Perfominer, Terms and Conditions

1. Definitions and scope

These Terms and Conditions (“Terms”) govern the access to and use of the Perfominer software-as-a-service platform (“Perfominer”, “Service”) provided by Forability Ltd., a company established in Sofia, Bulgaria, Rodopski Izvor 70, 1618 Sofia (“Forability”, “we”, “us”, “our”), to business customers (“Customer”, “you”).
Perfominer is a platform for automated monitoring and management of IT infrastructure and SAP systems, including silent data collection, automated alerting, automated management actions and automated cloud cost calculation.

2. Conclusion of contract and account

A binding SaaS contract for Perfominer is formed when Forability confirms the Customer’s order in writing (including email) or grants access credentials to the Service following an offer or order form.
The Customer must ensure that all information provided during registration and contracting is accurate and must keep access credentials confidential and protected against unauthorised use.

3. Grant of use and service description

Forability grants the Customer a non-exclusive, non-transferable, non-sublicensable right to access and use Perfominer during the agreed subscription term, solely for the Customer’s internal business purposes and in accordance with these Terms and the documentation.
Perfominer enables automated monitoring of systems performance and resource usage, including data collection from the Customer’s IT and SAP landscape, generation of alerts on defined conditions, support for automated management actions subject to Customer approval, and automated estimation of cloud hosting costs with major providers; Forability does not warrant any specific business outcome or decision based on these estimates.

4. Customer responsibilities and acceptable use

The Customer is responsible for configuring monitored systems, thresholds, and automated actions in Perfominer, for verifying alerts and recommendations before acting upon them, and for maintaining its own infrastructure, connectivity, and security controls outside the Service.
The Customer must not misuse Perfominer, including but not limited to: attempting to gain unauthorised access to the Service or underlying infrastructure, reverse engineering or circumventing technical protections, using the Service in violation of applicable law

(including export control and data protection rules), or granting access to unauthorised third parties except as expressly agreed.

5. Fees, invoicing and payment terms

Fees for Perfominer are set out in the applicable offer, order form, or price list and may include recurring subscription fees, usage-based charges, and one-off implementation or training fees.
Unless otherwise agreed in writing, all amounts are due within the payment term stated on the invoice (typically no more than 60 days under Bulgarian commercial practice), exclusive of applicable taxes, and Forability may suspend access to Perfominer for material payment delay after prior notice.

6. Service levels, maintenance and support

Forability provides Perfominer as a cloud service with commercially reasonable efforts to achieve high availability and timely processing of monitoring data and alerts, subject to planned maintenance, emergency interventions, and factors outside Forability's control (such as Customer networks, third-party clouds, or internet issues).
Planned maintenance windows and support channels (including response times and support hours) are described in a service description or SLA referenced in the order; Forability may update the Service and its technical components, provided that overall functionality relevant to the Customer is not materially reduced.

7. Data protection and security

Each party acts as an independent controller for its own business contact data; where Perfominer processes personal data on behalf of the Customer (for example, user identifiers or log data), Forability will act as a processor under EU GDPR, and the parties will enter into a data processing agreement meeting Articles 28 and 32 GDPR and the Bulgarian Personal Data Protection Act.
Forability implements appropriate technical and organisational measures to protect monitoring data and personal data processed through Perfominer, including access controls, secure hosting, backup and logging, and will support the Customer in complying with applicable EU data protection law, including data subject rights and international transfer mechanisms where relevant.

8. Intellectual property

All intellectual property rights in Perfominer, including software, interfaces, documentation, configurations, and related know-how, remain the exclusive property of Forability and/or its licensors.

The Customer retains all rights to its own data and remains responsible for ensuring that it has the necessary rights to transmit such data to Perfominer; Forability may use aggregated and anonymised monitoring data for service improvement, analytics, and benchmarking, provided no Customer is identifiable.

9. Warranties and disclaimers

Forability warrants that Perfominer will, in all material respects, perform substantially in accordance with the agreed documentation and service description when used as intended, and that the Service will not knowingly infringe third-party intellectual property rights in the EU.
Except for the foregoing and mandatory statutory warranties, Perfominer is provided "as is" and "as available"; in particular Forability does not guarantee uninterrupted availability, error-free operation, or that monitoring or automated actions will detect or prevent every performance issue, outage, or security incident in the Customer's environment.

10. Liability

Forability's liability for damages arising out of or in connection with Perfominer is, to the maximum extent permitted by applicable law, limited per contract year to the fees paid by the Customer for Perfominer during that year, excluding liability that cannot be limited under mandatory law (for example for intent or gross negligence under Bulgarian law).
In no event will Forability be liable for loss of profits, loss of business, loss or corruption of data not attributable to Forability's breach of its security obligations, or indirect or consequential damages, except where such exclusion is not permitted by applicable law.

11. Term, renewal and termination

The subscription term for Perfominer, including any minimum term and renewal conditions, is specified in the order form; if not otherwise agreed, subscriptions renew automatically for successive one-year periods unless either party gives written notice of non-renewal at least thirty (30) days before the end of the current term.
Each party may terminate the contract for cause with immediate effect if the other party commits a material breach that remains uncured after a reasonable cure period, or in the event of insolvency or cessation of business; upon termination, the Customer's access to Perfominer will cease, and Forability will provide data export options for a limited period as described in the data processing or exit provisions.

12. Governing law and dispute resolution

These Terms and any non-contractual obligations arising out of or in connection with them are governed by the laws of the Republic of Bulgaria, without giving effect to conflict of law

rules, and subject to any overriding mandatory provisions of EU law applicable to the Customer.
The parties will seek to resolve disputes amicably, and failing such resolution within a reasonable period, any dispute will be submitted to the competent courts of Sofia, Bulgaria, unless the parties agree on arbitration or another dispute resolution mechanism in the specific contract.

13. Changes to the Service and Terms

Forability may modify Perfominer and these Terms to reflect technical improvements, security updates, changes in legal or regulatory requirements (including the EU Data Act), or adjustments to its business model, provided that Customers are informed in advance and may object if a change materially disadvantages them.
Where the Customer continues to use Perfominer after the effective date of updated Terms notified in text form, such continued use may be deemed acceptance of the updated Terms, unless the Customer exercises a contractual right to terminate.