.** Licensee acknowledges and agrees that, from time-to-time, portions of, or functionality included in, the Software may be added to, modified, or deleted by Licensor and that the Software may change over time consistent with Licensor's standard product practices; provided that Licensor shall not diminish the functionality of the Software during the Term unless mutually agreed to by the Parties. Licensor may (but is not required to) expand or enhance the Software by providing additional features in the general course of Licensor's standard development model and offering road map. If any features or functionality are at the request or timing of the Licensee (or Licensee requests any consulting or other services or software) there may be additional cost and the Parties shall enter into a SOW or a separate agreement (or amend this Agreement) for such services or software.

c. **Equipment.** Licensee shall be responsible for obtaining and maintaining any equipment and ancillary services and software needed to access or otherwise use the Software, including, without limitation, Internet access, modems, hardware, servers, software, hosting services, operating systems, networking, web servers, cameras, printers and other technology, software or equipment (collectively, "Equipment"). Licensee shall also be responsible for maintaining the security of the Equipment, Licensee accounts, passwords, if any, (including but not limited to administrative and user passwords) and files, and for all uses of Licensee account or the Equipment with or without Licensee's knowledge or consent. In order for Licensee to make full use of the Software, it may be necessary for Licensee to use particular Equipment or to download or install certain pieces of software and Licensee shall be responsible for procuring and maintaining such Equipment and complying with any requirements related thereto. If Licensee is unable to access or use all or part of the Software because it does not have access to any necessary Equipment, this shall not constitute a breach of this Agreement by Licensor and Licensor shall not be liable for any loss, damage or expense which may result from Licensee's inability to access or use the Software.

d. **Regulatory Compliance.** Licensee shall be responsible for compliance with any applicable laws or regulations related to Licensee's business, operations and offerings (collectively, "Licensee Offerings"), including, without limitation, that Licensee's use of the Software in connection with the Licensee Offerings complies with all applicable laws and regulations.

e. **Authorized User Access Terms.** Licensee shall provide the Authorized Users with appropriate notice of the terms and conditions under which access to the Software is granted under this Agreement including, in particular, any limitations on access or use of the Software as set forth in this Agreement. Licensee may present this Agreement or other terms of use or policy to the Authorized Users, but is not obligated to do so. In the event of any unauthorized use of the Software by an Authorized User, Licensor may terminate such Authorized User's access to the Software. Licensee hereby agrees to be liable for all acts and omissions of such Authorized Users to the same extent as if Licensee had engaged in such acts or omissions itself.

6. **Licensor Rights.** Licensee acknowledges and agrees and hereby grants Licensor any and all rights and licenses to: (i) access, use, process, display and manipulate any Licensee Materials and any Equipment solely as necessary to provide, improve and monitor the Software; and (ii) display or use, in advertising or otherwise, Licensee's name, logo and trademarks, to provide the Software and to indicate that Licensee is or was a Licensee of Licensor.

7. **Ownership: Licensee Materials.**

a. **Licensor IP.** Licensee agrees that the Software, Services and all Feedback are owned by Licensor or its licensors, and is protected by U.S. and international intellectual property laws, and that Licensor shall solely own and retain all right, title and interest to, including all intellectual property rights in, the Software, Services and Feedback. For purposes of this Agreement, the term "Feedback" means any (i) feedback from Licensee or its employees or Authorized Users related to their respective access to and use of the Software, including without limitation, feedback on features or functionality, usability, specifications, architectural diagrams, APIs and related information, software or hardware compatibility, interoperability, performance, bug reports, test results and documentation requirements, and (ii) any improvements, enhancements, features, derivatives, developments, materials, items or other intellectual property related to the Software that is created or developed by Licensee or its Authorized Users, including pursuant to Licensee's use of the Source Code hereunder. Licensee agrees to assign and hereby does assign to Licensor all of its right, title and interest in and to the Feedback, including all intellectual property rights therein. The Software and all Feedback shall be deemed the Confidential Information of Licensor.

b. **Licensee IP.** Licensor agrees that the Licensee Materials are owned by Licensee or its Licensees and clients, and is protected by U.S. and international intellectual property laws, and that Licensee or its Licensees shall solely own and retain all right, title and interest to, including all intellectual property rights in, the Licensee Materials.

c. **Licensee Materials.** Licensee is solely responsible for the accuracy, quality, integrity, legality, reliability, appropriateness, and copyright of all Licensee Materials, and Licensor assumes no responsibility for the deletion, correction, destruction, loss, infringement or failure of the Software to store any Licensee Materials. Licensee shall be solely responsible for its actions while using the Software.

8. **Fees.** Licensee agrees to pay Licensor the fees and amounts set forth in Exhibit A with respect to the Software license hereunder. In consideration of any Services provided by Licensor, Licensee shall pay the fees and expenses identified in the applicable SOW. Unpaid amounts are subject to a finance charge of 0.8% per month on any outstanding balance, or the maximum permitted by law, whichever is lower, plus all expenses of collection and may, in the case of fees owing with respect to the licensed Software, result in immediate termination of Software. Licensee shall be responsible for all taxes associated with Software and/or Services other than U.S. taxes based on Licensor's net income. Licensor reserves the right to increase fees for the Software consistent with Licensor's then applicable rates and fees on an annual basis following the third year anniversary of the Effective Date. Licensor will use reasonable efforts to provide Licensee with 60 days' advance written notice of any such increases.

9. **Term: Expiration.**

a. **General.** This Agreement shall commence on the Effective Date and shall expire on the three (3) year anniversary of the Effective Date (the "Initial Term"). The Agreement shall automatically renew on an annual basis thereafter (each a "Renewal Term" and together with the Initial Term, the "Term") until a Party gives the other Party notice of its intent to terminate this Agreement at least ninety (90) days in advance of the next Renewal

Term. A Party shall have the right to terminate this Agreement immediately (a) if the other Party breaches any material term or provision of this Agreement and such breach remains uncured thirty days after it provides notice the breaching Party in writing of such breach, or (b) the other Party terminates its business activities or becomes insolvent, admits in writing its inability to pay debts as they mature, makes an assignment for the benefit of creditors, or becomes subject to direct control of a trustee, receiver or similar authority. In the event of termination of this Agreement, Licensee shall destroy or return immediately the Software and all copies thereof to Licensor and return all other Licensor Confidential Information that it has in its possession (including any documentation). Additionally, Licensor shall have the right to remotely disable the Software. Sections 2(d), 5(a), 5(d), 5(e), 6(ii) and 7 through 15 shall remain in full force and effect notwithstanding termination of Agreement.

b. SOW. Unless otherwise set forth in an SOW, either Party may terminate such SOW if the other Party breaches a material obligation under such SOW and, if curable, fails to cure such breach within thirty (30) days from the date it receives notice of such breach from the non-breaching Party. In addition, if Licensee is in material breach of Licensee's obligations as set forth in any SOW, or if any fees for Service are thirty (30) or more days overdue, Licensor may, without limiting Licensor's other rights and remedies, immediately suspend Licensor's performance under such SOW until such amounts are paid in full, and such suspension periods shall lengthen Licensor's time for performance by an equal amount. The term of each SOW for Services shall commence on the effective date of such SOW and shall continue in full force and effect thereafter unless and until it is terminated or expires in accordance with the provisions of such SOW or, if it is not terminated and no expiration is provided in such SOW, until completion of the Services provided for in such SOW. The Parties understand and agree that (i) unless specifically set forth in a termination notice, termination of an SOW for Services shall not terminate the Agreement, and (ii) unless stated in the applicable SOW for Services or otherwise agreed by the Parties in writing, a termination of the Agreement shall effect a termination of each SOW for Professional Services.

10. Confidentiality.

a. "Confidential Information" means any information disclosed previously or in the future by one Party (the "Disclosing Party") to the other Party (the "Receiving Party"), either directly or indirectly, in writing, orally or by inspection of tangible objects (including without limitation documents, business plans, source code, software, documentation, specifications, mock ups, financial analyses, marketing plans, customer names, customer lists, customer data, product plans, products, services, inventions, processes, designs, drawings, engineering or hardware configuration information, know-how, trade secrets, or any other proprietary or business information), which is designated as "Confidential," "Proprietary" or some similar designation, or other information, the confidential or proprietary nature of which is reasonably apparent under the circumstances. Confidential Information shall not, however, include any information which (i) was publicly known and made generally available in the public domain prior to the time of disclosure by the Disclosing Party; (ii) becomes publicly known and made generally available after disclosure by the Disclosing Party to the Receiving Party through no action or inaction of the Receiving Party; (iii) is already in the possession of the Receiving Party at the time of disclosure by the Disclosing Party as shown by the Receiving Party's files and records immediately prior to the time of disclosure; (iv) is obtained by the Receiving Party from a third party without a breach of such third party's obligations of confidentiality; or (v) is independently developed by the Receiving Party without use of or reference to the Disclosing Party's Confidential Information. Moreover, it shall not be a breach of this Agreement for the Receiving Party to disclose to a court or other governmental body Confidential Information of the Disclosing Party which the Receiving Party is required by law to disclose to such entity, provided that the Receiving Party shall give the Disclosing Party written notice of such requirement prior to disclosure so that the Disclosing Party may seek a protective order or other appropriate relief. The Software shall be considered the Confidential Information of Licensor without any further requirement of marking or designation, and the Licensee Materials will be considered Confidential Information of Licensee without any further requirement of marking or designation.

b. Non-Disclosure and Non-Use. The Receiving Party shall not disclose any Confidential Information of the Disclosing Party to third parties or to the Receiving Party's employees, except those employees who require the information to perform obligations or exercise rights under this Agreement and who have signed a confidentiality agreement at least as protective of the Confidential Information of the Disclosing Party as this Agreement. The Receiving Party shall not use any Confidential Information of the Disclosing Party for any purpose other than for the purposes contemplated by this Agreement. The Receiving Party shall take all reasonable measures to protect the secrecy of and avoid disclosure and unauthorized use of the Confidential Information of the Disclosing Party. Without limiting the foregoing, the Receiving Party shall exercise the same degree of care to protect Confidential Information of the Disclosing Party as it does to protect its own highly confidential information of like nature, which shall in no event be less than reasonable care. The Receiving Party shall immediately notify the Disclosing Party in the event of any unauthorized use or disclosure of the Disclosing Party's Confidential Information.

11. **Indemnity.**

a. **Licensor Indemnity.** Licensor shall indemnify, defend and hold harmless Licensee and its officers, directors, employees and agents from and against any and all unaffiliated third party claims, losses, damages, costs, expenses (including reasonable attorneys' fees) or liabilities (collectively, "Claims") relating to, or arising out of, any third party claim alleging that the Software (excluding any Third Party Software and excluding any Licensee Materials) infringes, misappropriates or violates the intellectual property or proprietary rights of a third party; provided that: (A) Licensee gives Licensor prompt notice in writing of any such Claim (provided, that failure to meet this condition does not exempt the Licensor of its indemnification obligation, except to the extent that failure has materially prejudiced the Licensor's ability to defend the Claim) and permits Licensor, through counsel of its choice, to answer the charge of infringement and defend such Claim; and (B) Licensee provides Licensor reasonable information and assistance and authority to enable Licensor to defend such suit. Without limiting the foregoing, Licensor will not be responsible for any settlement made by Licensee without Licensor's prior written permission, provided that such permission shall not be unreasonably delayed or withheld, and Licensor will not be liable for any costs or expense incurred without Licensor's prior written authorization, provided that such authorization shall not be unreasonably delayed or withheld. Licensor will have no liability for, and Licensor shall have no indemnity obligations hereunder with respect to, any Claims relating to or arising out of the following (collectively, the "Indemnity Exclusions"): (i) any software not supplied by Licensor, (ii) any software or intellectual property made in whole or in part in accordance with Licensee specifications or made on a custom basis at Licensee's request, (iii) Software that is modified after delivery by Licensor, (iv) Licensee's combination of the Software with other products, processes or materials where the alleged infringement relates to such combination, (v) where Licensee continues allegedly infringing activity after being notified thereof or after being informed of modifications that would have avoided the alleged infringement, (vi) where Licensee's use of the Software is not strictly in accordance with this Agreement and any Documentation, (vii) Third Party Software, or (viii) to the extent that any such Claims is based on the Licensee's Materials. If, due to a claim of infringement, the Software are held by a court of competent jurisdiction to be or are believed by Licensor to be infringing, Licensor may, at its option and expense (1) replace or modify the Software to be non-infringing provided that such modification or replacement contains substantially similar features and functionality, (2) obtain for Licensee a license to continue using the Software, or (3) if neither of the foregoing is commercially practicable, terminate this Agreement and Licensee's rights hereunder and provide Licensee a refund of any prepaid, unused fees for the Software. For the avoidance of doubt, Licensor shall have no indemnification obligations for any Claims attributable to or arising from Licensee Materials.

b. **Licensee Indemnity.** Licensee shall indemnify, defend and hold harmless Licensor and its officers, directors, employees, and agents from and against any and all Claims relating to, or arising out of, any third party claim alleging any Indemnity Exclusion under Section 11(a) or related to or arising from any Licensee Materials; provided that: (A) Licensor gives Licensee prompt notice in writing of any such Claim (provided, that failure to meet this condition does not exempt the Licensor of its indemnification obligation, except to the extent that failure has materially prejudiced the Licensor's ability to defend the Claim) and permits Licensee, through counsel of its choice, to answer the charge of infringement and defend such Claim; and (B) Licensor provides Licensee reasonable information and assistance and authority to enable Licensee to defend such suit. Without limiting the foregoing, Licensee will not be responsible for any settlement made by Licensor without Licensee's prior written permission, provided that such permission shall not be unreasonably delayed or withheld, and Licensee will not be liable for any costs or expense incurred without Licensee's prior written authorization, provided that such authorization shall not be unreasonably delayed or withheld.

12. **Limitation of Liability.** EXCEPT WITH REGARD TO A BREACH OF THE CONFIDENTIALITY OBLIGATIONS IN SECTION 10, THE INDEMNITY OBLIGATIONS OF A PARTY SET FORTH IN SECTION 11, OR A PARTY'S GROSS NEGLIGENCE, INTENTIONAL MISCONDUCT OR FRAUD, NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY (OR TO ANY PERSON OR ENTITY CLAIMING THROUGH THE OTHER PARTY) FOR LOST PROFITS, LOSS OF DATA, COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, LOSS OF SOURCE MEDIA AND/OR LICENSEE MATERIALS, OR COSTS OF RECREATING LOST SOURCE MEDIA AND/OR LICENSEE MATERIALS) OR FOR SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, CONSEQUENTIAL OR EXEMPLARY DAMAGES ARISING OUT OF OR IN ANY MANNER CONNECTED WITH THIS AGREEMENT OR THE SUBJECT MATTER HEREOF, REGARDLESS OF THE FORM OF ACTION AND WHETHER OR NOT SUCH PARTY HAS BEEN INFORMED OF, OR OTHERWISE MIGHT HAVE ANTICIPATED, THE POSSIBILITY OF SUCH DAMAGES. EXCEPT WITH REGARD TO A BREACH OF THE CONFIDENTIALITY OBLIGATIONS IN SECTION 10, THE INDEMNITY OBLIGATIONS OF A PARTY SET FORTH IN SECTION 11, OR A PARTY'S GROSS NEGLIGENCE,

INTENTIONAL MISCONDUCT OR FRAUD, EACH PARTY'S LIABILITY ARISING UNDER THIS AGREEMENT SHALL BE LIMITED TO DIRECT, OBJECTIVELY MEASURABLE DAMAGES WHICH SHALL NOT EXCEED \$250,000 IN THE AGGREGATE.

13. **Representations and Warranties; Disclaimer of Warranties.**

a. **Mutual Representations and Warranties.** Each Party represents and warrants to the other the following: (a) the execution, delivery and performance of this Agreement: (i) has been authorized by all necessary corporate action, (ii) does not violate the terms of any law, regulation, or court order to which such Party is subject or the terms of any material agreement to which such Party or any of its assets may be subject, and (iii) will not breach any contractual right of, or obligation to, any third party and are not subject to the consent or approval of any third party; and (b) this Agreement is the valid and binding obligation of each Party, enforceable against such Party in accordance with its terms.

b. **Disclaimer.** **EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SOFTWARE AND SERVICES ARE PROVIDED TO LICENSEE "AS IS" "WITH ALL FAULTS" AND WITHOUT WARRANTIES OR CONDITIONS OF ANY KIND. LICENSOR EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, NONINFRINGEMENT, QUIET-ENJOYMENT, TITLE AND FITNESS FOR A PARTICULAR PURPOSE. THIS DISCLAIMER OF WARRANTY CONSTITUTES AN ESSENTIAL PART OF THIS AGREEMENT. NO USE OR DISTRIBUTION OF THE SOFTWARE IS AUTHORIZED HEREUNDER EXCEPT UNDER THIS DISCLAIMER. NO WARRANTIES ARE CREATED BY ANY COURSE OF DEALING BETWEEN THE PARTIES, TRADE USAGE OR INDUSTRY CUSTOM. LICENSOR SPECIFICALLY DISCLAIMS ANY REPRESENTATION AND WARRANTY THAT THE SOFTWARE OR SERVICES WILL BE ERROR FREE OR WILL FUNCTION UNINTERRUPTED, THAT ANY ERRORS OR DEFECTS IN THE SOFTWARE OR SERVICES CAN OR WILL BE CORRECTED, THAT ANY SUCH CORRECTION CAN OR WILL BE MADE IN A TIMELY MANNER, THAT THE SOFTWARE OR SERVICES WILL OPERATE IN THE COMBINATIONS WHICH MAY BE REQUIRED, WILL PRODUCE THE RESULTS REQUIRED, OR THAT THE SOFTWARE FUNCTIONALITY WILL MEET ANY LICENSEE REQUIREMENTS.**

14. **Audit.** Licensee shall keep reasonable records relating to its use of the Software and its compliance with the terms of this Agreement. Licensor or its agents or representatives may, upon reasonable notice and during normal business hours, but no more often than once a year (unless it has a reasonable basis to believe there is a violation of this Agreement), inspect Licensee's records and systems related solely to use of the Software and compliance with the terms of this Agreement.

15. **General.**

a. **Independent Contractors.** In performing this Agreement, the Parties act and shall act at all times as independent contractors, and nothing contained in this Agreement shall be construed or implied to create an agency, partnership or employer and employee relationship between the Parties. Except as expressly set forth in this Agreement, at no time shall either Party make commitments or incur any charges or expenses for, or in the name of, the other Party.

b. **Assignment; Delegation.** Neither Party may assign any of its rights or delegate any of its duties hereunder without the prior written consent of the other Party, provided however that either Party may assign its obligations and rights hereunder to any successor entity acquiring all or substantially all of the business to which this Agreement relates, including, without limitation, as a result of reorganization, restructuring, merger, or acquisition. Except as permitted by the foregoing, any attempted assignment or delegation shall be null, void and of no effect.

c. **No Third Party Beneficiaries.** The Parties acknowledge that the covenants set forth in this Agreement are intended solely for the benefit of the Parties, their successors and permitted assigns. Nothing in this Agreement, whether express or implied, shall confer upon any person or entity, other than the Parties, their successors and permitted assigns, any legal or equitable right whatsoever to enforce any provision of this Agreement.

d. Severability. If any provision of this Agreement is invalid or unenforceable for any reason in any jurisdiction, such provision shall be construed to have been adjusted to the minimum extent necessary to cure such invalidity or unenforceability. The invalidity or unenforceability of one or more of the provisions contained in this Agreement shall not have the effect of rendering any such provision invalid or unenforceable in any other case, circumstance or jurisdiction, or of rendering any other provisions of this Agreement invalid or unenforceable whatsoever.

e. Waiver. No waiver under this Agreement shall be valid or binding unless set forth in writing and duly executed by the Party against whom enforcement of such waiver is sought. Any such waiver shall constitute a waiver only with respect to the specific matter described therein and shall in no way impair the rights of the Party granting such waiver in any other respect or at any other time. Any delay or forbearance by either Party in exercising any right hereunder shall not be deemed a waiver of that right.

f. Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of New York, without regard to conflicts of law principles thereof or to the United Nations Conventions on the International Sale of Goods. The Parties hereby irrevocably and unconditionally submit to the jurisdiction of state and federal courts of Arlington, Virginia. In the event of a breach or attempted breach of any of the provisions herein, the non-breaching Party, in addition to its other remedies, shall be entitled to specific performance and/or injunctive relief in order to enforce performance or prevent any violation of the provisions of this Agreement. If a suit or action is instituted in connection with any claim or controversy arising out of this Agreement, the prevailing Party shall be entitled to recover, in addition to costs, such sums the court may adjudge reasonable as attorneys' fees.

g. Counterparts. This Agreement may be executed (physically or by e-signature) in any number of counterparts including via facsimile or electronic distribution (e.g., by PDF), each of which when so executed shall be deemed to be an original and all of which when taken together shall constitute one Agreement. There shall be no force or effect to any different terms of any related purchase order or similar form even if signed by the Parties after the date hereof.

h. Headings; Interpretation. The headings in this Agreement are inserted merely for the purpose of convenience and shall not affect the meaning or interpretation of this Agreement. This Agreement shall be construed fairly according to its terms, without regard to the identity of the drafter of any provision in this Agreement.

i. Notice. Any notice, approval, request, authorization, direction or other communication under this Agreement will be given in English in writing and will be deemed to have been delivered and given for all purposes (i) on the delivery date if delivered personally to the Party to whom the same is directed; (ii) one business day after deposit with a commercial overnight carrier, with written verification of receipt; or (iii) five business days after the mailing date, whether or not actually received, if sent by U.S. mail, return receipt requested, postage and charges prepaid, or any other means of rapid mail delivery for which a receipt is available. Unless a Party gives notice as provided in this Section of a different recipient or address, notice shall be sent to the address set forth above; if to Licensor, notice shall be sent to the attention of the COO of the Licensor; if to Licensee: notice shall be sent to the attention of [REDACTED].

j. Public Statements. Neither Party will make any public statements regarding this Agreement or the relationship described herein, without the prior written consent of the other Party, except as required by law or as otherwise provided for herein. Notwithstanding the foregoing, Licensor may list Licensee as one of its licensees on its web site and promotional materials, provided that Licensor will immediately remove such listing from its web site and promotional materials upon request from Licensee and further provided that at Licensor's election, Licensee shall include "powered by Brightspot" in the footer of the Authorized Experiences (as defined herein). Licensee may identify itself as a customer of Perfect Sense, Inc. and as a licensee of the Brightspot Platform.

k. Entire Agreement and Construction. Except as specifically provided for in this Agreement, this Agreement, including Exhibits hereto, constitutes the complete agreement between the Parties and supersedes all prior agreements and representations, written or oral, concerning the subject matter of this Agreement. This Agreement may not be modified or amended except in a writing signed by a duly authorized representative of each Party; no other act, document, usage or custom shall be deemed to amend or modify this Agreement. The terms "including" shall mean "including, without limitation," unless the context clearly requires otherwise.

l. Force Majeure. Licensor shall not be responsible for any delay or failure in performance of any part of this Agreement to the extent that such delay is caused by reason of acts of God, wars, terrorism, revolution, civil

commotion, acts of public enemy, embargo, acts of government in its sovereign capacity, or any other circumstances beyond the reasonable control and not involving any fault or negligence of the Licensor.

m. Bankruptcy. For the purposes of 11 U.S.C. § 365(n), the Parties acknowledge and agree that this Agreement constitutes a license grant of intellectual property in software form to Licensee by Licensor.

n. Government Sales. If Licensee is a branch or agency of the United States Government or a contractor thereto, the following provision applies. As defined in FAR section 2.101, the Software and documentation are “commercial items” and according to DFAR section 252.2277014(a)(1) and (5) are deemed to be “commercial computer software” and “commercial computer software documentation.” Consistent with DFAR section 227.7202 and FAR section 12.212, any use modification, reproduction, release, performance, display, or disclosure of such commercial software or commercial software documentation by the U.S. Government will be governed solely by the terms of this Agreement and will be prohibited except to the extent expressly permitted by the terms of this Agreement.

o. No Export. Licensee may not remove or export from the United States or allow the export or re-export of the Software, or anything related thereto, or any direct product thereof in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign agency or authority.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their respective authorized representatives as of the date first written above.

Licensee:

Licensor:

PERFECT SENSE INC.

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

EXHIBIT A
SOFTWARE AND LICENSE/SUPPORT FEE SCHEDULE

Authorized Experiences: Licensee shall exercise its rights with respect to the Software only with respect to the following online experiences:

[Insert applicable sites]

License Fees: As of the Effective Date, Licensee agrees to pay Licensor during the Term: (i) \$_____per month beginning on the Effective Date. Licensee shall pay all such fees within thirty (30) days of each invoice therefor.

EXHIBIT B

List of Open Source Software Included in Software

[Note: BS to confirm this list.]

<u>Name</u>	<u>URL</u>	<u>License</u>
ASM	https://asm.ow2.io/	BSD3
Cglib	https://github.com/cglib/cglib	Apache License 2.0
HunspellBridJ	https://github.com/thomas-joiner/HunspellBridJ	MPL
cron-utils	https://github.com/jmrozanec/cron-utils	Apache License 2.0
metadata-extractor	https://github.com/drewnoakes/metadata-extractor	Apache License 2.0
Jackson	https://github.com/FasterXML/jackson	Apache License 2.0
ScribeJava	https://github.com/scribejava/scribejava	MIT
java-diff-utils	https://github.com/java-diff-utils/java-diff-utils	Apache License 2.0
Gson	https://github.com/google/gson	Apache License 2.0
Guava	https://github.com/google/guava	Apache License 2.0
ZXing	https://github.com/zxing/zxing	Apache License 2.0
json-simple	https://code.google.com/archive/p/json-simple/	Apache License 2.0
graphql-java	https://github.com/graphql-java/graphql-java	MIT
ICU4J	http://site.icu-project.org/home	Unicode License
ROME	https://rometools.github.io/rome/	Apache License 2.0
OkHttp	https://square.github.io/okhttp/	Apache License 2.0
HikariCP	https://github.com/brettwooldridge/HikariCP	Apache License 2.0
Apache Commons Codec	https://commons.apache.org/proper/commons-codec/	Apache License 2.0
Apache Commons Collections	https://commons.apache.org/proper/commons-collections/	Apache License 2.0
Apache Commons FileUpload	https://commons.apache.org/proper/commons-fileupload/	Apache License 2.0
Apache Commons IO	https://commons.apache.org/proper/commons-io/	Apache License 2.0
Apache Commons Lang	https://commons.apache.org/proper/commons-lang/	Apache License 2.0
Apache Commons Net	https://commons.apache.org/proper/commons-net/	Apache License 2.0

<https://www.unicode.org/license.html>

JSON via StAX	https://github.com/beckchr/staxon	Apache License 2.0
user-agent-utils	https://github.com/HaraldWalker/user-agent-utils	BSD3
Joda-Time	https://www.joda.org/joda-time/	Apache License 2.0
JetS3t	http://www.jets3t.org/	Apache License 2.0
JNA	https://github.com/java-native-access/jna	Apache License 2.0
Aho-Corasick	https://github.com/robert-bor/aho-corasick	Apache License 2.0
Apache HttpClient	https://hc.apache.org/httpcomponents-client-ga/	Apache License 2.0
Awaitility	https://github.com/awaitility/awaitility	Apache License 2.0
HSLuv	https://github.com/hsluv/hsluv-java	MIT
imgscalr	https://github.com/rkalla/imgscalr	Apache License 2.0
jOOQ	https://github.com/jOOQ/jOOQ	Apache License 2.0
jsoup	https://jsoup.org/	MIT
SLF4J	https://www.slf4j.org/	MIT
Xerces	https://xerces.apache.org/	Apache License 2.0

Statement of Work #1

[*Note: Add Statement of Work for consulting services.*]