

# Web Hosting Service Agreement

Version 1 – 2/28/2011

1. **General.** This Web Hosting Service Agreement (“Agreement”) is entered into as of \_\_\_\_\_, 20\_\_ by and between Perfection Software, Inc., a Florida corporation (“HOST”) with an address at 20871 Johnson Street, Suite 116 Pembroke Pines, FL 33029 and the Customer (“Customer”) listed below and on any Sales Order (“SO”) attached hereto and made a part hereof. Notwithstanding anything to the contrary contained in this Agreement or any SO executed hereunder, the “Effective Date” of this Agreement shall be the date on which HOST commences billable Services to the Customer pursuant to an SO.
2. **Services.** “Service” or “Services” shall mean the services provided by HOST to Customer under this Agreement as described more fully in any SO executed by Customer and HOST, each of which is hereby incorporated into this Agreement by this reference. HOST and Customer may enter into subsequent SOs, which may modify some or all of the Services provided on a prior SO. Customer shall pay for any new Services included in any SO at the rate(s) in effect at the time the SO is executed. Upon notice to Customer, HOST may modify or suspend Customer’s Service as determined by HOST for any reason, including without limitation as necessary to comply with any law or regulation such as any use contrary to the Digital Millennium Copyright Act of 1998, 17 U.S.C. 512.
3. **Activation of Web Hosting Services.** HOST will begin web site setup and other setup services described in the SO after it receives and accepts: (1) this Agreement signed by an authorized representative of Customer; (2) a completed and signed SO; and (3) payment of the deposit described in the SO. HOST will provide Customer with the date and time for HOST assisted initial installation of Customer web site at the HOST facility (“Installation Date”).
4. **Customer Delayed Activation.** In the event, for any reason whatsoever, Customer fails to meet customer obligations on or before the Installation Date and/or requests HOST to change the Installation Date, Customer shall be solely responsible and shall pay HOST: (1) all costs incurred by HOST as a result of such delay and all applicable fees, service charges, administrative fees and cancellation fees at HOST’s then current rates; and (2) for all Services from the original agreed-upon Installation Date, regardless of whether HOST actually provides such Services. These costs may include, but are not limited to, the recurring payment of the contracted Services as set forth in the applicable SO, regardless of whether Customer is fully installed or not.
5. **Billing and Payment.** Customer agrees to pay HOST the applicable fees as set forth in each SO.
6. **Service Activation Fees.** Upon Customer’s and HOST’s acceptance of this Agreement and the SO, Customer shall pay HOST a deposit for the activation, installation & setup services, the first monthly Service Fees, and any equipment fees as indicated in the SO.
7. **Monthly Service Fees.** Customer agrees to begin paying HOST a fee for monthly Services (collectively, “Service Fees”), as specified in the SO, on the date that is the earlier of: (1) the Installation Date; and (2) the date that Customer goes live with the web site. However, if Customer is unable to use the Services commencing on the Installation Date solely as a result of delays caused by HOST, then the Installation Date shall be extended to the end of the delay caused by HOST and Customer’s obligation to pay any Service Fees shall be delayed until such time as HOST is able to provide such Services; *provided, however*, HOST shall not be liable to Customer for any such delay or failure other than the abatement of Service Fees as specifically provided herein.
8. **Payment.** All Service Fees shall be invoiced monthly (“Billing Period”), unless an alternative period is agreed upon by HOST and Customer. Customer shall pay all Service Fees in advance before the first day of each and every month of this Agreement (the “Due Date”). Customer shall pay all such Service Fees, without demand, to the offices of HOST and without any deduction, revision or set-off whatsoever. In the event that any payment is returned to HOST or unavailable, such as checks returned for non-sufficient funds (“NSF”), Customer shall pay HOST an administrative fee in the amount of \$50, provided that payment of such administrative fee shall not limit any other right or remedy that may be available to HOST under Florida law.
9. **Default.** In the event Customer fails to deliver any payment to HOST under this Agreement, any SO or any other agreement between HOST and Customer on or before the date such payment is due, Customer shall be in material default of this Agreement and HOST shall be entitled to any one, or all of the following remedies: (i) HOST may immediately suspend all Services to Customer; (ii) all amounts due under this Agreement, any SO, or any other agreement between Customer and HOST shall be accelerated and become immediately due and payable; and/or (iii) HOST may terminate this Agreement.
10. **Late Payment.** In addition to the remedies available to HOST under this Agreement for payment default, all amounts that remain unpaid five (5) days after the date due shall be subject to a thirty five dollar (\$35) late payment fee and shall accrue interest at a rate of one and one-half percent (1.5%) per month, or the highest rate allowed by applicable law, whichever is lower.
11. **Taxes and Regulatory Fees.** Amounts due under this Agreement or any applicable SO are exclusive of all applicable federal, state and local sales, use, excise, communication service and any other taxes and regulatory fees and surcharges which may be levied or assessed upon any equipment or Services. Customer shall be solely responsible for payment of any and all such taxes and regulatory fees. Any calculation errors in assessment and/or tax rate changes requiring adjusted tax computations by HOST as necessary to accurately and properly collect taxes does not relieve Customer of its responsibility to remit tax payments fully when billed. Any failure to pay such taxes or regulatory fees or surcharges shall constitute a material default under this Agreement and HOST shall have the remedies available under this Agreement.
12. **Customer Billing Disputes.** Customer shall have the right to reasonably dispute any of the charges contained in an invoice for a period of thirty (30) days after the date of the invoice (the “Reconciliation Date”), provided that: (i) HOST receives payment in full for all charges (both disputed and undisputed) on or before the date due of such payment, (ii) Customer presents a written statement of the purported billing discrepancies to HOST in reasonable detail on or before the Reconciliation Date, and (iii) Customer negotiates in good faith with HOST for the purpose of resolving such dispute. In the event such dispute is mutually agreed upon and resolved in favor of Customer, Customer will receive a credit for the disputed charges. HOST shall not be obligated to consider any Customer notice of any billing discrepancies which are received by HOST after the Reconciliation Date.

### 13. TERM

14. **Effective Date and Initial Term.** The term of this Agreement shall commence on the Effective Date and shall continue in force and effect for the term commitment specified on the SO, or if no term, for a period of thirty days ("Initial Term").
15. **Renewal.** At the conclusion of the Initial Term, this Agreement shall automatically renew for successive periods as specified on the SO, or if no renewal term is included in the SO, this Agreement and any applicable SO shall automatically renew for successive one year periods (each, a "Renewal Term"), unless either party delivers written notice to the other party indicating its desire to terminate this Agreement at least sixty (60) days prior to the expiration of the Initial Term or any Renewal Term. The Initial Term and any Renewal Term shall be collectively referred to herein as the "Term".
16. **Identification of Space.** Customer shall be entitled to the use web server space (hereafter "Space") in a HOST facility ("Facility") under the terms and conditions of this Agreement and the SO.
17. **Installation.** HOST grants the Customer the right to install and operate its web site as described in the SO. The Space is provided on an "AS-IS" basis and Customer may use the Space only for the purposes of maintaining and operating the web site. If required, Customer may install equipment in the Space only after obtaining prior written authorization from HOST and entering in a separate Colocation Hosting Service Agreement, which can be provided upon request.
18. **Relocation of equipment.** HOST shall be entitled, upon reasonable written notice to Customer, to change the Space allocated for Customer, or to change the location of the Facility to a different location. HOST shall bear all costs of such changes and relocation, including re-cabling and moving. In the event of such relocation, the parties shall work together in good faith to minimize any disruptions of Customer's operations and use of the Services as arising from the change or relocation; such good faith efforts shall include negotiation of a plan and schedule for relocating the Facility, if applicable. HOST shall keep Customer informed of the timing of any planned relocation. All relocated facilities, space, connections, conduits, and/or cables shall be provided in accordance with the terms and conditions set forth in this Agreement. In the event Host provides notice of its intent to change the Space or location of the Colocation Data Center to a different geographic location and Customer does not find the change satisfactory for its purposes, Customer shall have the right to terminate this Agreement.
19. **Data Transport and Internet Access Service** HOST exercises no control over and specifically disclaims any responsibility for, the content, accuracy or quality of information passing or obtained through HOST's host computers, network hubs and points of presence ("HOST Network"). Use of any information obtained via the HOST Network is strictly at Customer's own risk. None of the underlying services for internet access and connectivity (collectively, the "Resold Services") are being provided by Host. Customer acknowledges and agrees that HOST is acquiring each of those Resold Services from a third party for resale and is not the originator of those services. Under no circumstances shall HOST be liable to Customer or any other person or entity for any loss, injury or damage of whatever kind or nature, resulting from or arising out of any mistakes, errors, omissions, delays or interruptions in the receipt, transmission or storage of any messages, signals or information arising out of or in connection with the Resold Services or use of any underlying service provider's network or services.
20. **Additional Agreements**
21. **Service Level Agreement.** HOST shall provide the Services in accordance with the HOST.net Service Level Agreement ("SLA") for each of the applicable Services as amended from time to time, the current version of which is set forth at [www.host.net/sla](http://www.host.net/sla), which SLA is incorporated into this Agreement by this reference. Any amendments to the SLA shall be effective upon posting at HOST'S site on the World Wide Web. The SLA sets forth Customer's sole and exclusive remedies for any claim relating to the Services or the HOST Network, including any failure to meet any service levels as set forth in the SLA.
22. **Monitoring.** HOST reserves the right to monitor customer's bandwidth usage and to utilize technology to limit Customer's bandwidth usage to those amounts included in the SO.
23. **Internet Protocol.** Any Internet Protocol Numbers ("IP") assigned to Customer by HOST in connection with the Services shall be used only in connection with the Services. In the event Customer discontinues use of the Services for any reason, or this Agreement terminates for any reason, Customer's right to use the IP shall terminate. HOST reserves the right to change the IP upon notice to Customer. Customer acknowledges and agrees that all IP addresses shall remain the sole and exclusive property of HOST.
24. **Other Networks Approval and Usage.** Services include the ability to transmit data beyond HOST's Network, through other networks, public and private. Customer's use of or presence on other networks may require approval of the respective network authorities and may be subject to any acceptable usage policies established by those network operators. Customer will not hold HOST responsible for, and HOST expressly disclaims all liability for, Customer's violation of such policies. Customer understands that HOST does not own or control other networks outside of HOST's Network, and HOST is not responsible or liable for performance (or non-performance) of those networks or the interconnection points between the Service and other networks that are operated by third parties.
25. **Acceptable Use Guidelines.**
26. **Acceptable Use Policy.** Customer agrees that it shall at all times use the Services in compliance with HOST's Acceptable Use Policy ("AUP"), as amended from time to time by HOST. The current version of HOST.net AUP is set forth at [www.host.net/aup](http://www.host.net/aup), which AUP is incorporated into this Agreement by this reference. Any amendments to the AUP shall be effective upon posting at HOST's site on the World Wide Web. Customer agrees that it shall be responsible for monitoring HOST's site for amendments to the AUP.
27. **Suspension or Termination of Services.** HOST shall have the right to immediately suspend Services and/or terminate this Agreement in the event Customer violates any provision of the AUP. Customer agrees to indemnify and hold harmless HOST and each of HOST's shareholders, directors, officers, employees, agents and affiliates from and against any losses, damages, costs or expenses, including reasonable attorneys' fees and expenses (collectively "Claims") arising out of or relating to Customer's use of the HOST Network or the Services in any way, including any Claim which, if true, would constitute a violation of the AUP.

28. **Law Enforcement Notification.** If HOST is informed by any third party, including, without limitation, any government authorities, of Customer's inappropriate or illegal use of HOST's facilities (including but not limited to the HOST Network) or other networks accessed through HOST, or HOST otherwise learns of such use or has reason to believe such use may be occurring, then (i) Customer hereby authorizes HOST to cooperate with any applicable governmental authorities, including by providing any and all requested information, and (ii) Customer will cooperate in any resulting investigation by HOST or any such third party. If Customer fails to cooperate with any such investigation or fails to immediately rectify any illegal use, HOST may immediately suspend Customer's Services without further notice to Customer.
29. **Defense of Third Party Claims and Indemnification.** Customer agrees to indemnify HOST, its directors, officers, employees, affiliates and customers (collectively, the "Host Covered Entities") from and against any and all claims, actions, demands, costs and expenses, including, without limitation, attorneys' fees, costs and expenses (collectively, the "Covered Claims"), brought against HOST and/or any of the Covered Entities alleging: (a) with respect to the Customer's business: (i) infringement or misappropriation of any intellectual property rights; (ii) defamation, libel, slander, obscenity, pornography, or violation of the rights of privacy or publicity; or (iii) spamming, or any other offensive, harassing or illegal conduct or violation of the AUP or Anti-Spam Policy; (b) any damage or destruction to the Facility, the Network, HOST premises, HOST equipment or to any other HOST customer which damage is caused by or otherwise results from acts or omissions by Customer, Customer Representative(s) or Customer's designees; (c) any personal injury or property damage to any Customer employee, Customer Representative or other Customer designee arising out of such individual's activities related to the Services, unless such injury or property damage is caused solely by HOST's gross negligence or willful misconduct; (d) any other damage arising from the Customer Equipment or Customer's business; (e) the breach of any term, condition or representation of Customer set forth in this Agreement; and (f) any breach or violation of any law, rule, ordinance applicable to Customer's business.
30. **Notification.** Customer will provide HOST with prompt written notice of each Covered Claim of which Customer becomes aware, and, at HOST's sole option, HOST may elect to participate in the defense and settlement of any Covered Claim, provided that such participation shall not relieve Customer of any of its obligations under this agreement.
31. **Limitations of Liability and Warranty.**
32. **No Warranties.** EXCEPT AS EXPRESSLY SET FORTH REGARDING THE SLA, HOST PROVIDES THE SERVICES AND EQUIPMENT "AS IS"; MAKES NO EXPRESS WARRANTIES OF ANY KIND WITH RESPECT TO THE SERVICES OR EQUIPMENT; AND DISCLAIMS ALL OTHER WARRANTIES WITH RESPECT TO THE SERVICES AND EQUIPMENT, INCLUDING, BUT NOT LIMITED TO, THE WARRANTIES OF TITLE, MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE. HOST shall not be liable for any failure or delay in performance due to circumstances beyond its reasonable control, which shall include, without limitation, acts of God, earthquakes, labor disputes, changes in law, regulation or government policy, riots, war, fire, epidemics, acts or omissions of vendors or suppliers, equipment failures, transportation difficulties, or any other such occurrences. Customer may terminate this Agreement if any such event of Force Majeure continues for a continuous period of ten (10) days.
33. **Limitation of Liability.** EXCEPT AS OTHERWISE SET FORTH IN THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES THAT ARISE OUT OF OR RELATE TO THIS AGREEMENT OR THE SERVICES PROVIDED HEREUNDER, INCLUDING WITHOUT LIMITATION ANY SUCH DAMAGES FOR LOSS OF DATA RESULTING FROM DELAYS, NON-DELIVERIES, MISDELIVERIES OR SERVICE INTERRUPTIONS. Notwithstanding anything to the contrary stated in this Agreement, Customer's sole and exclusive remedies for any claims relating to the Services or the HOST Network are set forth in the SLA.
34. **Personal Injury.** Each Customer Representative and any other persons visiting HOST facilities does so at his or her own risk and HOST shall not be liable for any harm to such persons resulting from any cause other than HOST's gross negligence or willful misconduct resulting in personal injury to such persons during such a visit.
35. **Damage to Customer Business.** In no event will HOST be liable to Customer, any Customer Representative, or any third party for any claims arising out of or related to Customer's business, Customer's customers or clients, Customer Representative's activities at HOST or otherwise, or for any lost revenue, lost profits, replacement goods, loss of technology, rights or services, incidental, punitive, indirect or consequential damages, loss of data, or interruption or loss of use of Service or of any Customer's business, even if advised of the possibility of such damages, whether under theory of contract, tort (including negligence), strict liability or otherwise.
36. **Maximum Liability.** Notwithstanding anything to the contrary in this Agreement, HOST's maximum aggregate liability to Customer related to or in connection with this Agreement will be limited to the total amount paid by Customer to HOST for Services rendered hereunder for the Twelve (12) month period prior to the event or events giving rise to such liability.
37. **Confidential Information.** Each party acknowledges that it will have access to certain confidential information of the other party concerning the other party's business, plans, customers, technology, and products, including the terms and conditions of this Agreement ("Confidential Information"). Confidential Information will include, but not be limited to, each party's proprietary software and customer information. Each party agrees that it will not use in any way, for its own account or the account of any third party, except as expressly permitted by this Agreement, nor disclose to any third party (except as required by law or to that party's attorneys, accountants and other advisors as reasonably necessary), any of the other party's Confidential Information and will take reasonable precautions to protect the confidentiality of such information. Information will not be deemed confidential information hereunder if such information: (i) is known to the receiving party prior to receipt from the disclosing party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing party; (ii) becomes known (independently of disclosure by the disclosing party) to the receiving party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing party; (iii) becomes publicly known or otherwise ceases to be secret or confidential, except through a breach of this Agreement by the receiving party; (iv) is independently developed by the receiving party; or (v) is required to be released by law or regulation, provided that the receiving party provide prompt written notice to the disclosing party of such impending release, and the releasing party cooperate fully with the disclosing party to minimize such release

38. **Termination; Suspension of Service**

39. **For Nonpayment or Bankruptcy.** HOST reserves the right to disable, suspend or terminate all Services and/or this Agreement if Customer fails to deliver any payment due under this Agreement or any SO executed hereunder. To re-enable Service, HOST will require a reconnection fee. HOST may also terminate this Agreement if Customer becomes the subject of a voluntary petition in bankruptcy or any voluntary proceeding relating to insolvency, receivership, liquidation, or an assignment for the benefit of creditors or becomes the subject of an involuntary petition in bankruptcy or any involuntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors, if such petition or proceeding is not dismissed within sixty (60) days of filing.
40. **For Unacceptable Use** HOST may immediately terminate this Agreement for violation of the AUP.
41. **For Cause.** Except as otherwise provided in this Agreement, HOST may terminate this Agreement if the Customer breaches any other term or condition of this Agreement and fails to cure such breach within fifteen (15) days after written notice of the same.
42. **Liability Following Termination.** In the event this Agreement is terminated, all amounts due under this Agreement, including any SO, shall be accelerated and become immediately due and payable. The expiration or termination of this Agreement will not (i) extinguish claims or liability (including, without limitation, for payments due) arising prior to such expiration or termination, or (ii) extinguish claims or liabilities arising after such expiration or termination if such claims or liabilities specifically survive any expiration or termination as set forth herein.
43. **Effect of Termination.** Upon the effective date of expiration or termination of this Agreement: (a) HOST will immediately cease providing the Services; (b) any and all payment obligations of Customer under this Agreement will become due immediately; (c) within ten (10) days after such expiration or termination, each party will return all Confidential Information of the other party in its possession at the time of expiration or termination and will not make or retain any copies of such Confidential Information except as required to comply with any applicable legal or accounting record keeping requirement. Customer will have no right to remain in possession of all or any part of the Space after the expiration or earlier termination of the Term. If Customer remains in possession of all or any part of the Space after the expiration or earlier termination of the Term, with the express written consent of HOST: (a) such right will be deemed to be a periodic license from month-to-month only; (b) such license will not constitute a renewal or extension of this Agreement for any further term; and (c) such license may be terminated by HOST upon the earlier of 15 days' prior written notice or the earliest date permitted by law. In such event, monthly Service Fees will be increased to an amount equal to the greater of two times the monthly Service Fees payable during the last month of the Term, and any other sums due under this Agreement will be payable in the amount and at the times specified in this Agreement. In addition to the payment of the increased monthly Service Fees as set forth herein and all additional Service Fees, Customer shall be liable to HOST for all costs, claims, losses or liabilities (including attorney's fees) which HOST may incur as a result of Customer's failure to surrender possession of the Space to HOST upon the expiration or earlier termination of this Agreement. In no way shall the increased monthly Service Fee set forth herein or any other monetary or non-monetary requirements set forth in this Agreement be construed to constitute liquidated damages for HOST's loss resulting from Customer's holdover. Any month to month license created hereby will be subject to every other term, condition, and covenant contained in this Agreement.
44. **Miscellaneous Provisions.**
45. **Notices.** Any notice or communication required or permitted to be given hereunder may be delivered personally, deposited with an overnight courier, sent by confirmed facsimile, or mailed by registered or certified mail, return receipt requested, postage prepaid, in each case to the address of the receiving party first indicated below, or at such other address as either party may provide to the other by written notice. Such notice will be deemed to have been given as of the date it is delivered, or five (5) days after mailed or sent, whichever is earlier.
46. **Force Majeure.** Except for the obligation to pay money, neither party will be liable for any failure or delay in its performance under this Agreement due to any cause beyond its reasonable control, including act of war, acts of God, earthquake, flood, embargo, riot, sabotage, labor shortage or dispute, governmental act or failure of the Internet, provided that the delayed party: (a) gives the other party prompt notice of such cause, and (b) uses its reasonable commercial efforts to correct promptly such failure or delay in performance.
47. **No Lease.** This Agreement is a services agreement and is not intended to and will not constitute a lease of any real or personal property. In particular, Customer acknowledges and agrees that Customer has not been granted any real property interest located on HOST's premises, the Space or Facility or other HOST premises, and Customer has no rights as a tenant or otherwise under any real property or landlord/tenant laws, regulations, or ordinances. Any right to collocate in the Facility granted to Customer under this Agreement shall constitute a license, revocable in accordance with this Agreement.
48. **Resale.** Customer may resell the Service after receiving HOST's prior written approval as to the nature and scope of such resale. Should Customer resell any portion of the Service to any other party, Customer assumes all liabilities arising out of or related to such third party sites and communications and will indemnify and hold HOST harmless from such liabilities and/or the resale of said services. Customer agrees to enter into written agreements with any and all parties to which it resells any portion of the Services with terms and conditions at least as restrictive and protective of HOST's rights, as the terms and conditions of this Agreement.
49. **Marketing.** Customer agrees that HOST may refer to Customer by trade name and trademark, and may briefly describe Customer's Business in HOST's marketing materials and web site. Customer hereby grants HOST a limited license to use any Customer trade names and trademarks solely in connection with the rights granted to HOST pursuant to this agreement. All goodwill associated with Customer's trade name and trademarks will inure solely to Customer. Customer may display the HOST logo, or any other HOST trademark or service mark or logo, on Customer's web sites or marketing literature only after obtaining HOST's written approval on a case-by-case basis, and provided that Customer abides by the HOST trademark guidelines and such other guidelines as HOST may provide Customer. All goodwill associated with HOST's trade name, trademarks, slogans and logos will inure solely to HOST.
50. **Government Regulations.** Customer will not export, re-export, transfer, or make available, whether directly or indirectly, any regulated item or information to anyone outside the U.S. in connection with this Agreement without first complying with all export control laws and regulations which may be imposed by the U.S. Government and any country or organization of nations within whose jurisdiction Customer operates or does business. Customer represents and warrants that customer (i) is not located in a country subject to United States embargoes, or listed

on the United States Treasury Department's list of specially designated nationals, or listed on the United States Commerce Department's denied persons list or entities list, and (ii) if an individual, is at least 18 years of age.

51. **Assignment.** HOST reserves the right and Customer grants the right for HOST to assign the rights and responsibilities of this Agreement to a third party. Customer may not assign its rights or delegate its duties under this Agreement either in whole or in part without the prior written consent of HOST in each instance. Notwithstanding the foregoing, Customer upon notice to HOST, may assign all of its rights and delegate all of its duties under these terms and conditions and any applicable Contract to (a) a subsidiary, affiliate or parent company; (b) any entity that Customer controls, is controlled by, or is under common control with; or (c) any entity which succeeds to all or substantially all of the party's assets, whether by merger, sale or otherwise, provided such entity is not a competitor to HOST; has a net worth at least equal to Customer at the time of the requested assignment; and agrees in writing to assume all duties, obligations and responsibilities of Customer under all applicable Contracts and these terms and conditions and to otherwise be bound as provided for herein. Any attempted assignment or delegation without such consent will be void. This Agreement will bind and inure to the benefit of each party's successors and permitted assigns. Each request by Customer for a proposed assignment shall be accompanied by a nonrefundable fee payable to HOST in the amount of Seven Hundred Fifty Dollars (\$750.00) to cover HOST's administrative, legal and other costs and expenses incurred in processing each of Customer's requests.
52. **Relationship of Parties.** HOST and Customer are independent contractors and this Agreement will not establish any relationship of partnership, joint venture, employment, franchise or agency between HOST and Customer. Neither HOST nor Customer will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent, except as otherwise expressly provided herein.
53. **Choice of Law and Attorney's Fees.** This Agreement will be governed by and construed pursuant to the laws of the State of Florida. Exclusive jurisdiction and venue for purposes of any litigation in connection herewith shall be in the state or federal court located in Broward County, Florida. If any legal action is brought by either party to enforce its rights under this Agreement, the non-prevailing party in such action shall reimburse the prevailing party all of such prevailing party's costs and expenses (including reasonable attorneys' fees and expenses) incurred in connection with such action.
54. **Waiver.** The waiver by either party of any term, condition, or provision contained in this Agreement will not be deemed to be a waiver of any subsequent breach of the same or any other term, condition, or provision contained in this Agreement, nor will any custom or practice that may grow up between the parties in the administration of the terms of this Agreement be construed to waive or lessen the right of such party to insist upon the performance by the other party in strict accordance with the terms of this Agreement.
55. **Entire Agreement.** This Agreement, together with the all applicable SOs and HOST policies and documents referred to and incorporated into this Agreement represent the complete agreement and understanding of the parties with respect to the subject matter herein, and supersede all previous and contemporaneous agreements, representations or understanding, written or oral related to the subject matter herein and shall prevail notwithstanding any variance with terms and conditions of any order submitted. This Agreement may be modified only through a written instrument signed by both parties. Both parties represent and warrant that they have full corporate power and authority to execute and deliver this Agreement and to perform their obligations under this Agreement and that the person whose signature appears below is duly authorized to enter into this Agreement on behalf of the respective party. Should any terms of this Agreement be declared void or unenforceable by any arbitrator or court of competent jurisdiction, such terms will be amended to achieve as nearly as possible the same economic effect as the original terms and the remainder of this Agreement will remain in full force and effect. Customer's recordation of this Agreement or any memorandum or short form of it will be void and a default under this Agreement.

IN WITNESS WHEREOF, the parties understand and agree to the terms and conditions of this agreement and hereto have caused this agreement to be executed as of the day and year first written above.

Customer:

HOST:

\_\_\_\_\_

Perfection Software, Inc.

Signature:

Signature:

Print Name:

Print Name:

Title:

Title: