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# US Securities and Exchange Commission

Washington, DC 20549

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## Form 8-K

### CURRENT REPORT

#### 1. PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

Date of Report (Date of Earliest Event Reported): January 3, 2002

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### PERFICIENT, INC.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of  
incorporation or organization)

001-15169

(Commission file number)

74-2853258

(IRS Employer Identification No.)

7600-B North Capital of Texas Highway, Suite 340, Austin, Texas 78731

(Address of principal executive offices)

(512) 531-6000

(Issuer's telephone number)

(Former name, former address and former fiscal year, if changed since last report)

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#### ITEM 5. OTHER EVENTS

We have entered into a Convertible Preferred Stock Purchase Agreement, dated as of December 21, 2001, with a limited number of investors under which we have sold 1,884,000 shares of our Series A Convertible Preferred Stock, par value \$0.001 per share, to such investors for a purchase price of \$1.00 per share. Each share of Series A Preferred Stock is initially convertible into one share of our common stock, par value \$0.001 per share, at the election of the holder. We have also issued Warrants to purchase up to 942,000 shares of our common stock in connection with this sale of Series A Preferred Stock. For every two shares of Series A Preferred Stock purchased by an investor, such investor will also receive a Warrant to purchase one share of our common stock at an initial exercise price of \$2.00 per share of common stock.

Subject to earlier release under certain circumstances, the proceeds from the sale of Series A Preferred Stock as well as the certificates representing the Series A Preferred Stock and the Warrants will remain in escrow subject to the consummation of the Vertecon Merger and the Javelin Merger and the approval of Perficient stockholders sought by the proxy statement (the "Proxy Statement") filed with the SEC on January 17, 2002. If these conditions are not satisfied by April 30, 2002, or if either the Vertecon Merger or Javelin Merger is terminated, all proceeds from the sale of the Series A Preferred Stock will be promptly returned to the investors.

#### Use of Proceeds

We intend to use the proceeds from the sale of the Series A Preferred Stock to further accelerate our previously announced acquisition program, strengthen our working capital position and for other corporate purposes.

#### Description of Series A Preferred Stock

The following table presents a summary of the material terms of the Series A Preferred Stock. This summary does not purport to be complete and is subject in all respects to the Delaware General

Corporation Law and our Certificate of Incorporation and the Certificate of Rights, Designations and Preferences related to Series A Preferred Stock.

#### Conversion

At any time following shareholder approval of the issuance of the common stock upon conversion of the Series A Preferred Stock sought by the Proxy Statement, holders of Series A Preferred Stock have the right to convert such shares of Series A Preferred Stock into our common stock. The initial conversion ratio is one-to-one (one share of common stock for each share of Series A Preferred Stock converted), subject to adjustment under certain circumstances. Each of the outstanding shares of Series A Preferred Stock will be automatically converted in the event that the closing price of our

common stock on the Nasdaq SmallCap Market is greater than \$3.00 for any twenty consecutive trading days or at the election of holders of 50% of the voting power of the Series A Preferred Stock.

Voting	In addition to any other voting rights provided in our certificate of incorporation or as otherwise required by law, holders of Series A Preferred Stock will vote together with holders of common stock on all matters as to which holders of common stock are entitled to vote. Each share of Series A Preferred Stock entitles the holder thereof to one vote for each share of common stock into which such share of Series A Preferred Stock is then convertible.
Dividends	Holders of Series A Preferred Stock are entitled to dividends only upon the liquidation, dissolution or sale of Perficient or the redemption or conversion of the Series A Preferred Stock. Such dividends will accrue and be payable at an annual rate per share equal to \$1.00 multiplied by the Prime Rate plus 150 basis points.
Liquidation Preference	In the event of the liquidation, dissolution or winding up of Perficient or the sale of Perficient, holders of Series A Preferred Stock will be entitled to receive \$1.00 per share (subject to certain adjustments) plus all unpaid, accrued dividend payments. After payment of the full liquidation preference to the holders of Series A Preferred Stock, any remaining assets of Perficient will be distributed ratably among the holders of Perficient common stock and Series A Preferred Stock. In the event that the assets of Perficient are insufficient to pay the full liquidation preference to the holders of Series A Preferred Stock, the assets of Perficient will be distributed ratably among such holders.
Registration Rights	We have agreed to file a registration statement covering the resale of the shares of common stock issuable upon the conversion of the Series A Preferred Stock (and exercise of the Warrants) within thirty days following the date of the special meeting contemplated by this proxy statement. Our Board of Directors can extend this filing deadline by sixty days under certain circumstances.

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#### **Certain Officers and Directors of Perficient have agreed to Purchase Shares of Series A Convertible Preferred Stock**

John T. McDonald, our Chairman and Chief Executive Officer, has purchased 100,000 shares of Series A Preferred Stock. Sam J. Fatigato, our President, Chief Operating Officer and Director, has purchased 50,000 shares of Series A Preferred Stock. Such purchases were made on the same terms as those by non-affiliated investors and, in fact, were a condition to the purchase of the Series A Preferred Stock by the non-affiliated investors.

David Lundeen, a director of Perficient, is managing member of Watershed-Perficient, LLC which purchased 625,000 shares of Series A Preferred Stock. This purchase was made on the same terms as those by non-affiliated investors.

#### **Approval of the issuance of common stock upon conversion of the Series A Preferred Stock and exercise of the Warrants is assured**

Officers, directors and stockholders of Perficient, owning in the aggregate more than 50% of the issued and outstanding shares of Perficient common stock, have agreed, under voting agreements, to vote their shares in favor of the issuance of the common stock upon conversion of the Series A Preferred Stock and exercise of the Warrants. Accordingly, approval is assured.

#### **ITEM 7. FINANCIAL STATEMENTS, PRO FORMA FINANCIAL INFORMATION AND EXHIBITS**

(c)  
Exhibits

Exhibit No.	Description
Exhibit 4.1.	Certificate of Designation, Rights and Preferences of Series A Preferred Stock. of Perficient, Inc.
Exhibit 4.2.	Form of Common Stock Purchase Warrant.
Exhibit 10.1.	Convertible Stock Purchase Agreement, dated as of December 21, 2001, by and among Perficient, Inc. and the Investors listed on Schedule 1 thereto.
Exhibit 10.2.	Investor Rights Agreement, dated as of January 7, 2002, by and among Perficient, Inc and the holders of the Perficient's Series A Preferred Stock set forth on Exhibit A thereto.

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#### **SIGNATURES**

In accordance with the requirements of the Exchange Act, the registrant caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

**PERFICIENT, INC.**  
(Registrant)

/s/ MATTHEW CLARK

Date: January 17, 2002

**PERFICIENT, INC.**  
**CERTIFICATE OF DESIGNATION, RIGHTS AND PREFERENCES**  
**OF SERIES A PREFERRED STOCK**

Pursuant to Section 151 of the General Corporation Law of the State of Delaware (the "DGCL"), the undersigned, on behalf of Perficient, Inc. (the "Corporation"), a corporation organized and existing under the DGCL, in accordance with the provisions of Section 103 thereof, **DOES HEREBY CERTIFY:**

That pursuant to the authority given to the Board of Directors of the Corporation by the Certificate of Incorporation of the Corporation (the "Certificate of Incorporation"), and in accordance with the provisions of Section 151 of the DGCL, the Board of Directors of the Corporation, as of December 19, 2001, adopted the following resolution creating a series of Preferred Stock designated as Series A Preferred Stock.

**RESOLVED** that, pursuant to the authority vested in the Board of Directors of the Corporation in accordance with the DGCL and the provisions of the Certificate of Incorporation, a series of preferred stock, par value \$.001 per share, of the Corporation is hereby created and that the designation and number of shares thereof and the voting powers, preferences and relative, participating, optional and other special rights of the shares of such series, and the qualifications, limitations and restrictions thereof, are as follows:

**SERIES A CONVERTIBLE PREFERRED STOCK**

**A.1 Designation and Amount.** The designation of this series of capital stock shall be "Series A Convertible Preferred Stock," par value \$.001 per share (the "Series A Stock"). The number of shares, powers, terms, conditions, designations, preferences and privileges, relative, participating, optional and other special rights, and qualifications, limitations and restrictions, if any, of the Series A Stock shall be as set forth herein. The number of authorized shares of the Series A Stock is 2,200,000.

**A.2 Ranking.** The Corporation's Series A Stock shall rank, as to dividends and upon Liquidation (as defined in Section A.4(b) hereof), equally with each other series of preferred stock and senior and prior to the Corporation's Common Stock, except as otherwise approved by the affirmative vote or consent of the holders of shares of Series A Stock pursuant to Section A.5(c) hereof.

**A.3 Dividend Provisions.**

Subject to the terms of this Section A.3, dividends on the Series A Stock shall accrue and be payable only in connection with a *Liquidation* or the *redemption or conversion* of the Series A Stock as provided for herein and then at an annual rate per share of Series A Stock equal to the Original Purchase Price multiplied by the Prime Rate plus 150 basis points (the "Dividend Payment") from the Closing Date.

**A.4 Liquidation Rights.**

A.4(a) With respect to rights on Liquidation (as defined in Section A.4(b) hereof), the Series A Stock shall rank equally with each other series of preferred stock and senior and prior to the common stock, par value \$.001, of the Corporation (the "Common Stock"), except as otherwise approved by the affirmative vote or consent of the holders of Series A Stock pursuant to Section A.5(c) hereof.

A.4(b) In the event of any liquidation, dissolution or winding-up of the affairs of the Corporation or an Event of Sale (collectively, a "Liquidation"), the holders of shares of Series A Stock then outstanding (the "Series A Stockholders") shall be entitled to receive out of the assets of the Corporation legally available for distribution to its stockholders, whether from capital, surplus or earnings, before any payment shall be made to the holders of Common Stock or any other class or series of stock ranking on Liquidation junior to such Series A Stock, an amount per share equal to the Original Purchase Price (as defined in Section A.8 hereof), plus all accrued Dividend Payments.

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A.4(c) If, upon any Liquidation, the assets of the Corporation available for distribution to its stockholders shall be insufficient to pay the Series A Stockholders the full amount as to which each of them shall be entitled, then the Series A Stockholders shall share ratably in any distribution of assets according to the respective amounts which would be payable to them in respect of the shares held upon such distribution if all amounts payable on or with respect to such shares were paid in full. For purposes of calculating the amount of any payment to be paid upon any such Liquidation, each share of Series A Stock shall be deemed to be that number of shares (including fractional shares) of Common Stock into which it is then convertible, rounded to the nearest one-tenth of a share.

A.4(d) In the event of any Liquidation, after payments shall have been made first to the Series A Stockholders and then to the holders of each junior class or series of capital stock (other than Common Stock) of the full amount to which they shall be entitled pursuant to Section A.4(b), the holders of Common Stock shall be entitled to share ratably in all remaining assets of the Corporation available for distribution to its stockholders.

A.4(e) For purposes of this Section A.4, an "Event of Sale" shall mean (A) the merger or consolidation of the Corporation into or with another corporation, partnership, joint venture, trust or other entity, or the merger or consolidation of any corporation into or with the Corporation, or (B) the sale or other disposition of all or substantially all the assets of the Corporation, unless, upon consummation of such merger or consolidation, the holders of voting securities of the Corporation immediately prior to such transaction continue to own directly or indirectly not less than fifty percent (50%) of the voting power of the surviving corporation.

**A.5 Voting.**

A.5(a) In addition to any other rights provided for herein or by law, the Series A Stockholders shall be entitled to vote, together with the Common Stockholders as one class, on all matters as to which Common Stockholders shall be entitled to vote, in the same manner and with the same effect as such Common Stockholders. In any such vote, each share of Series A Stock shall entitle the holder thereof to the number of votes per share that equals the number of shares of Common Stock (including fractional shares) into which each such share of Series A Stock is then convertible, rounded up to the nearest one-tenth of a share.

A.5(b)(i) In addition to the rights specified in Section A.5(a), the holders of a majority in voting power of the Series A Stock, voting as a separate class, shall have the exclusive right to elect (x) one (1) member of the Board of Directors of the Corporation, or (y) in the event that the Corporation fails to redeem Series A Stock within forty-five (45) days following a request occurring on a date that is not less than five (5) years after the Closing Date in accordance with Section A.7 hereof, such number of the members of the Board of Directors of the Corporation as shall equal one-half of the members of the Board of Directors (each of the Directors elected pursuant to (x) or (y) above, a "Preferred Director"). In any election of a Preferred Director pursuant to this Section A.5(b), each Series A Stockholder shall be entitled to one vote for each share of the Series A Stock held, and no Series A Stockholder shall be entitled to cumulate its votes by giving one candidate more than one vote per share. The exclusive voting right of the Series A Stockholders, contained in this Section A.5(b), may be exercised at a special meeting of the Series A Stockholders called as provided in accordance with the By-laws of the Corporation, at any annual or special meeting of the stockholders of the Corporation, or by written consent of such Series A Stockholders in lieu of a meeting. Any Preferred Director elected pursuant to this Section A.5(b) shall serve from the date of their election and qualification until their successors have been duly elected and qualified. The right described herein to elect a member to the Board of Directors shall be without regard to any persons serving on the Board of Directors on the date of this Certificate of Designation. To accommodate the election of the Preferred Directors as

described above, the Corporation shall procure the resignation of such number of directors as shall be necessary, or the number of directors shall be automatically increased, to create the requisite number of vacancies.

A.5(b)(ii) A vacancy in the directorship to be elected by the Series A Stockholders may be filled only by a vote at a meeting called in accordance with the By-laws of the Corporation or written consent in lieu of such meeting of the holders of at least a majority in voting power of such Series A Stock.

A.5(b)(iii) At the election of the holders of the Series A Stock, voting as a separate class, and in lieu of electing a member of the Board of Directors, the holders of Series A Stock may elect an observer to the Board of Directors.

A.5(c) The Corporation shall not, without the affirmative approval of the holders of shares representing at least a majority of the voting power of the Series A Stock then outstanding (determined as set forth in the second sentence of Section A.5(a) hereof), acting separately from the holders of Common Stock or any other securities of the Corporation, given by written consent in lieu of a meeting or by vote at a meeting called for such purpose, for which meeting or approval by written consent timely and specific notice (a "Notice") shall have been given to each holder of such Preferred Stock, in the manner provided in the By-laws of the Corporation, take any action that: (i) amends or repeals any provision of the Certificate of Incorporation if such action would materially and adversely change the rights, preferences or privileges of the Series A Stock, (ii) (A) at any time prior to the fifth anniversary of the Closing Date, authorizes or issues shares of any class of stock ranking on par with or having any preference or priority as to dividends or liquidation superior to the Series A Stock, or (B) at any time on or after the fifth anniversary of the Closing Date, authorizes or issues any shares of any class of stock of the Company or any securities convertible into or exercisable, exchangeable or redeemable for any shares of any class of stock of the Corporation, whether or not such shares have any preference or priority as to dividends or liquidation equal or superior to the Series A Stock or (iii) provides for a sale of substantially all of the assets of the Corporation, or a merger or consolidation of the Corporation in which the holders of voting securities of the Corporation immediately prior to such transaction do not continue to own directly or indirectly at least fifty percent (50%) of the voting power of the surviving corporation, but in each case only if John T. McDonald is not the Chief Executive Officer or Chairman of the Board of the Corporation at the time that the transaction is approved by the Board of Directors of the Corporation.

#### A.6 Conversion.

A.6(a)(i) Any Series A Stockholder shall have the right (at any time, or from time to time, after Shareholder Approval is obtained) to convert any or all of its Series A Stock into that number of fully paid and nonassessable shares of Common Stock for each share of Series A Stock so converted equal to the quotient of the Original Purchase Price for such share divided by the Conversion Price for such share (as defined in Section A.6(d) hereof), as last adjusted and then in effect, rounded up to the nearest one-tenth of a share; *provided, however*, that cash shall be paid in lieu of the issuance of fractional shares of Common Stock, as provided in Section A.6(c)(ii) hereof.

A.6(a)(ii) Any Series A Stockholder who exercises the right to convert shares of Series A Stock into shares of Common Stock, pursuant to this Section A.6, shall be entitled to payment of all accrued Dividend Payments with respect to such Series A Stock pursuant to Section A.6(a) herein, up to and including the Conversion Date (as defined in Section A.6(b)(ii) hereof).

A.6(b)(i) Any Series A Stockholder may exercise the right to convert such shares into Common Stock pursuant to this Section A.6 by delivering to the Corporation during regular business hours, at the office of the Corporation or any transfer agent of the Corporation or at such

other place as may be designated by the Corporation, the certificate or certificates for the shares to be converted (the "Series A Preferred Certificate"), duly endorsed or assigned in blank to the Corporation (if required by it).

A.6(b)(ii) Each Series A Preferred Certificate shall be accompanied by written notice stating that such holder elects to convert such shares and stating the name or names (with address) in which the certificate or certificates for the shares of Common Stock (the "Common Certificate") are to be issued. Such conversion shall be deemed to have been effected on the date when such delivery is made, and such date is referred to herein as the "Conversion Date."

A.6(b)(iii) As promptly as practicable thereafter, the Corporation shall issue and deliver to or upon the written order of such holder, at the place designated by such holder, a certificate or certificates for the number of full shares of Common Stock to which such holder is entitled and a check or cash in respect of any fractional interest in any shares of Common Stock, as provided in Section A.6(c)(ii) hereof, payable with respect to the shares so converted up to and including the Conversion Date.

A.6(b)(iv) The person in whose name the certificate or certificates for Common Stock are to be issued shall be deemed to have become a holder of record of Common Stock on the applicable Conversion Date, unless the transfer books of the Corporation are closed on such Conversion Date, in which event the holder shall be deemed to have become the stockholder of record on the next succeeding date on which the transfer books are open, provided that the Conversion Price shall be that Conversion Price in effect on the Conversion Date.

A.6(b)(v) Upon conversion of only a portion of the number of shares covered by a Series A Preferred Certificate, the Corporation shall issue and deliver to or upon the written order of the holder of such Series A Preferred Certificate, at the expense of the Corporation, a new certificate covering the number of shares of the Series A Stock representing the unconverted portion of the Series A Preferred Certificate, which new certificate shall entitle the holder thereof to all the rights, powers and privileges of a holder of such shares.

A.6(c)(i) If a Series A Stockholder shall surrender more than one certificate representing shares of Series A Stock for conversion at any one time, then the number of full shares of Common Stock issuable upon conversion thereof shall be computed on the basis of the aggregate number of shares of Series A Stock so surrendered.

A.6(c)(ii) No fractional shares of Common Stock shall be issued upon conversion of Series A Stock. The Corporation shall pay a cash adjustment for any such fractional interest in an amount equal to the Current Market Price thereof on the Conversion Date, as determined in accordance with Section A.6(d)(vi) hereof.

A.6(d) For all purposes of this Part A, the "Conversion Price" with respect to the Series A Stock shall be equal to \$1.00 with respect to each such share of Series A Stock, subject to adjustment from time to time as follows:

A.6(d)(i) Subject to Section A.6(d)(ii) below, if the Corporation shall, at any time or from time to time after the Original Issuance Date, issue any shares of Common Stock (which term, for purposes of this Section A.6(d)(i) and Section A.6(d)(ii), including all subsections thereof, shall be deemed to include all other securities convertible into, or exchangeable or exercisable for, shares of Common Stock (including, but not limited to, Series A Stock) or options to purchase or other rights to subscribe for such convertible or exchangeable securities, in each case other than Excluded Stock (as hereinafter defined)), for a consideration per share less than the greater of (i) the applicable Conversion Price in effect immediately prior to the issuance of such Common Stock or other securities and (ii) the Current Market Price of the Common Stock (a "Dilutive Issuance"), the Conversion Price for Series A Stock in effect

4

immediately prior to each such Dilutive Issuance shall automatically be lowered to a price equal to the price determined in accordance with the following formula:

A.	For issuances at less than the Conversion Price in effect immediately prior to the issuance of such securities:	$C_1 = C_0 \times \frac{(N_0 + [N_+ \times \$]/C_0]}{N_1}$
B.	For issuances at less than the Current Market Price:	$C_1 = C_0 \times \frac{[(N_0 \times \text{CMP}) + N_+[\$ + \text{CMP}(\text{Permitted Dilution } \%)]]/N_1}{\text{CMP}}$

In each case, where:

C <sub>1</sub>	=	adjusted Conversion Price;
C <sub>0</sub>	=	current Conversion Price;
N <sub>0</sub>	=	number of shares of Common Stock outstanding prior to the issuance;
N <sub>1</sub>	=	number of shares of Common Stock outstanding immediately after issuance;
N <sub>+</sub>	=	number of shares of Common Stock issued in the dilutive issuance;
\$	=	consideration per share received in the dilutive issuance;
CMP	=	Current Market Price per share of Common Stock; and
Permitted Dilution % = for issuances in 2002, 35%; in 2003, 20%; in 2004 and after, 10%; <i>provided, however</i> , that Permitted Dilution % shall be 0% for all shares issued after the issuance of shares having an aggregate Current Market Price in excess of \$5,000,000 in 2002 and \$10,000,000 in 2003, taking into account (i) all dilutive issuances for which adjustments are required under this Section (f)(2) and Section f(3) and (ii) all issuances to employees, consultants or directors for which an adjustment is required under this Section.		

Such adjustment shall be made successively whenever such an issuance is made. No adjustment pursuant to this Section A.6(d)(i) shall increase the Conversion Price.

A.6(d)(i)(A) In the case of the issuance of Common Stock in whole or in part for cash, the consideration shall be deemed to be the amount of cash paid therefor after deducting therefrom any discounts, commissions or other expenses allowed, paid or incurred by the Corporation for any underwriting or otherwise in connection with the issuance and sale thereof, plus the value of any property other than cash received by the Corporation, determined as provided in Section A.6(d)(i)(B) hereof, plus the value of any other consideration received by the Corporation determined as set forth in Section A.6(d)(i)(C) hereof.

A.6(d)(i)(B) In the case of the issuance of Common Stock for a consideration in whole or in part in property other than cash, the value of such property other than cash shall be deemed to be the fair market value of such property as determined in good faith by the Board of

Directors, irrespective of any accounting treatment; *provided, however*, that such fair market value of such property as determined by the Board of Directors shall not exceed the aggregate Current Market Price (as defined in Section A.6(d)(vii) hereof) of the shares of Common Stock or such other securities being issued, less any cash consideration paid for such shares, determined as provided in Section A.6(d)(i)(A) hereof and less any other consideration received by the Corporation for such shares, determined as set forth in Section A.6(d)(i)(C) hereof.

A.6(d)(i)(C) In the case of the issuance of Common Stock for consideration in whole or in part other than cash or property, the value of such other consideration shall be deemed to be the fair market value of such property as determined in good faith by the Board of Directors, irrespective of any accounting treatment.

A.6(d)(i)(D) In the case of the issuance of options or other rights to purchase or subscribe for Common Stock or the issuance of securities by their terms convertible into or exchangeable or exercisable for Common Stock or options to purchase or other rights to subscribe for such convertible or exchangeable or exercisable securities:

A.6(d)(i)(D)(1) The aggregate maximum number of shares of Common Stock deliverable upon exercise of such options to purchase or rights to subscribe for Common Stock shall be deemed to have been issued at the time such options or rights were issued and for a consideration equal to the consideration (determined in the manner provided in Sections A.6(d)(i)(A), (B) and (C) hereof), if any, received by the Corporation upon the issuance of such options or rights plus the minimum purchase price provided in such options or rights for the Common Stock covered thereby (the consideration in each case to be determined in the manner provided in Sections A.6(d)(i)(A), (B) and (C) hereof);

A.6(d)(i)(D)(2) the aggregate maximum number of shares of Common Stock deliverable upon conversion of, or in exchange for, any such convertible or exchangeable securities or upon the exercise of options to purchase or rights to subscribe for such convertible or exchangeable securities and subsequent conversion or exchange thereof shall be deemed to have been issued at the time such securities were issued or such options or rights were issued and for a consideration equal to the consideration received by the Corporation for any such securities and related options or rights (excluding any cash received on account of accrued interest or accrued dividends), plus the minimum additional consideration, if any, to be received by the Corporation upon the conversion or exchange of such securities or the exercise of any related options or rights (the consideration in each case to be determined in the manner provided in Sections A.6(d)(i)(A), (B) and (C) hereof);

A.6(d)(i)(D)(3) If there is any change in the exercise price of, or number of shares deliverable upon exercise of, any such options or rights or upon the conversion or exchange of any such convertible or exchangeable securities (other than a change resulting from the antidilution provisions thereof), then the Conversion Price shall automatically be readjusted in proportion to such change; and

A.6(d)(i)(D)(4) Upon the expiration of any such options or rights or the termination of any such rights to convert or exchange such convertible or exchangeable securities, the Conversion Price shall be automatically readjusted to the Conversion Price that would have obtained had such options, rights or convertible or exchangeable securities not been issued.

A.6(d)(ii) "Excluded Stock" shall mean:

A.6(d)(ii)(A) Series A Stock authorized hereunder or Shares of Common Stock issued upon conversion of any shares of Series A Stock;

A.6(d)(ii)(B) Common Stock issued or issuable to officers, directors or employees of or consultants or independent contractors to the Corporation, pursuant to any written agreement, plan or arrangement, to purchase, or rights to subscribe for, such Common Stock, including Common Stock issued under the 1999 Employee Stock Purchase/Stock Option Plan, as approved by a majority of the members of the Board of Directors of the Corporation, provided, that in order to qualify as Excluded Stock (i) any issuance of Common Stock to officers, directors or employees, or their affiliates, for consideration other than cash equal to the fair market value of such Common Stock shall have been approved by the director elected by the holders of Series A Stock, and (ii) that the price payable for any Common Stock issuable pursuant to any stock option, warrant or other right to subscribe for Common Stock shall be equal to or greater than the Current Market Price of the Common Stock on the date such stock option, warrant or other right is granted;

A.6(d)(ii)(C) Common Stock issued as a stock dividend payable in shares of Common Stock, or capital stock of any class issuable upon any subdivision, recombination, split-up or reverse stock split of all the outstanding shares of such class of capital stock;

A.6(d)(ii)(D) Common Stock issued upon the exercise of any options, warrants or securities convertible into Common Stock that are outstanding on the Closing Date;

A.6(d)(ii)(E) Common Stock issued upon the exercise of the Common Stock Purchase Warrants issued in connection with the purchase and sale of the Series A Stock; and

A.6(d)(ii)(F) Common Stock or other securities issued in connection with any merger, acquisition or similar transaction approved by a majority of the members of the Board of Directors of the Corporation, whether before or after the Closing Date.

A.6(d)(ii)(G) Common Stock or other securities issued in connection with any firm commitment underwritten public offering.

A.6(d)(iii) If the number of shares of Common Stock outstanding at any time after the Original Issuance Date (as hereinafter defined) is increased by a stock dividend payable in shares of Common Stock or by a subdivision or split-up of shares of Common Stock, then, following the record date fixed for the determination of holders of Common Stock entitled to receive such stock dividend, subdivision or split-up, the Conversion Price shall be appropriately decreased so that the number of shares of Common Stock issuable on

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conversion of each share of Series A Stock shall be increased in proportion to such increase in outstanding shares.

A.6(d)(iv) If, at any time after the Original Issuance Date, the number of shares of Common Stock outstanding is decreased by a combination of the outstanding shares of Common Stock, then, following the record date for such combination, the Conversion Price shall be appropriately increased so that the number of shares of Common Stock issuable on conversion of each share of Series A Stock shall be decreased in proportion to such decrease in outstanding shares.

A.6(d)(v) All calculations under this Section A.6(d) shall be made to the nearest one-tenth of a cent (\$.001) or to the nearest one-tenth of a share, as the case may be.

A.6(d)(vi) For the purpose of any computation pursuant to Section A.6(d), the Current Market Price at any date of one share of Common Stock shall be determined as follows:

(1) If the Common Stock is listed on a national securities exchange or admitted to unlisted trading privileges on such exchange or listed for trading on the Nasdaq National Market or the Nasdaq SmallCap Market or any exchange, the Current Market Price shall be the last reported sale price of the Common Stock on such exchange or market on the last business day prior to the date of computation or if no such sale is made on such day, the average closing bid and asked prices for such day on such exchange or market; or

(2) If the Common Stock is not so listed or admitted to unlisted trading privileges, but is traded on the NASD Bulletin Board, the Current Market Price shall be the average of the closing bid and asked prices for such day on such market and if the Common Stock is not so traded, the Current Market Price shall be the mean of the last reported bid and asked prices reported by the National Quotation Bureau, Inc. on the last business day prior to the date of computation; or

(3) If the Common Stock is not so listed or admitted to unlisted trading privileges and bid and asked prices are not so reported, the Current Market Price shall be the fair market value of the Common Stock as reasonably determined by the Board of Directors of the Company acting in good faith, but not less than the book value thereof as at the end of the most recent fiscal quarter of the Company ending prior to the relevant date.

A.6(d)(vii) In any case in which the provisions of this Section A.6(d) shall require that an adjustment shall become effective immediately after a record date for an event, the Corporation may defer until the occurrence of such event (A) issuing to the holder of any shares of Series A Stock converted after such record date and before the occurrence of such event the additional shares of capital stock issuable upon such conversion by reason of the adjustment required by such event over and above the shares of capital stock issuable upon such conversion before giving effect to such adjustment, and (B) paying to such holder any cash amounts in lieu of fractional shares pursuant to Section A.6(c)(ii) hereof; *provided, however*, that the Corporation shall deliver to such holder a due bill or other appropriate instrument evidencing such holder's right to receive such additional shares, and such cash, upon the occurrence of the event requiring such adjustment.

A.6(d)(viii) If a state of facts shall occur that, without being specifically controlled by the provisions of this Section A.6, would not fairly protect the conversion rights of the holders of the Series A Stock in accordance with the essential intent and principles of such provisions, then the Board of Directors shall make an adjustment in the application of such provisions, in accordance with such essential intent and principles, so as to protect such conversion rights.

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A.6(e) Whenever the Conversion Price shall be adjusted as provided in Section A.6(d) hereof, the Corporation shall forthwith file and keep on record at the office of the Secretary of the Corporation and at the office of the transfer agent for the Series A Stock or at such other place as may be designated by the Corporation, a statement, signed by its President or Chief Executive Officer and by its Treasurer or Chief Financial Officer, showing in detail the facts requiring such adjustment and the Conversion Price that shall be in effect after such adjustment. The Corporation shall also cause a copy of such statement to be sent by first-class, certified mail, return receipt requested, postage prepaid, to each Series A Stockholder at such holder's address appearing on the Corporation's records. Where appropriate, such copy shall be given in advance of any such adjustment and shall be included as part of a notice required to be mailed under the provisions of Section A.6(f) hereof.

A.6(f) In the event the Corporation shall propose to take any action of the types described in Section A.6(d)(i), (ii), (iii) or (iv) hereof, or any other Event of Sale, the Corporation shall give notice to each Series A Stockholder in the manner set forth in Section A.6(e) hereof, which notice shall specify the record date, if any, with respect to any such action and the date on which such action is to take place. Such notice shall also set forth such facts with respect thereto as shall be reasonably necessary to indicate the effect of such action (to the extent such effect may be known at the date of such notice) on the Conversion Price with respect to the Series A Stock, and the number, kind or class of shares or other securities or property which shall be deliverable or purchasable upon each conversion of Series A Stock. In the case of any action that would require the fixing of a record date, such notice shall be given at least 10 days prior to the record date so fixed, and in the case of any other action, such notice shall be given at least 20 days prior to the taking of such proposed action.

A.6(g) The Corporation shall pay all documentary, stamp or other transactional taxes attributable to the issuance or delivery of shares of capital stock of the Corporation upon conversion of any shares of Series A Stock; *provided, however*, that the Corporation shall not be required to pay any taxes which may be payable in respect of any transfer involved in the issuance or delivery of any certificate for such shares in a name other than that of the Series A Stockholder in respect of which such shares of Series A Stock are being issued.



A.6(h) The Corporation shall reserve out of its authorized but unissued shares of Common Stock solely for the purpose of effecting the conversion of the Series A Stock sufficient shares of Common Stock to provide for the conversion of all outstanding shares of Series A Stock.

A.6(i) All shares of Common Stock which may be issued in connection with the conversion provisions set forth herein will, upon issuance by the Corporation, be validly issued, fully paid and nonassessable, not subject to any preemptive or similar rights and free from all taxes, liens or charges with respect thereto created or imposed by the Corporation.

A.6(j) In the event that (i) the closing price of Common Stock on the Nasdaq SmallCap Market or any exchange on which the Common Stock trades (as adjusted for any stock dividend, split-up, combination or reclassification) is over \$3.00 for any twenty (20) consecutive trading days (provided that, there is an average trading volume during such period of at least 50,000 shares of Common Stock per trading day), or (ii) holders of shares representing at least fifty percent (50%) of the voting power of the Series A Stock then outstanding (determined as set forth in the second sentence of Section A.5(a)) approve of the automatic conversion of each share of Series A Stock into Common Stock, each share of Series A Stock then outstanding shall, without any action on the part of the holder thereof, be deemed automatically converted into Common Stock in accordance with the provisions of Section A.6(a)(i) and all rights and obligations relating to the Series A Stock shall terminate immediately other than the right to receive Common Stock on the conversion thereof and such shares of Series A Stock shall no longer be deemed to be outstanding,

whether or not the certificates representing the Series A Stock have been received by the Corporation.

#### A.7 Redemption

A.7(a) At the request of the holder or holders of a majority of the shares of Series A Stock then outstanding (individually, a "Requesting Holder" and, collectively, the "Requesting Holders") made at any time after December 30, 2006, the Corporation may, at the discretion of the Board of Directors of the Corporation, redeem on the Redemption Date (as such term is defined in Section A.7(c) hereof), unless such a redemption is otherwise prevented by law, all or any portion of the Series A Stock, at a redemption price per share equal to the Original Purchase Price for such Series A Stock plus accrued Dividend Payments thereon. Each Requesting Holder who desires to have any of the Series A Stock owned of record by such Requesting Holder redeemed shall specify in a written notice to the Corporation the number of shares which the Requesting Holder elects to redeem (a "Redemption Notice"), in accordance with Section A.7(c) hereof. The total sum payable per share of Series A Stock on the Redemption Date is hereinafter referred to as the "Redemption Price," and the payment to be made on the Redemption Date is hereinafter referred to as the "Redemption Payment."

A.7(b) On and after the Redemption Date, all rights of the Requesting Holder with respect to those shares of Series A Stock being redeemed by the Corporation pursuant to Section A.7(a), except the right to receive the Redemption Price per share of Series A Stock as hereinafter provided, shall cease and terminate, and such shares of Series A Stock shall no longer be deemed to be outstanding, whether or not the certificates representing such shares have been received by the Corporation; *provided, however*, that, notwithstanding anything to the contrary set forth herein, (A) if the Corporation defaults in the payment of the Redemption Payment, the rights of the Requesting Holder with respect to such shares of Series A Stock not yet redeemed shall continue until the Corporation cures such default, and (B) without limiting any other rights of a Requesting Holder, upon the occurrence of a subsequent Liquidation or Event of Sale, with respect to the shares of Series A Stock in respect of which no Redemption Payment has been received by a Requesting Holder, such Requesting Holder shall be accorded the rights and benefits set forth in Section A.4 hereof in respect of such remaining shares, as if no prior redemption request had been made with respect to such remaining shares.

A.7(c) Each Requesting Holder shall send its Redemption Notice pursuant to this Section A.7 by first-class, certified mail, return receipt requested, postage prepaid, to the Corporation at its principal place of business or to any transfer agent of the Corporation. Within ten (10) business days of receipt of a Redemption Notice, if the Board of Directors determines to effect a redemption of the Series A Stock in accordance with section A.7(a) hereof, the Corporation shall notify in writing all other Series A Stockholders of the redemption proposed by the Corporation (the "Corporation Notice"). If any other Series A Stockholder desires to have redeemed all or any portion of the Series A Stock owned of record by such Series A Stockholder, each such Series A Stockholder shall send a Redemption Notice to the Corporation postmarked within five (5) business days after the receipt of the Corporation Notice, and such Series A Stockholder shall be deemed to be a Requesting Holder. On the thirtieth (30th) business day following the date upon which the Corporation received the first Redemption Notice from a Requesting Holder, if the shares are to be redeemed, the Corporation shall pay each Requesting Holder the applicable Redemption Price pursuant to the terms of Section A.7(a), provided that the Corporation or its transfer agent has received the certificate(s) representing the shares of Series A Stock to be redeemed. Such payment date shall be referred to herein as the "Redemption Date".

A.8 Definitions. As used in Section A of this Certificate of Designation, the following terms shall have the corresponding meanings:

"Closing Date" shall mean December 31, 2001.

"Original Issuance Date" with respect to any share of Series A Stock shall mean the date of first issuance by the Corporation of a share of Series A Stock.

"Original Purchase Price" shall mean, with respect to the Series A Stock, \$1.00 per share, subject, for all purposes other than Section A.7 hereof (which provisions shall be applied in accordance with their own terms), to Proportional Adjustment.

"Proportional Adjustment" shall mean an adjustment made to the price of the Series A Stock upon the occurrence of a stock split, reverse stock split, stock dividend, stock combination, reclassification or other similar change with respect to such security, such that the price of one share of the Series A Stock before the occurrence of any such change shall equal the aggregate price of the share (or shares or fractional share) of such security (or any other security) received by the holder of the Series A Stock with respect thereto upon the effectiveness of such change.

"Shareholder Approval" shall mean the requisite approval by the holders of the Common Stock of the Corporation for the issuance of Common Stock in connection with the conversion of Series A Stock at a special meeting of the Stockholders of the Corporation to be held following the date of this Certificate of Designation.

**IN WITNESS WHEREOF**, the undersigned has caused this Certificate of Designation to be duly executed on behalf of the Corporation as of December 31, 2001.

**PERFICIENT, INC.**

By: /s/ JOHN T. MCDONALD

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John T. McDonald,  
*Chief Executive Officer*  
*President*

THIS WARRANT AND THE SHARES ISSUABLE UPON THE EXERCISE OF THIS WARRANT, HAVE BEEN ACQUIRED SOLELY FOR INVESTMENT AND HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR ANY STATE SECURITIES LAWS. SUCH SECURITIES MAY NOT BE SOLD, OFFERED FOR SALE, PLEDGED, HYPOTHECATED OR OTHERWISE TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR AN OPINION OF COUNSEL SATISFACTORY TO THE COMPANY AND ITS COUNSEL THAT SUCH SALE, OFFER, PLEDGE OR HYPOTHECATION IS EXEMPT FROM THE REGISTRATION AND PROSPECTUS DELIVERY REQUIREMENTS OF THE ACT AND OF ANY APPLICABLE STATE SECURITIES LAWS.

Void after 5:00 p.m. Central Standard Time on December 30, 2011  
Warrant to Purchase Shares of Common Stock

## WARRANT TO PURCHASE COMMON STOCK

OF

**PERFICIENT, INC.**

This is to Certify that, FOR VALUE RECEIVED, [ ], or assigns ("Holder"), is entitled to purchase, subject to the provisions of this Warrant, from Perficient, Inc., a Delaware corporation (the "Company"), [ ] shares of fully paid, validly issued and nonassessable Common Stock, par value \$0.001 per share, of the Company ("Common Stock") at a price of \$2.00 per share, at any time or from time to time during the period from the date hereof to December 30, 2011, but not later than 5:00 p.m. Central Standard Time, on December 30, 2011. The number of shares of Common Stock to be received upon the exercise of this Warrant and the price to be paid for each share of Common Stock may be adjusted from time to time as hereinafter set forth. The shares of Common Stock deliverable upon such exercise, and as adjusted from time to time, are hereinafter sometimes referred to as "Warrant Shares" and the exercise price of a share of Common Stock in effect at any time and as adjusted from time to time is hereinafter sometimes referred to as the "Exercise Price."

### (a) EXERCISE OF WARRANT

(1) This Warrant may be exercised in whole or in part at any time or from time to time on or after the date hereof, unless and to the extent that it has been redeemed pursuant to Section (j) hereof and until December 30, 2011 (the "Exercise Period"), provided, however, that (i) if either such day is a day on which banking institutions in the State of Texas are authorized by law to close, then on the next succeeding day which shall not be such a day, and (ii) in the event of any merger, consolidation or sale of substantially all the assets of the Company as an entirety, resulting in any distribution to the Company's stockholders, prior to December 30, 2011, the Holder shall have the right to exercise this Warrant commencing at such time through December 30, 2011, into the kind and amount of shares of stock and other securities and property (including cash) receivable by a holder of the number of shares of Common Stock into which this Warrant might have been exercisable immediately prior thereto. This Warrant may be exercised by presentation and surrender hereof to the Company at its principal office, or at the office of its stock transfer agent, with the Purchase Form annexed hereto duly executed and accompanied by payment of the Exercise Price for the number of Warrant Shares specified in such form. As soon as practicable after each such exercise of the warrants, but not later than seven (7) days from the date of such exercise, the Company shall issue and deliver to the Holder a certificate or certificates for the Warrant Shares issuable upon such exercise, registered in the name of the Holder or its designee. If this Warrant should be exercised in part only, the Company shall, upon surrender of this Warrant for cancellation, execute and deliver a new Warrant evidencing the rights of the Holder thereof to purchase the balance of the Warrant Shares purchasable thereunder. Upon receipt by the Company of this Warrant at its office, or by the stock transfer agent of the Company at its office, in proper form for exercise, the Holder shall be deemed to be the holder of record of the shares of Common Stock issuable upon such exercise, notwithstanding that the stock transfer books of the Company shall then be closed or that certificates representing such shares of Common Stock shall not then be physically delivered to the Holder.

(2) At any time during the Exercise Period, the Holder may, at its option, exchange this Warrant, in whole or in part (a "Warrant Exchange"), into the number of Warrant Shares determined in accordance with this Section (a)(2), by surrendering this Warrant at the principal office of the Company or at the office of its stock transfer agent, accompanied by a notice stating such Holder's intent to effect such exchange, the number of Warrant Shares to be exchanged and the date on which the Holder requests that such Warrant Exchange occur (the "Notice of Exchange"). The Warrant Exchange shall take place on the date specified in the Notice of Exchange or, if later, the date the Notice of Exchange is received by the Company (the "Exchange Date"). Certificates for the shares issuable upon such Warrant Exchange and, if applicable, a new warrant of like tenor evidencing the balance of the shares remaining subject to this Warrant, shall be issued as of the Exchange Date and delivered to the Holder within seven (7) days following the Exchange Date. In connection with any Warrant Exchange, this Warrant shall represent the right to subscribe for and acquire the number of Warrant Shares (rounded to the next highest integer) equal to (i) the number of Warrant Shares specified by the Holder in its Notice of Exchange (the "Total Number") less (ii) the number of Warrant Shares equal to the quotient obtained by dividing (A) the product of the Total Number and the existing Exercise Price by (B) the Current Market Value of a share of Common Stock. Current Market Value shall have the meaning set forth in Section (c) below, except that for purposes hereof, the date of exercise, as used in such Section (c), shall mean the Exchange Date.

(b) RESERVATION OF SHARES. The Company shall at all times reserve for issuance and/or delivery upon exercise of this Warrant such number of shares of its Common Stock as shall be required for issuance and delivery of Warrant Shares upon exercise of the Warrants.

(c) FRACTIONAL SHARES. No fractional shares or script representing fractional shares shall be issued upon the exercise of this Warrant. With respect to any fraction of a share called for upon any exercise hereof, the Company shall pay to the Holder an amount in cash equal to such fraction multiplied by the Current Market Value of a share, determined as follows:

(1) If the Common Stock is listed on a national securities exchange or admitted to unlisted trading privileges on such exchange or listed for trading on the Nasdaq National Market, the Current Market Value shall be the last reported sale price of the Common Stock on such exchange or market on the last business day prior to the date of exercise of this Warrant or if no such sale is made on such day, the average closing bid and asked prices for such day on such exchange or market; or

(2) If the Common Stock is not so listed or admitted to unlisted trading privileges, but is traded on the Nasdaq SmallCap Market, the Current Market Value shall be the average of the closing bid and asked prices for such day on such market and if the Common Stock is not so traded, the Current Market

Value shall be the mean of the last reported bid and asked prices reported by the National Quotation Bureau, Inc. on the last business day prior to the date of the exercise of this Warrant; or

(3) If the Common Stock is not so listed or admitted to unlisted trading privileges and bid and asked prices are not so reported, the Current Market Value shall be the fair market value of the Common Stock as reasonably determined by the Board of Directors of the Company acting in good faith, but not less than the book value thereof as at the end of the most recent fiscal quarter of the Company ending prior to the date of the exercise of the Warrant.

(d) EXCHANGE, TRANSFER, ASSIGNMENT OR LOSS OF WARRANT. This Warrant is exchangeable, without expense, at the option of the Holder, upon presentation and surrender hereof to the Company or at the office of its stock transfer agent, for other warrants of different denominations entitling the holder thereof to purchase in the aggregate the same number of shares of Common Stock purchasable hereunder. Upon surrender of this Warrant to the Company at its principal office or at the office of its stock transfer agent with the Assignment Form annexed hereto duly executed and funds

2

sufficient to pay any transfer tax, the Company shall, without charge, execute and deliver a new Warrant in the name of the assignee or assignees named in such instrument of assignment and this Warrant shall promptly be canceled. This Warrant may be divided or combined with other warrants which carry the same rights upon presentation hereof at the principal office of the Company or at the office of its stock transfer agent together with a written notice specifying the names and denominations in which new Warrants are to be issued and signed by the Holder hereof. The term "Warrant" as used herein includes any Warrants into which this Warrant may be divided or exchanged. Upon receipt by the Company of evidence satisfactory to it of the loss, theft, destruction or mutilation of this Warrant, and (in the case of loss, theft or destruction) of reasonably satisfactory indemnification, and upon surrender and cancellation of this Warrant, if mutilated, the Company will execute and deliver a new Warrant of like tenor and date. Any such new Warrant executed and delivered shall constitute an additional contractual obligation on the part of the Company, whether or not this Warrant so lost, stolen, destroyed or mutilated shall be at any time enforceable by anyone.

(e) RIGHTS OF THE HOLDER. The Holder shall not, by virtue hereof, be entitled to any rights of a shareholder in the Company, either at law or equity, and the rights of the Holder are limited to those expressed in the Warrant and are not enforceable against the Company except to the extent set forth herein.

(f) ANTI-DILUTION PROVISIONS. The Exercise Price in effect at any time and the number and kind of securities purchasable upon the exercise of the Warrants shall be subject to adjustment from time to time upon the happening of certain events as follows:

(1) In case the Company shall (i) declare a dividend or make a distribution on its outstanding shares of Common Stock in shares of Common Stock, (ii) subdivide or reclassify its outstanding shares of Common Stock into a greater number of shares, or (iii) combine or reclassify its outstanding shares of Common Stock into a smaller number of shares, the Exercise Price in effect at the time of the record date for such dividend or distribution or of the effective date of such subdivision, combination or reclassification shall be adjusted so that it shall equal the price determined by multiplying the Exercise Price by a fraction, the denominator of which shall be the number of shares of Common Stock outstanding after giving effect to such action, and the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such action. Such adjustment shall be made successively whenever any event listed above shall occur.

(2) In case the Company shall issue shares of its Common Stock (excluding (i) shares issued upon exercise of options and warrants outstanding as of the date hereof, including this Warrant, (ii) Common Stock issued to employees, consultants or directors in accordance with plans approved by the Board of Directors, provided that any such issuance of Common Stock for consideration other than cash equal to or greater than the Current Market Value of the Common Stock shall have been approved by the designee to the Board of Directors elected by the holders of the Series A Preferred Stock of the Company, and provided, further, that the price payable for any such Common Stock issuable pursuant to any stock option, warrant or other right to subscribe for Common Stock issued to employees, consultants or directors shall be equal to or greater than the Current Market Value of a share of Common Stock on the date such instrument is granted, (iii) common stock or other securities offered and sold in a firm commitment underwritten public offering, or (iv) Common Stock issued in connection with acquisitions approved by the Board of Directors) for a consideration per share (the "Offering Price") less than the greater of (i) the Current Market Value of the Common Stock and (ii) the Exercise Price in effect immediately prior

3

to the issuance of such securities, the Exercise Price shall be reduced immediately thereafter to an amount calculated in accordance with the following formulae:

A. For issuances at less than the Exercise Price in effect immediately prior to the issuance of such securities:

$$E_1 = E_0 \times \frac{(N_0 + [(N_+ \times \$) / E_0])}{N_1}$$

B. For issuances at less than the Current Market Value:

$$E_1 = E_0 \times \frac{[(N_0 \times CMV) + N_+[\$ + CMV(\text{Permitted Dilution } \%)] / N_1}{CMV}$$

In each case, where:

$E_1$  = adjusted Exercise Price;  
 $E_0$  = current Exercise Price;  
 $N_0$  = number of shares of Common Stock outstanding prior to the issuance;  
 $N_1$  = number of shares of Common Stock outstanding immediately after issuance;

$N_+$  = number of shares of Common Stock issued in the dilutive issuance;  
 $\$$  = consideration per share received in the dilutive issuance;  
 CMV = Current Market Value per share of Common Stock; and  
 Permitted Dilution % = for issuances in 2002, 35%; in 2003, 20%; in 2004 and after, 10%; *provided, however*, that Permitted Dilution % shall be 0% for all shares issued with an aggregate Current Market Value in excess of \$5,000,000 in 2002 and \$10,000,000 in 2003, taking into account (i) all dilutive issuances for which adjustments are required under this Section f(2) and Section f(3) and (ii) all issuances to employees, consultants or directors for which an adjustment is required under this section.

Such adjustment shall be made successively whenever such an issuance is made. No adjustment pursuant to this Section f(2) shall increase the Exercise Price.

(3) In case the Company shall issue any securities convertible into or exchangeable for its Common Stock for a consideration per share of Common Stock (the "Exchange Price") initially deliverable upon conversion or exchange of such securities (determined as provided in Subsection (4) below) less than the greater of (i) the Current Market Value of a share of Common Stock at the time such securities are issued and (ii) the current Exercise Price in effect immediately prior to

4

the issuance of such securities, the Exercise Price shall be reduced immediately thereafter to an amount calculated in accordance with the following formulae:

A. For issuances at an Exchange Price less than the Exercise Price in effect immediately prior to the issuance of such securities:

$$E_1 = E_0 \times \frac{N_0 + \$1 / E_0 + (N_+ \times \$2) / E_0}{N_1}$$

B. For issuances at an Exchange Price less than the Current Market Value:

$$E_1 = E_0 \times \frac{[(N_0 \times \text{CMV}) + \$1 + N_+[\$2 + \text{CMV}(\text{Permitted Dilution } \%)] / N_1}{\text{CMV}}$$

In each case, where:

$E_1$  = adjusted Exercise Price;  
 $E_0$  = existing Exercise Price;  
 $N_0$  = number of shares of Common Stock outstanding prior to the issuance;  
 $N_1$  = number of shares of Common Stock outstanding immediately after issuance, assuming full conversion or exchange of the issued security;  
 $N_+$  = maximum number of shares of Common Stock issuable upon conversion or exchange of the issued security;  
 $\$1$  = aggregate consideration received upon issuance of the convertible or exchangeable securities;  
 $\$2$  = minimum consideration per share to be received upon conversion or exchange of the issued security;  
 CMV = Current Market Value per share of Common Stock; and  
 Permitted Dilution % = for issuances in 2002, 35%; in 2003, 20%; in 2004 and after, 10%; *provided, however*, that Permitted Dilution % shall be 0% for all shares issued with an aggregate Current Market Value in excess of \$5,000,000 in 2002 and \$10,000,000 in 2003, taking into account (i) all dilutive issuances for which adjustments are required pursuant to Section f(2) and Section f(3) and (ii) all issuances to employees, consultants or directors for which an adjustment is required under this section.

Such adjustment shall be made successively whenever such an issuance is made. No adjustment pursuant to this Section f(3) shall increase the Exchange Price.

5

(4) For purposes of any computation respecting consideration received pursuant to Subsections (2) and (3) above, the following shall apply:

(A) in the case of the issuance of shares of Common Stock for cash, the consideration shall be the amount of such cash, provided that in no case shall any deduction be made for any commissions, discounts or other expenses incurred by the Company for any underwriting of the issue or otherwise in connection therewith;

(B) in the case of the issuance of shares of Common Stock for a consideration in whole or in part other than cash, the consideration other than cash shall be deemed to be the fair market value thereof as reasonably determined in good faith by the Board of Directors of the Company (irrespective of the accounting treatment thereof); and

(C) in the case of the issuance of securities convertible into or exchangeable for shares of Common Stock, the aggregate consideration received therefor shall be deemed to be the consideration received by the Company for the issuance of such securities plus the additional minimum consideration, if any, to be received by the Company upon the conversion or exchange thereof (the consideration in each case to be determined in the same manner as provided in clauses (A) and (B) of this Subsection (4)).

(D) The number of shares of Common Stock outstanding shall include all shares issuable upon the exercise or conversion of any options, warrants, notes, debt instruments, preferred stock or other security, instrument or right convertible or exchangeable for Common Stock of the Company, whether or not such convertible instrument or security is fully vested, currently exercisable or convertible and whether or not the exercise price or conversion price is below the Exercise Price or Current Market Value at the time of the calculation.

(5) Whenever the Exercise Price payable upon exercise of this Warrant is adjusted pursuant to Subsections (1), (2) and (3) above, the number of Warrant Shares purchasable upon exercise of this Warrant shall simultaneously be adjusted by multiplying the number of Warrant Shares initially issuable upon exercise of this Warrant by the Exercise Price in effect on the date hereof and dividing the product so obtained by the Exercise Price, as adjusted.

(6) No adjustment in the Exercise Price shall be required unless such adjustment would require an increase or decrease of at least one cent (\$0.01) in such price; provided, however, that any adjustments which by reason of this Subsection (6) are not required to be made shall be carried forward and taken into account in any subsequent adjustment required to be made hereunder. All calculations under this Section (f) shall be made to the nearest cent or to the nearest one-hundredth of a share, as the case may be. Anything in this Section (f) to the contrary notwithstanding, the Company shall be entitled, but shall not be required, to make such changes in the Exercise Price, in addition to those required by this Section (f), as it shall determine, in its sole discretion, to be advisable in order that any dividend or distribution in shares of Common Stock or any subdivision, reclassification or combination of Common Stock, hereafter made by the Company shall not result in any Federal income tax liability to the holders of Common Stock or securities convertible into Common Stock (including this Warrant).

(7) Whenever the Exercise Price is adjusted, as herein provided, the Company shall promptly but no later than 10 days after any request for such an adjustment by the Holder, cause a notice setting forth the adjusted Exercise Price and adjusted number of Warrant Shares issuable upon exercise of each Warrant, and, if requested, information describing the transactions giving rise to such adjustments, to be mailed to the Holders at their last addresses appearing in the Warrant Register, and shall cause a certified copy thereof to be mailed to its transfer agent. The Company may retain a firm of independent certified public accountants selected by the Board of Directors (who may be the regular accountants employed by the Company) to make any computation

6

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required by this Section (f), and a certificate signed by such firm shall be conclusive evidence of the correctness of such adjustment.

(8) Irrespective of any adjustments in the Exercise Price or the number or kind of shares purchasable upon exercise of this Warrant, Warrants theretofore or thereafter issued may continue to express the same price and number and kind of shares as are stated in the similar Warrants initially issuable pursuant to this Agreement.

(g) OFFICER'S CERTIFICATE. Whenever the Exercise Price shall be adjusted as required by the provisions of the foregoing Section, the Company shall forthwith file in the custody of its Secretary or an Assistant Secretary at its principal office and with its stock transfer agent, an officer's certificate showing the adjusted Exercise Price determined as herein provided, setting forth in reasonable detail the facts requiring such adjustment, including a statement of the number of additional shares of Common Stock, if any, and such other facts as shall be necessary to show the reason for and the manner of computing such adjustment. Each such officer's certificate shall be made available at all reasonable times for inspection by the Holder or any holder of a Warrant executed and delivered pursuant to Section (a) and the Company shall, forthwith after each such adjustment, mail a copy by certified mail of such certificate to the Holder or any such holder.

(h) NOTICES TO WARRANT HOLDERS. So long as this Warrant shall be outstanding, (i) if the Company shall pay any dividend or make any distribution upon the Common Stock or (ii) if the Company shall offer to the holders of Common Stock for subscription or purchase by them any share of any class or any other rights or (iii) if any capital reorganization of the Company, reclassification of the capital stock of the Company, consolidation or merger of the Company with or into another corporation, sale, lease or transfer of all or substantially all of the property and assets of the Company to another corporation, or voluntary or involuntary dissolution, liquidation or winding up of the Company shall be effected, then in any such case, the Company shall cause to be mailed by certified mail to the Holder, at least thirty days prior the date specified in (x) or (y) below, as the case may be, a notice containing a brief description of the proposed action and stating the date on which (x) a record is to be taken for the purpose of such dividend, distribution or rights, or (y) such reclassification, reorganization, consolidation, merger, conveyance, lease, dissolution, liquidation or winding up is to take place and the date, if any is to be fixed, as of which the holders of Common Stock or other securities shall receive cash or other property deliverable upon such reclassification, reorganization, consolidation, merger, conveyance, dissolution, liquidation or winding up.

(i) RECLASSIFICATION, REORGANIZATION OR MERGER. In case of any reclassification, capital reorganization or other change of outstanding shares of Common Stock of the Company, or in the case of any consolidation or merger of the Company with or into another corporation (other than a merger with a subsidiary in which merger the Company is the continuing corporation and which does not result in any reclassification, capital reorganization or other change of outstanding shares of Common Stock of the class issuable upon exercise of this Warrant) or in the case of any sale, lease or conveyance to another corporation of the property of the Company as an entirety, the Company shall, as a condition precedent to such transaction, cause effective provisions to be made so that the Holder shall have the right thereafter by exercising this Warrant at any time prior to the expiration of the Warrant, to purchase the kind and amount of shares of stock and other securities and property receivable upon such reclassification, capital reorganization and other change, consolidation, merger, sale or conveyance by a holder of the number of shares of Common Stock which might have been purchased upon exercise of this Warrant immediately prior to such reclassification, change, consolidation, merger, sale or conveyance. Any such provision shall include provision for adjustments which shall be as nearly equivalent as may be practicable to the adjustments provided for in this Warrant. The foregoing provisions of this Section (i) shall similarly apply to successive reclassifications, capital reorganizations and changes of shares of Common Stock and to successive consolidations, mergers, sales or conveyances. In the event that in connection with any such capital reorganization or

7

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reclassification, consolidation, merger, sale or conveyance, additional shares of Common Stock shall be issued in exchange, conversion, substitution or payment, in whole or in part, for security of the Company other than Common Stock, any such issue shall be treated as an issue of Common Stock covered by the provisions of Subsection (1) of Section (f) hereof.

(j) REDEMPTION. In the event that the closing price of Common Stock on the Nasdaq SmallCap Market (as adjusted for any stock dividend, split-up, combination or reclassification) is over \$5.00 for any twenty (20) consecutive trading days (provided that, there is an average trading volume during such period of at least 50,000 shares of Common Stock per trading day), the Company may redeem this Warrant upon 60 days' written notice to the Holder, which notice shall set forth the date for such redemption (the "Redemption Date"). On and after the Redemption Date, upon the surrender of this Warrant, the Company shall issue to the Holder a number of shares of Common Stock equal to the number that would have been issued if the Holder had tendered the Warrant pursuant to a Warrant Exchange on the Redemption Date (the "Redemption Shares"). All rights of the Holder with respect to this Warrant shall cease and terminate on and after the Redemption Date, except for the right to receive the Redemption Shares, and this Warrant shall no longer be deemed to be outstanding, whether or not this Warrant has been returned to the Company.

IN WITNESS WHEREOF, the undersigned has duly executed this Warrant on behalf of the Company as of January 7, 2002.

PERFICIENT, INC.

By: \_\_\_\_\_  
Name:  
Title:

PURCHASE FORM

Dated \_\_\_\_\_,

The undersigned hereby irrevocably elects to exercise the within Warrant to the extent of purchasing \_\_\_\_\_ shares of Common Stock and hereby makes payment of \_\_\_\_\_ in payment of the actual price thereof.

INSTRUCTIONS FOR REGISTRATION OF STOCK

Name \_\_\_\_\_  
(Please typewrite or print in block letters)  
  
Address: \_\_\_\_\_  
  
Signature \_\_\_\_\_

ASSIGNMENT FORM

FOR VALUE RECEIVED, \_\_\_\_\_ hereby sells, assigns and transfers unto

Name \_\_\_\_\_  
(Please typewrite or print in block letters)  
  
Address \_\_\_\_\_

the right to purchase Common Stock represented by this Warrant to the extent of \_\_\_\_\_ shares as to which such right is exercisable and does hereby irrevocably constitute and appoint \_\_\_\_\_ as attorney, to transfer the same on the books of the Company with full power of substitution in the premises.

Date \_\_\_\_\_,  
Signature \_\_\_\_\_

## CONVERTIBLE PREFERRED STOCK PURCHASE AGREEMENT

**THIS AGREEMENT**, dated as of this 21st day of December, 2001, is entered into by and among **PERFICIENT, INC.**, a Delaware corporation (the "Corporation"), and the persons listed on *Schedule 1* attached hereto (the "Investors").

The Corporation and the Investors are desirous of providing for the issuance of shares of Series A Preferred Stock and Warrants (each, as hereinafter defined), as more specifically set forth hereinafter.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements herein contained, the parties hereto, intending to be legally bound, hereby agree as follows:

**SECTION 1. *Filing of Certificate of Designation; Shareholder Meeting.*** (a) Prior to Closing (as defined in Section 4 hereof), the Corporation shall have filed a Certificate of Designation, Rights and Preferences to the Certificate of Incorporation of the Corporation (the "Certificate of Designation") setting forth, among other things, the terms, designations, powers, preferences, and relative, participating, optional, and other special rights, and the qualifications, limitations and restrictions of the Series A Preferred Stock, in the form attached hereto as *Exhibit A*. Pursuant to the Certificate of Designation, the Corporation shall be authorized to issue 2,200,000 shares of Series A Convertible Preferred Stock, par value \$.001 per share ("Series A Preferred Stock"). The Series A Preferred Stock shall have the terms set forth in the Certificate of Designation.

(b) The Corporation shall submit to the stockholders of the Corporation for approval at a special meeting ("Special Meeting") to be called and held as promptly as practicable after the date hereof the approval of the sale and issuance of the Series A Preferred Stock contemplated by this Agreement. The Corporation shall include the proposal in an amendment to the preliminary proxy statement for a special meeting of stockholders filed with the Securities and Exchange Commission on November 15, 2001. In connection with such special meeting, the Corporation shall prepare and file with the SEC a preliminary proxy statement (the "Proxy Statement") by which the Corporation's shareholders will be asked to approve the transaction and the issuance of the Corporation's Common Stock contemplated hereby. The Proxy Statement as initially filed with the SEC, as it may be amended and refiled with the SEC and as it may be mailed to the Corporation's shareholders, shall be in form and substance reasonably satisfactory to Investors. The Corporation shall use its best efforts to respond to any comments of the SEC, and to cause the Proxy Statement to be mailed to the Corporation's shareholders at the earliest practicable time. The Corporation will notify Investors promptly of the receipt of any comments from the SEC or its staff and of any request by the SEC or its staff or any other government officials for amendments or supplements to the Proxy Statement or for additional information and will supply Investors with copies of all correspondence between the Corporation or any of its representatives, on the one hand, and the SEC, or its staff or any other government officials, on the other hand, with respect to the Proxy Statement. The Proxy Statement shall comply in all material respects with all applicable requirements of law. Investors shall provide the Corporation all information about Investors required to be included or incorporated by reference in the Proxy Statement and shall otherwise cooperate with the Company in taking the actions described in this paragraph. Whenever any event occurs which is required to be set forth in an amendment or supplement to the Proxy Statement, the Corporation or Investors, as the case may be, shall promptly inform the other party of such occurrence and cooperate in filing with the SEC or its staff or any other government officials, and/or mailing to shareholders of the Corporation, such amendment or supplement. Subject to the exercise by the Board of Directors of their fiduciary duties, the Proxy Statement shall include the recommendation of the Board of Directors of the Corporation that the shareholders of the Corporation vote in favor of and approve the transactions contemplated by, and the issuance of the Corporation's Common stock pursuant to, this Agreement.

**SECTION 2. *Authorization of Issuance and Sale of Preferred Shares; Reservation of Reserved Common Shares; Closing.*** Subject to the terms and conditions hereof, the Corporation has authorized the issuance on the Closing Date (as defined in Section 4 hereof) of an aggregate of (i) 2,200,000

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shares of Series A Preferred Stock (such shares of Series A Preferred Stock being sometimes hereinafter referred to as the "Preferred Shares"), and (ii) Warrants, in the form attached hereto as *Exhibit B* (the "Warrants") to purchase up to 1,100,000 shares of the common stock, par value \$.001 per share, of the Corporation ("Common Stock") for \$2.00 per share, as adjusted pursuant to the terms of the Warrants and, has reserved up to 3,300,000 shares of Common Stock for issuance upon conversion of the Preferred Shares and exercise of the Warrants (such reserved Common Stock being sometimes hereinafter referred to as the "Reserved Shares").

**SECTION 3. *Sale and Delivery of Preferred Shares and Warrants.***

**3.1 *Agreement to Sell and Purchase the Preferred Shares.*** Subject to the terms and conditions hereof, the Corporation shall sell to each Investor at the Closing or at subsequent Closings and each Investor, severally and not jointly, shall purchase from the Corporation, subject to the satisfaction of the conditions precedent set forth in Section 7.1 hereof and subject to the terms and other conditions hereinafter set forth, at the Closing, the number of Preferred Shares and Warrants set forth opposite the name of such Investor on *Schedule 1* hereto for a purchase price of \$1.00 per share of Series A Preferred Stock (subject to adjustment to reflect stock splits, stock dividends, stock combinations, recapitalizations and like occurrences), representing an aggregate purchase price of \$2,200,000 for the Preferred Shares and Warrants purchased by all Investors. Each Investor will receive a Warrant to purchase one share of Common Stock for every two Preferred Shares that such Investor purchases hereunder.

**3.2 *Delivery of Preferred Shares and Warrants.*** At each Closing, the Corporation shall deliver to Continental Stock Transfer & Trust Company, as Escrow Agent (the "Escrow Agent") pursuant to an Escrow Agreement to be agreed upon by the parties, certificates, registered in the name of such Investor as set forth on *Schedule 1*, representing (i) that number of Preferred Shares being purchased by such Investor at the Closing, and (ii) that number of Warrants being purchased by the Investor at the Closing. At the Closing, each Investor shall deliver to the Escrow Agent a check payable to the Escrow Agent for the benefit of Perficient, Inc. or a wire transfer to an account designated by the Escrow Agent for the benefit of the Corporation in the full amount of the purchase price for the Preferred Shares being purchased by such Investor at the Closing. Upon the approval of the issuance of the Series A Preferred Stock and the Common Stock proposed to be issued pursuant to this Agreement at the Special Meeting and the closing by the Company of each of its subsidiary with Primary Webworks, Inc. d/b/a Vertecon, Inc. and another subsidiary with Javelin Solutions, Inc., (in accordance with the provisions, without amendment, of the Agreement and Plan of Merger by and among the Corporation and Primary Webworks, Inc. d/b/a Vertecon, Inc. et al., dated as of September 30, 2001, and the Agreement and Plan of Merger by and among the Corporation and Javelin Solutions, Inc. et al., dated as of October 26, 2001 (the "Acquisition Agreements"), as applicable, the Escrow Agent will deliver the certificates representing the shares of Series A Preferred Stock and the Warrants to each Investor and the proceeds to the Corporation. Notwithstanding this condition, the Investors may instruct the Escrow Agent to release the proceeds to the Corporation at such sooner time as an Investor may notify the Escrow Agent; provided, that, the Corporation receives the consent of WWC Capital Fund, L.P. prior thereto. If the conditions for closing



of the shares and Warrants shall not have been satisfied by 5:00 p.m. Eastern time on April 30, 2002, or if either of the Acquisition Agreements is terminated, all proceeds still retained by the Escrow Agent will be returned promptly to the respective Investors.

SECTION 4. *The Closing.* The Closing (the "Closing") hereunder with respect to the transactions contemplated by Section 3 hereof will take place by delivery of executed copies of the documents contemplated hereby, delivered no later than January 4, 2001, at the offices of Perficient, Inc., 7600-B North Capital of Texas Highway, Suite 340, Austin, Texas 78731, (such date sometimes being referred to herein as the "Closing Date").

SECTION 5. *Representations and Warranties of the Corporation to the Investors.*

The Corporation hereby represents and warrants to the Investors as follows:

5.1 *Organization.* The Corporation is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and has all requisite corporate power and authority to own and lease its property and to carry on its business as presently conducted. The Corporation is duly qualified to do business as a foreign corporation, or has taken substantially all actions necessary such that it will be duly qualified to do business as a foreign corporation, in the states set forth on *Schedule 5.1*. The Corporation does not own or lease property or engage in any activity in any other jurisdiction which would require its qualification in such jurisdiction and in which the failure to be so qualified would have a material adverse effect on the business, properties, financial condition, results of operations, or prospects of the Corporation (a "Material Adverse Effect").

5.2 *Capitalization.* As more fully described in the capitalization table set forth in *Schedule 5.2* attached hereto, the authorized capital stock of the Corporation immediately following the Closing shall consist of:

(a) 20,000,000 shares of Common Stock, of which:

- (i) 6,278,566 shall be validly issued and outstanding, fully paid and nonassessable;
- (ii) up to 3,300,000 shares shall have been duly reserved for issuance upon conversion of the Preferred Shares and exercise of the Warrants; and
- (iii) 3,533,080 shares (the "Option Shares") shall have been duly reserved for issuance in connection with the options available under the Corporation's Stock Option Plan; and options and warrants issued outside the Stock Option Plan.

(b) 5,000,000 shares of Preferred Stock, 2,200,000 of which shall have been designated the Series A Preferred Stock and all of which shall be validly issued and outstanding and, pursuant to the terms of this Agreement, fully paid and nonassessable.

Except pursuant to the terms of this Agreement, the Investor Rights Agreement between the Investors and the Corporation in the form attached hereto as *Exhibit C* (the "Investor Rights Agreement"), the Warrants and as set forth in *Schedule 5.2* attached hereto, there are, and immediately following the Closing, if any, there will be: (1) no outstanding warrants, options, rights, agreements, convertible securities or other commitments or instruments pursuant to which the Corporation is or may become obligated to issue, sell, repurchase or redeem any shares of capital stock or other securities of the Corporation (other than the Option Shares); (2) no preemptive, contractual or similar rights to purchase or otherwise acquire shares of capital stock of the Corporation pursuant to any provision of law, the Certificate of Incorporation of the Corporation (the "Certificate of Incorporation"), the By-laws of the Corporation (the "By-laws") or any agreement to which the Corporation is a party or may otherwise be bound; (3) no restrictions on the transfer of capital stock of the Corporation imposed by the Certificate of Incorporation or the By-laws, any agreement to which the Corporation is a party, any order of any court or any governmental agency to which the Corporation is subject, or any statute other than those imposed by relevant state and federal securities laws; (4) no cumulative voting rights for any of the Corporation's capital stock; (5) no registration rights under the Securities Act of 1933, as amended, with respect to shares of the Corporation's capital stock; (6) to the best of the Corporation's knowledge and belief, no options or other rights to purchase shares of capital stock from stockholders of the Corporation granted by such stockholders; and (7) no agreements, written or oral, between the Corporation and any holder of its securities, or, to the best of the Corporation's knowledge and belief, among holders of its securities, relating to the acquisition, disposition or voting of the securities of the Corporation.

5.3 *Authorization of this Agreement, the Warrants and the Investor Rights Agreement.* The execution, delivery and performance by the Corporation of this Agreement, the Warrants and the Investor Rights Agreement and the consummation of the transactions contemplated hereby and thereby have been duly authorized by all requisite action on the part of the Corporation and its shareholders, except as contemplated by Section 1. Each of this Agreement, the Warrants and the Investor Rights Agreement has been duly executed and delivered by the Corporation and constitutes a valid and binding obligation of the Corporation, enforceable in accordance with its respective terms. The execution, delivery and performance by the Corporation of this Agreement, the Warrants and the Investor Rights Agreement, the filing of the Certificate of Designation and the compliance with the provisions hereof and thereof by the Corporation, will not:

- (a) violate any provision of law, statute, ordinance, rule or regulation or any ruling, writ, injunction, order, judgment or decree of any court, administrative agency or other governmental body;
- (b) conflict with or result in any breach of any of the terms, conditions or provisions of, or constitute (with due notice or lapse of time, or both) a default (or give rise to any right of termination, cancellation or acceleration) under (i) any agreement, document, instrument, contract, understanding, arrangement, note, indenture, mortgage or lease to which the Corporation is a party or under which the Corporation or any of its assets is bound or affected, (ii) the Certificate of Incorporation, or (iii) the By-laws; or
- (c) result in the creation of any lien, security interest, charge or encumbrance upon any of the properties or assets of the Corporation.

5.4 *Authorization of Preferred Shares, Warrants and Reserved Shares.*

(a) The issuance, sale and delivery of the Preferred Shares and Warrants have been duly authorized by all requisite action of the Corporation, and, when issued, sold and delivered in accordance with this Agreement and when released from escrow in accordance with the terms hereof, the Preferred Shares and the Warrants, respectively, will be validly issued and outstanding, fully paid and nonassessable, with no personal liability attaching to the ownership thereof, and not subject to preemptive or any other similar rights of the stockholders of the Corporation or others.

(b) Except as contemplated by Section 1, the reservation, issuance, sale and delivery by the Corporation of the Reserved Shares have been duly authorized by all requisite action of the Corporation. Upon the issuance and delivery of the Reserved Shares in accordance with the terms of this Agreement and the Warrants, the Reserved Shares will be validly issued and outstanding, fully paid and nonassessable, with no personal liability attaching to the ownership thereof, and not subject to preemptive or any other similar rights of the stockholders of the Corporation or others.

5.5 *Consents and Approvals.* Except as set forth on *Schedule 5.5* attached hereto, no authorization, consent, approval or other order of, or declaration to or filing with, any governmental agency or body (other than filings required to be made under applicable federal and state securities laws) or any other person, entity or association is required for: (a) the valid authorization, execution, delivery and performance by the Corporation of this Agreement, the Warrants and the Investor Rights Agreement; (b) the valid authorization, issuance, sale and delivery of the Preferred Shares; or (c) the valid authorization, reservation, issuance, sale and delivery of the Reserved Shares. The Corporation has obtained all other consents that are necessary to permit the consummation of the transactions contemplated hereby.

#### 5.6 *Business of Corporation.*

(a) Except as provided in *Schedule 5.6(a)* attached hereto: (i) there are no actions, suits, arbitrations, claims, investigations or legal or administrative proceedings pending or, to the best of the

4

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Corporation's knowledge and belief, threatened, against the Corporation, whether at law or in equity; (ii) there are no judgments, decrees, injunctions or orders of any court, government department, commission, agency, instrumentality or arbitrator entered or existing against the Corporation or any of its assets or properties for any of the forgoing or otherwise; and (iii) the Corporation has not admitted in writing its inability to pay its debts generally as they become due, filed or consented to the filing against it of a petition in bankruptcy or a petition to take advantage of any insolvency act, made an assignment for the benefit of creditors, consented to the appointment of a receiver for itself or for the whole or any part of its property, or had a petition in bankruptcy filed against it, been adjudicated bankrupt, or filed a petition or answer seeking reorganization or arrangement under the federal bankruptcy laws or any other laws of the United States or any other jurisdiction.

(b) The Corporation is in compliance with all obligations, agreements and conditions contained in any evidence of indebtedness or any loan agreement or other contract or agreement (whether or not relating to indebtedness) to which the Corporation is a party or is subject (collectively, the "Obligations"), the lack of compliance with which could afford to any person the right to accelerate any indebtedness or terminate any right of or agreement with the Corporation. To the best of the Corporation's knowledge and belief, all other parties to such Obligations are in compliance with the terms and conditions of such Obligations. The Corporation has no reason to believe that the transactions contemplated by the Acquisition Agreements will not be consummated on the terms described therein prior to March 31, 2002.

(c) Except for employment and consulting agreements described in the reports that the Company files pursuant to the Securities Exchange Act of 1934, as amended (collectively, the "34 Act Reports") and for agreements and arrangements relating to the Option Shares and benefit plans in which all employees of the Company may participate and except as provided in *Schedule 5.6(c)* attached hereto, this Agreement, the Warrants and the Investor Rights Agreement, there are no agreements, understandings or proposed transactions between the Corporation and any of its officers, directors or other "affiliates" (as defined in Rule 405 promulgated under the Securities Act of 1933, as amended (the "Securities Act")), and there are no transactions between any of such persons and the Corporation of a type required to be disclosed under Rule 404 promulgated under the Securities Act that have not been so disclosed.

(d) The Corporation does not have any collective bargaining agreements covering any of its employees or any employee benefit plans, other than the Stock Option Plan or any other plan described on *Schedule 5.6(d)*.

(e) The Corporation is not in violation of or default under any provision of its By-Laws or Certificate of Incorporation, or any contract, instrument, judgment, order, writ or decree to which it is a party or by which it or any of its properties are bound which violation or default, individually or in the aggregate, would have a Material Adverse Effect and the Corporation is not in violation of any provision of any federal or state statute, rule or regulation applicable to the Corporation which violation would, individually or in the aggregate, have a Material Adverse Effect.

(f) (i) Included in the Company's 34 Act Reports and attached hereto as *Schedule 5.6(f-1)* is the Balance Sheet dated September 30, 2001 (the "Balance Sheet") and Statements of Operation, Stockholders' Equity and Cash Flows for the nine months then ended (collectively, the "Financial Statements"). The Financial Statements are complete and correct, are in accordance with the books and records of the Corporation and present fairly the financial condition and results of operation of the Corporation, as at the dates and for the periods indicated, and have been prepared in accordance with generally accepted accounting principles consistently applied, except that the Financial Statements may not be in accordance with generally accepted accounting principles because of the absence of footnotes normally contained therein and are subject to normal year-end audit adjustments. Specifically, but not by way of limitation, the Balance Sheet discloses all of the Corporation's material debts, liabilities and

5

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obligations of any nature, whether due or to become due, as of their respective dates (including, without limitation, absolute liabilities, accrued liabilities, and contingent liabilities) to the extent such debts, liabilities and obligations are required to be disclosed in accordance with generally accepted accounting principles.

(ii) The financial projections provided to Investors by the Corporation and attached hereto as *Schedule 5.6(f-2)* were prepared by management of the Corporation in good faith, represent their best estimate of the Corporation's expected performance and are based on assumptions believed by them to be reasonable at the time given, provided that no representation is made as to whether such projections will be achieved.

(iii) Except as set forth on *Schedule 5.6(f-3)*, since the date of the Balance Sheet and other than as set forth in the Company's filings with the SEC, there has not been:

(a) any damage, destruction or loss to any property of the Corporation, whether or not covered by insurance, that has had or will have a Material Adverse Effect;

(b) any waiver by the Corporation of a material valuable right or of a material debt owed to it except for items fully reserved for on the Balance Sheet;

(c) any satisfaction or discharge of any lien, claim or encumbrance or payment of any obligation by the Corporation, except such a satisfaction, discharge or payment made in the ordinary course of business that is not material to the assets, properties, financial condition, operating results, business or prospects of the Corporation;

(d) any material change or amendment to a material contract or arrangement by which the Corporation or any of its assets or properties is bound or subject;

(e) any material change in any compensation arrangement or agreement with any present or prospective employee, contractor or director of the Corporation other than as set forth on *Schedule 5.6(c)*;

(f) any loan to any officer, director or shareholder of the Corporation, other than advances in the ordinary course of business or as related to the Vertecon acquisition and as set forth in the agreements related thereto;

(g) any debt, obligation or liability incurred, assumed or guaranteed by the Corporation, except for those that are immaterial in amount and for current liabilities incurred in the ordinary course of business;

(h) to the Corporation's knowledge, any other event or condition of any character which would have Material Adverse Effect; or

(i) any agreement by the Corporation to do any of the foregoing.

(iv) The Corporation has no material liabilities, contingent, accrued, unaccrued, known, unknown or otherwise, that were not reflected in the Balance Sheet, except for liabilities incurred after the date thereof in the ordinary course of business that would not have Material Adverse Effect.

**5.7 Payment of Taxes.** Neither the Corporation, nor any entity to whose liabilities the Corporation has succeeded, has filed or been included in a consolidated, unitary, or combined tax return with another person. Except as set forth on *Schedule 5.7*, the Corporation represents and warrants that: (a) the Corporation has filed all tax returns and reports required to have been filed by or for it; (b) all material information set forth in such returns or reports is accurate and complete; (c) the Corporation has paid or made adequate provision for all taxes, additions to tax, penalties, and interest payable by the Corporation; (d) no material unpaid tax deficiency has been asserted against or

with respect to the Corporation by any taxing authority, and the Corporation has not received written notice of any such assertion; (e) the Corporation has collected or withheld all amount required to be collected or withheld by it for any taxes, and to the extent required by law, all such amounts have been paid to the appropriate governmental agencies or set aside in appropriate accounts for future payment when due; (f) the Corporation is in compliance with, and its records contain all information and documents necessary to comply with, all applicable information reporting and tax withholding requirements; (g) the Balance Sheet fully and properly reflects, as of the date thereof, the liabilities of the Corporation for all material accrued taxes, additions to tax, penalties, and interest; (h) for periods ending after the Balance Sheet Date, the books and records of the Corporation fully and properly reflect its liability for all accrued taxes, additions to tax, penalties, and interest; (i) the Corporation has not granted, nor is it subject to, any waiver of the period of limitations of the assessment of tax for any currently open taxable period; (j) the Corporation has not made or entered into, and holds no asset subject to, a consent filed pursuant to Section 341(f) of the U.S. Internal Revenue Code of 1986, as amended (the "*Code*") and the regulations thereunder or a "safe harbor lease" subject to former Section 168(f)(8) of the Internal Revenue Code of 1954, as amended before the Tax Reform Act of 1986, and the regulations thereunder; (k) the Corporation is not required to include in income any amount for an adjustment pursuant to Section 481 of the Code or the regulations thereunder; and (l) the Corporation is not a party, or obligated under, any agreement or other arrangement providing for the payment of any amount that would be an "excess parachute payment" under Section 280G of the Code. The Corporation has not elected pursuant to the Code, to be treated as an "S" corporation or a collapsible corporation pursuant to Section 341(f) or Section 1362(a) of the Code, nor has it made any other elections pursuant to the Code (other than elections which relate solely to matters of accounting, depreciation or amortization) which would have a material effect on the Corporation, its financial condition, its business as presently conducted or presently proposed to be conducted or any of its properties or material assets.

**5.8 Intellectual Property Rights and Related Employee Matters.** (i) All patents, patent rights, patent applications, registered trademarks and service marks, trademark rights, trademark applications, trade names, registered copyrights, domain names and all licenses owned or possessed by the Corporation are listed on *Schedule 5.8* attached hereto (collectively, the "*Listed Rights*"). To the best of the Corporation's knowledge and belief, except as set forth on *Schedule 5.8*, the Listed Rights comprise all of the patents, patent rights, patent applications, registered trademarks and service marks, trademark rights, trademark applications, trade names, registered copyrights, domain names and all licenses that are necessary for the conduct of the business of the Corporation as now being conducted. Except as set forth on *Schedule 5.8*, to the best of the Corporation's knowledge and belief, the Corporation owns and possesses all of the proprietary rights and trade secrets not included in the Listed Rights (hereinafter collectively referred to as "*Intellectual Property*") necessary for the Corporation's business as now being conducted. "The Listed Rights and Intellectual Property are valid and enforceable rights and do not infringe or conflict with the rights of any third party. There is neither pending nor threatened, or, to the best of the Corporation's knowledge and belief, any basis for, any claim or litigation against the Corporation contesting the validity or right to use any of the Listed Rights or Intellectual Property, and the Corporation has not received any notice of infringement upon or conflict with any asserted right of others nor, to the best of the Corporation's knowledge and belief, is there a basis for such a notice. To the best of the Corporation's knowledge and belief, no person, corporation or other entity is infringing the Corporation's rights to the Listed Rights or Intellectual Property. Except as otherwise provided in *Schedule 5.8*, the Corporation has no obligation to compensate others for the use of any Listed Right or any Intellectual Property, nor has the Corporation granted any license or other right to use, in any manner, any of the Listed Rights or Intellectual Property, whether or not requiring the payment of royalties.

(ii) The Corporation is not aware that any of its employees is obligated under any contract (including licenses, covenants or commitments of any nature) or other agreement, or subject to any

judgment, decree or order of any court or administrative agency, that would interfere with their duties to the Corporation or that would conflict with the Corporation's business as currently conducted or proposed to be conducted. Neither the execution nor delivery of this Agreement, nor the carrying on of the Corporation's business by the employees of the Corporation, nor the conduct of the Corporation's business as currently conducted or proposed to be conducted, will, to the Corporation's knowledge, conflict with or result in a breach of the terms, conditions or provisions of, or constitute a default under, any contract, covenant or instrument under which any employee is now obligated. The Corporation does not believe it is or will be necessary to utilize any inventions, trade secrets or proprietary information of any of its employees made prior to their employment by the Corporation, except for inventions, trade secrets or proprietary information that have been assigned to the Corporation.

(iii) Except as otherwise provided for in his or her employment agreement, each officer of the Corporation is currently devoting substantially all of his or her business time to the conduct of the business of the Corporation. No officer or key employee of the Corporation is planning to work less than full time at the Corporation in the future. To the best of the Corporation's knowledge and belief, no officer or key employee is currently working or plans to work for a competitive enterprise, whether or not such officer or key employee is or will be compensated by such enterprise.

5.9 *Securities Laws.* Neither the Corporation nor anyone acting on its behalf has offered securities of the Corporation for sale to, or solicited any offers to buy the same from, or sold securities of the Corporation to, any person or organization, in any case so as to subject the Corporation, its promoters, directors and/or officers to any liability under the Securities Act, the Securities and Exchange Act of 1934, as amended, or any state securities or "blue sky" law and the rules and regulations promulgated thereunder (collectively, the "Securities Laws"). The offer, grant, sale and/or issuance of the following were not, are not, or, as the case may be, will not be, in violation of the Securities Laws when offered, sold and issued in accordance with this Agreement:

- (a) the Preferred Shares, as contemplated by this Agreement and the Exhibits and Schedules hereto;
- (b) the Warrants, as contemplated by the terms thereof and this Agreement and the Exhibits and Schedules hereto; and

- (c) the Common Stock issuable upon the conversion of the Preferred Shares and the exercise of the Warrants.

5.10 *Title to Properties.* Except as provided on *Schedule 5.10* attached hereto, the Corporation has good, legal and merchantable title to all of its assets, including all properties and assets reflected on the Balance Sheet, free and clear of all liens, restrictions or encumbrances, except those assets disposed of since the date of the Balance Sheet in the ordinary course of business. All machinery and equipment included in such assets that are material to the business of the Corporation are in good condition and repair, and each lease of real or personal property to which the Corporation is a party (each, a "Lease" and collectively, the "Leases") is fully effective, affords the Corporation peaceful and undisturbed possession of the subject matter of the lease. Each Lease constitutes a valid and binding obligation of, and is enforceable in accordance with its terms against, the respective parties thereto. The Corporation has in all respects performed the obligations required to be performed by it to date under each lease and is not in default thereunder in any respect, and there has not occurred any event which (whether with or without the passage of time or the giving of notice) would constitute such a default under any lease. The Corporation does not own any real property.

5.11 *Investments in Other Persons.* Except as indicated in *Schedule 5.11* attached hereto, (a) the Corporation has not made any material loan or advance to any person or entity which is outstanding on the date hereof, nor is it committed or obligated to make any such loan or advance, and (b) the Corporation has never owned or controlled and does not currently own or control, directly or indirectly, any subsidiaries and has never owned or controlled and does not currently own or control any capital stock or other ownership interest, directly or indirectly, in any corporation, association, partnership, trust, joint venture or other entity.

5.12 *ERISA.* Except as set forth on *Schedule 5.12*, the Corporation has not made and is not obligated to make contributions to any pension, defined benefit or defined contribution plans for its employees which are subject to the Federal Employee Retirement Income Security Act of 1974, as amended.

5.13 *Use of Proceeds.* The net proceeds received by the Corporation from the sale of the Preferred Shares is currently intended to be used by the Corporation generally for the purposes set forth in *Schedule 5.13* attached hereto.

5.14 *Permits and Other Rights; Compliance with Laws.* The Corporation has all material franchises, permits, licenses and other rights and privileges necessary to permit it to own its properties and to conduct its business as presently conducted. The Corporation is in compliance under each, and the transactions contemplated by this Agreement will not cause a violation under any of such franchises, permits, licenses and other rights and privileges. The Corporation is in compliance in all respects with all laws and governmental rules and regulations applicable to its businesses, properties and assets, and to the products and services sold by it, including, without limitation, all such rules, laws and regulations relating to fair employment practices and public or employee safety, except for such failures to so comply, individually or in the aggregate, as would not result in a Material Adverse Effect.

5.15 *Insurance.* The Company has in full force and effect fire and casualty insurance policies, with extend coverage, sufficient in amount (subject to reasonable deductibles) to allow it to replace any of its properties that might be damaged or destroyed. *Schedule 5.15* attached hereto lists all insurance policies carried by the Corporation covering its properties and business. The Corporation is not in default with respect to its obligations under any insurance policy maintained by it.

5.16 *Board of Directors.* Except as provided in *Schedule 5.16* attached hereto, the Corporation has not extended any offer or promise or entered into any agreement, arrangement, understanding or otherwise, whether written or oral, with any person or entity by which the Corporation has agreed to allow such person or entity to participate, in any way, in the affairs of the Board of Directors of the

Corporation, including without limitation, appointment or nomination as a member, or right to appear at, or receive the minutes of, a meeting of the Board of Directors of the Corporation.

#### 5.17 *Environmental Matters.*

(a) The Corporation has not used, generated, manufactured, refined, treated, transported, stored, handled, disposed, transferred, produced, processed or released (together defined as "Release") any Hazardous Materials (as hereinafter defined) in any manner or by any means in violation of any Environmental Laws (as hereinafter defined). Except as described on Schedule 5.17(a) attached hereto, to the best of the Corporation's knowledge and belief, the Corporation has not Released any Hazardous Material or other pollutant or effluent into, on or from the Property in a way which can pose a risk to human health or the environment, nor is there a threat of such Release. As used herein, the term "Property" shall include, without limitation, land, buildings and other facilities owned or leased by the Corporation or as to which the Corporation now has any duties, responsibilities (for clean-up, remedy or otherwise) or liabilities under any Environmental Laws, or as to which the Corporation or any subsidiary of the Corporation may have such duties, responsibilities or liabilities because of past acts or omissions of the Corporation or any such subsidiary or their predecessors, or because the Corporation or any such subsidiary or their predecessors in the past was such an owner or operator of, or bore some other relationship with, such land, buildings and/or facilities. The term "Hazardous Materials" shall include, without limitation, any flammable explosives, petroleum products, petroleum byproducts, radioactive materials, hazardous wastes, hazardous substances, toxic substances or related materials as defined by the Environmental Laws.

(b) No notice of lien under any Environmental Laws has been filed against any Property of the Corporation.

Section 5.19. *SEC Reports.* The Corporation has made available to the Investors its registration statement, and all amendments and exhibits thereto, filed with the SEC in connection with its initial public offering, and each other report, registration statement, proxy statement or information statement, including, without limitation the 34 Act Reports, filed by it with the SEC under the Securities Laws since the effective date of that registration statement (the "Corporation Reports"). The Corporation has timely filed all such documents required to be filed by it with the SEC under the Securities Laws and, as of their respective dates, the Corporation Reports (i) complied as to form in all material respects with the applicable requirements of the Securities Laws and (ii) did not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements made therein not misleading in light of the circumstances under which such statements were made. Except as set forth on *Schedule 5.19* and to the best of the Corporation's knowledge, none of the Corporation Reports currently is the subject of any review or investigation by the SEC or any other government authority and there is no currently unresolved violation asserted by the SEC or any government authority with respect to any of the Corporation Reports.

5.20 *Listing.* The Corporation's Common Stock is included in The Nasdaq SmallCap Market. The Company is in compliance with the terms of its listing agreement with The Nasdaq Stock Market, Inc. ("Nasdaq"), the Nasdaq Marketplace Rules and and Nasdaq's standards for continued listing and has complied or will timely comply with such agreement and such Rules and standards in connection with the transactions contemplated by this Agreement. No proceeding is pending or, to the best of the Corporation's knowledge, threatened relating to any unresolved violation of any of such items or delisting of the Corporation's Common Stock and the Corporation has no reason to believe that its Common Stock will not continue to be so listed.

5.21 *Full Disclosure.* The Corporation has provided Investors with all information requested by Investors in connection with their decision to purchase the Preferred Shares and Warrants,. Neither this Agreement, the Schedules hereto, the related agreements nor any other document delivered by the

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Corporation to Investors or their attorneys or agents in connection herewith or therewith or with the transactions contemplated hereby or thereby, contain any untrue statement of a material fact. As used in this Section 5, the term "to the best of the Corporation's knowledge and belief" shall mean and include, (a) with respect to matters relating directly to the Corporation and its operations, actual knowledge of the Corporation's executive officers or that knowledge which a prudent business person reasonably would have discovered in the management of his or her business affairs after making reasonable inquiry and exercising due diligence with respect thereto, and (b) with respect to all other events or conditions, actual knowledge of the Corporation's executive officers.

#### SECTION 6. *Representations and Warranties of the Investors to the Corporation.*

Each of the Investors, as to itself, severally and not jointly, represents and warrants to the Corporation as follows:

(a) It is acquiring the Preferred Shares and Warrants and, in the event it should acquire Reserved Shares upon conversion of the Preferred Shares or exercise of the Warrants, it will be acquiring such Reserved Shares, for its own account, for investment and not with a view to the distribution thereof within the meaning of the Securities Act.

(b) It is an "accredited investor" as such term is defined in Rule 501(a) promulgated under the Securities Act.

(c) It agrees that the Corporation may place a legend on the certificates delivered hereunder stating that the Preferred Shares and any Reserved Shares have not been registered under the Securities Act, and, therefore, cannot be offered, sold or transferred unless they are registered under the Securities Act or an exemption from such registration is available.

(d) The execution, delivery and performance by it of this Agreement have been duly authorized by all requisite action of it.

(e) It further understands that the exemptions from registration afforded by Rule 144 and Rule 144A (the provisions of which are known to it) promulgated under the Securities Act depend on the satisfaction of various conditions, and that, if applicable, Rule 144 may afford the basis for sales only in limited amounts.

(f) It has such knowledge and experience in business and financial matters and with respect to investments in securities of "small cap" companies so as to enable it to understand and evaluate the risks of its investment in the Preferred Shares and Warrants and form an investment decision with respect thereto. It has been afforded the opportunity during the course of negotiating the transactions contemplated by this Agreement to ask questions of, and to secure such information from, the Corporation and its officers and directors as it deems necessary to evaluate the merits of entering into such transactions. With respect to any projections submitted to the Investors by the Corporation, the Investors acknowledge that the projections contain forward looking statements involving risk and uncertainties and are only the best estimates of the Corporation's management of the expected performance of the business, but projections are speculative in nature and the assumptions on which they are based can and will change.

(g) If it is a natural person, it has the power and authority to enter into this Agreement. If it is not a natural person, it is duly organized and validly existing and has the power and authority to enter into this Agreement. Any Investor which is a corporation, partnership or trust represents that it has not been organized, reorganized or recapitalized specifically for the purpose of acquiring the securities of the Corporation.

(h) It has adequate net worth and means of providing for its current needs and personal contingencies to sustain a complete loss of its investment in the Corporation.

## SECTION 7. *Closing Conditions.*

7.1 *Conditions Precedent to the Closing.* The several obligations of the Investors to purchase and pay for the Preferred Shares and Warrants at the Closing are subject to the satisfaction of the following conditions precedent:

(a) All proceedings to have been taken and all waivers and consents to be obtained in connection with the transactions contemplated by this Agreement shall have been taken or obtained, and all documents incidental thereto shall be satisfactory to each Investor and its counsel, and each Investor and its counsel shall have received copies (executed or certified, as may be appropriate) of all documents which such Investor or its counsel may reasonably have requested in connection with such transactions.

(b) All legal matters incident to the purchase of the Preferred Shares shall be satisfactory to each Investor's counsel, and the Investors shall have received from McCarter & English, counsel for the Corporation, such firm's opinion addressed to the Investors and dated the date of the Closing in the form attached hereto as *Exhibit D*.

(c) All consents, permits, approvals, qualifications and/or registrations required to be obtained or effected under any applicable securities or "Blue Sky" laws of any jurisdiction shall have been obtained or effected.

(d) The representations and warranties of the Corporation contained herein shall be true and correct on and as of the date of such Closing with the same force and effect as though such representations and warranties had been made on and as of such date.

(e) A duly executed Certificate of Designation shall have been filed with and accepted by the Secretary of State of Delaware.

(f) The Corporation shall have delivered to the Investors a certificate or certificates, dated the Closing Date, of the Secretary of the Corporation certifying as to (i) the resolutions of the Corporation's Board of Directors approving the issuance to the Investors of the Preferred Shares and Warrants, the execution and delivery of such other documents and instruments as may be required by this Agreement, and the consummation of the transactions contemplated hereby, and certifying that such resolutions were duly adopted and have not been rescinded or amended as of said date, and (ii) the name and the signature of the officers of the Corporation authorized to sign, as appropriate, this Agreement and the other documents and certificates to be delivered pursuant to this Agreement by either the Corporation or any of its officers.

(g) The Corporation shall have delivered to the Investors a certificate or certificates, dated the Closing Date, of the President of the Corporation certifying as to the accuracy of the representations and warranties made by the Corporation pursuant to this Agreement.

(h) The Corporation shall have duly executed and delivered an Investors Rights Agreement in the form attached hereto as *Exhibit C*.

(i) The Investors shall have received duly executed Voting Agreements, in the form attached hereto as *Exhibit E*, from the holders of such number of shares of the Corporation's Common Stock as would comprise a majority of the shares of Common Stock to be outstanding on the record date for meeting of the Corporation's shareholders at which the transactions contemplated by this Agreement will be presented for approval.

(j) The gross proceeds from the sale of the Preferred Shares to be received by the Corporation at the Closing shall be at least \$1,500,000.

(k) John T. McDonald and Sam Fatigato shall have purchased 100,000 and 50,000 Preferred Shares pursuant to this Agreement.

(l) With respect to the obligations of WWC Capital Fund, LP shall have received from its partners pursuant to a capital call made in accordance with its organizational documents, all funds necessary to purchase the Shares.

7.2 *Conditions to Obligations of the Corporation.* It shall be a condition precedent to the obligations of the Corporation hereunder to be performed at the Closing as the case may be, as to each Investor severally, but not jointly, that (i) the representations and warranties contained herein of each of the Investors hereunder shall be true and correct as of the date of the Closing with the same force and effect as though such representations and warranties had been made on and as of such date, and (ii) each Investor shall have delivered payment of the purchase price as set forth in Section 3 and Schedule 1.

## SECTION 8. *Expenses and Fees.*

The Corporation agrees to pay, in connection with the preparation, execution, delivery, filing, administration, modification and amendment of this Agreement, the Certificate of Designation, the Warrants, the Investor Rights Agreement and the other documents to be delivered under this Agreement, all costs and expenses not to exceed \$12,500 incurred by the Investors in connection therewith, including the fees and out-of-pocket expenses of counsel for the Investors with respect thereto and with respect to advising the Investors as to their rights and responsibilities under this Agreement, the Certificate of Designation, the Warrants and the Investor Rights Agreement, as modified from time to time. The Corporation further agrees that it will pay, and hold each of the Investors harmless from, any and all liability with respect to any stamp or similar taxes which may be determined to be payable in connection with the execution and

delivery of this Agreement or any modification, amendment or alteration of the terms or provisions of this Agreement and that it will similarly pay, and hold each of the Investors harmless from, all issue taxes in respect of the issuance of the Preferred Shares and/or Reserved Shares to each of the Investors.

#### SECTION 9. *Brokers or Finders.*

The Corporation represents and warrants to each of the Investors, and each of the Investors, as to itself, represents and warrants to the Corporation that, other than as listed on Schedule 9, no person or entity has or will have, as a result of the transactions contemplated by this Agreement, any right, interest or valid claim against or upon the Corporation or the Investors for any commission, fee or other compensation as a finder or broker because of any act or omission by the Corporation or the Investors or by any agent of the Corporation or the Investors.

#### SECTION 10. *Exchanges; Lost, Stolen or Mutilated Certificates.*

Upon surrender by any Investor to the Corporation of Preferred Shares or Reserved Shares purchased or acquired by such Investor hereunder, the Corporation, at its expense, will issue in exchange therefor, and deliver to such Investor, a new certificate or certificates representing such shares in such denominations as may be requested by such Investor. Upon receipt of evidence satisfactory to the Corporation of the loss, theft, destruction or mutilation of any certificate representing any shares of Common Stock or Preferred Stock purchased or acquired by any Investor hereunder and, in case of any such loss, theft or destruction, upon delivery of any indemnity agreement satisfactory to the Corporation, or in case of any such mutilation, upon surrender and cancellation of such certificate, the Corporation, at its expense, will issue and deliver to such Investor a new certificate for such shares of Common Stock or Preferred Stock, as applicable, of like tenor, in lieu of such lost, stolen or mutilated certificate.

#### SECTION 11. *Survival of Representations and Warranties.*

The representations and warranties set forth in Sections 5 and 6 hereof shall survive the Closing.

13

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#### SECTION 12. *Remedies.*

In case any one or more of the covenants and/or agreements set forth in this Agreement shall have been breached by any party hereto, the party or parties entitled to the benefit of such covenants or agreements may proceed to protect and enforce their rights either by suit in equity and/or action at law, including, but not limited to, an action for damages as a result of any such breach and/or an action for specific performance of any such covenant or agreement contained in this Agreement. The rights, powers and remedies of the parties under this Agreement are cumulative and not exclusive of any other right, power or remedy which such parties may have under any other agreement or law. No single or partial assertion or exercise of any right, power or remedy of a party hereunder shall preclude any other or further assertion or exercise thereof.

#### SECTION 13. *Successors and Assigns.*

Except as otherwise expressly provided herein, this Agreement shall bind and inure to the benefit of the Corporation and each of the Investors and the respective permitted successors and assigns of each of the Investors and the permitted successors and assigns of the Corporation.

#### SECTION 14. *Entire Agreement.*

This Agreement, together with the other writings referred to herein or delivered pursuant hereto which form a part hereof, contains the entire agreement among the parties with respect to the subject matter hereof and amends, restates and supersedes all prior and contemporaneous arrangements or understandings, whether written or oral, with respect thereto.

#### SECTION 15. *Notices.*

All notices, requests, consents and other communications hereunder to any party shall be deemed to be sufficient if contained in a written instrument delivered in person or duly sent by first class registered, certified or overnight mail, postage prepaid, or telecopied with a confirmation copy by regular mail, addressed or telecopied, as the case may be, to such party at the address or telecopier number, as the case may be, set forth below or such other address or telecopier number, as the case may be, as may hereafter be designated in writing by the addressee to the addressor listing all parties:

(i)

if to the Corporation, to:

Perficient, Inc.  
7600-B North Capital of Texas Highway  
Suite 340  
Austin, Texas 78731  
Attention: John T. McDonald, Chief Executive Officer  
Telecopier: (512) 531-6100

with a copy to:

McCarter & English, LLP  
Four Gateway Center  
100 Mulberry Street  
Newark, New Jersey 07102-4096  
Attention: Jeffrey A. Baumel Esq.  
Telecopier: (973) 624-7070

(ii)

if to Investors, at the respective addresses set forth on Schedule 1.

with a copy to:

Hunton & Williams  
951 East Byrd Street  
Richmond, Virginia 23219  
Attention: Randall S. Parks

Telecopier: (804) 788-8218

All such notices, requests, consents and other communications shall be deemed to have been received: (a) in the case of personal delivery, on the date of such delivery; (b) in the case of mailing, on the third business day following the date of such mailing; (c) in the case of overnight mail, on the first business day following the date of such mailing; and (d) in the case of facsimile transmission, when confirmed by facsimile machine report.

#### SECTION 16. *Changes.*

The terms and provisions of this Agreement may not be modified or amended, or any of the provisions hereof waived, temporarily or permanently, except pursuant to a writing executed by a duly authorized representative of the Corporation and a majority in voting power of the outstanding Preferred Shares and/or Reserved Shares with each such holder entitled to the number of votes for each such Preferred Share that equals the number of shares of Common Stock (including fractional shares) into which each such Preferred Share is then convertible, rounded up to the nearest one-tenth of a share.

#### SECTION 17. *Counterparts.*

This Agreement may be executed in any number of counterparts, and each such counterpart shall be deemed to be an original instrument, but all such counterparts together shall constitute but one agreement.

#### SECTION 18. *Headings.*

The headings of the various sections of this Agreement have been inserted for convenience of reference only and shall not be deemed to be a part of this Agreement.

#### SECTION 19. *Nouns and Pronouns.*

Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of names and pronouns shall include the plural and vice-versa.

#### SECTION 20. *Severability.*

Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

#### SECTION 21. *Governing Law.*

This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, excluding choice of laws rules thereof.

[Remainder of the Page Intentionally Blank]

**IN WITNESS WHEREOF**, the parties hereto have executed this Convertible Preferred Stock Purchase Agreement as of the date first above written.

#### **PERFICIENT, INC.**

By: /s/ John T. McDonald

John T. McDonald, *Chief Executive Officer*

#### **INVESTORS:**

WWC Capital Fund, L.P.

By: /s/ WWC Capital Fund, L.P.

Name:

Title:

Watershed-Perficient, LLC

By: /s/ Watershed-Perficient, LLC



Name:  
Title:

Schedule 1

Investor	Number of Shares of Series A Preferred Stock
Daniel Hilliard	20,000
Hilliard Limited Partnership	10,000
Daniel Hilliard TTEE Flint Trust Amended 6/19/98 UA DTD 12/20/97 FBO Wallace J Hilliard	100,000
Julie A. Maccoux & Neal J. Maccoux JT TEN	12,000
Andrew Hilliard	20,000
Hilliard Family Foundation Inc.	12,000
Daniel Hilliard TTEE Wallace J. Hilliard Irrevocable Trust UA DTD 10/25/99	5,000
Paul Hilliard	10,000
Chris Cline	10,000
Richard Chernick	5,000
Frederick Seipp	5,000
Watershed-Perficient, LLC	625,000
WWC Capital Fund, L.P.	600,000
Samuel J. Fatigato	50,000
John T. McDonald	100,000
Eric Simone	50,000
Jalak Investments BV	250,000

**PERFICIENT INC.  
INVESTOR RIGHTS AGREEMENT**

**THIS INVESTOR RIGHTS AGREEMENT** (the "Agreement") is entered into as of January 7, 2002, by and among Perficient, Inc., a Delaware corporation (the "Company"), and the holders of the Company's Series A Preferred Stock (the "Series A Preferred Stock") set forth on Exhibit A hereto. All of the holders of the Series A Preferred Stock shall be referred to hereinafter as the "Investors" and each individually as an "Investor."

**RECITALS**

WHEREAS, the Company and each of the Investors have entered into that certain Convertible Preferred Stock Purchase Agreement, dated as of the date hereof, pursuant to which the Investors have purchased an aggregate of up to 2,200,000 shares of Series A Preferred Stock and warrants to purchase up to 1,100,000 shares of Common Stock of the Company (the Purchase Agreement);

WHEREAS, the Investors requested that the Company extend to them registration rights, information rights and other rights as set forth below as a condition of purchasing the shares of Series A Preferred Stock;

NOW, THEREFORE, in consideration of the mutual promises, representations, warranties, covenants and conditions set forth in this Agreement and the investment of the Investors in the Series A Preferred Stock, the parties mutually agree as follows:

**SECTION 1. GENERAL**

**1.1 Definitions.** As used in this Agreement the following terms shall have the following respective meanings:

**"Common Stock"** means common stock of the Company, par value \$.001.

**"Exchange Act"** means the Securities Exchange Act of 1934, as amended.

**"Form S-3"** means such form under the Securities Act as in effect on the date hereof or any successor registration form under the Securities Act subsequently adopted by the SEC which permits inclusion or incorporation of substantial information by reference to other documents filed by the Company with the SEC.

**"Holder"** means any person owning of record Registrable Securities that have not been sold to the public or any assignee of record of such Registrable Securities in accordance with Section 2.7 hereof.

**"Register," "registered," and "registration"** refer to a registration effected by preparing and filing a registration statement in compliance with the Securities Act, and the declaration or ordering of effectiveness of such registration statement or document by the SEC.

**"Registrable Securities"** means (a) Common Stock of the Company issued or issuable upon conversion of the Shares; (b) Common Stock of the Company issued or issuable upon exercise of the Warrants; and (c) any Common Stock of the Company issued as (or issuable upon the conversion or exercise of any warrant, right or other security which is issued as) a dividend or other distribution with respect to, or in exchange for or in replacement of, such above described securities. Notwithstanding the foregoing, Registrable Securities shall not include any securities sold by a person to the public pursuant to a registration statement or Rule 144 or sold in a private transaction in which the transferor's rights under Section 2 of this Agreement are not assigned.

**"Registrable Securities then outstanding"** shall be the number of shares determined by calculating the total number of shares of the Company's Common Stock that are Registrable

Securities and either (a) are then issued and outstanding or (b) are issuable pursuant to then exercisable or convertible securities.

**"Registration Expenses"** shall mean all expenses incurred by the Company in complying with Sections 2.2, 2.3 and 2.4 hereof, including, without limitation, all registration and filing fees, printing expenses, fees and disbursements of counsel for the Company, reasonable fees and disbursements of a single special counsel for the Holders, blue sky fees and expenses and the expense of any special audits incident to or required by any such registration (but excluding the compensation of regular employees of the Company which shall be paid in any event by the Company).

**"SEC" or "Commission"** means the Securities and Exchange Commission.

**"Securities Act"** shall mean the Securities Act of 1933, as amended.

**"Selling Expenses"** shall mean all underwriting discounts and selling commissions applicable to a sale.

**"Shares"** shall mean the Company's Series A Preferred Stock owned by the Investors listed on Exhibit A hereto and their permitted assigns.

**"Warrants"** shall mean the Stock Purchase Warrants to purchase initially one share of Common Stock at a price of \$2.00 per share, issued in connection with the sale of the Series A Preferred Stock.

**SECTION 2. REGISTRATION; RESTRICTIONS ON TRANSFER**

**2.1 Restrictions on Transfer.**

(a) Each certificate representing Shares or Registrable Securities shall (unless otherwise permitted by the provisions of the Agreement) be stamped or otherwise imprinted with a legend substantially similar to the following (in addition to any legend required under applicable state securities laws):

THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 (THE "ACT") AND MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED, ASSIGNED, PLEDGED OR HYPOTHECATED UNLESS AND UNTIL REGISTERED UNDER THE ACT OR UNLESS THE COMPANY HAS RECEIVED AN OPINION OF COUNSEL OR OTHER EVIDENCE SATISFACTORY TO THE COMPANY AND ITS COUNSEL THAT SUCH REGISTRATION IS NOT REQUIRED.

(b) The Company shall be obligated to reissue promptly unlegended certificates at the request of any holder thereof if the holder shall have obtained an opinion of counsel (which counsel may be counsel to the Company) reasonably acceptable to the Company to the effect that the securities proposed to be unlegended may lawfully be so disposed of without registration, qualification or legend.

(c) Any legend endorsed on an instrument pursuant to applicable state securities laws and the stop transfer instructions with respect to such securities shall be removed upon receipt by the Company of an order of the appropriate blue sky authority authorizing such removal.

## 2.2 Automatic Registration.

(i) (a) Subject to the conditions of this Section 2.2, the Company shall, within 15 days of the Special Meeting of Stockholders of the Company (the "Special Meeting") at which the issuance of Common Stock upon the conversion of the Shares (the "Issuance") is approved by the Stockholders of the Company, give notice to all Holders. The Holders shall have the right, by giving written notice to the Company within 10 days after their receipt of the Company's notice, to elect to have included in a Registration Statement on Form S-3 to be filed by the Company such of their Registrable Securities as such Holders may request in such notice of election, and the Company shall file, within 30 days of the Special Meeting, a registration statement covering the resale of all Registrable Securities that the Holders request to be registered in such notice of election. The Company shall not be required to effect a registration pursuant to this Section 2.2: prior to the date that is 30 days following the Special Meeting; or

(ii) if the Company shall furnish to the Holders a certificate signed by the Chairman of the Board stating that in the good faith judgment of the Board of Directors, it would be seriously detrimental to the Company and its stockholders for such registration statement to be effected at such time, in which event the Company shall have the right to defer such filing for a period of not more than ninety (90) days after the date of the Special Meeting.

**2.3 Expenses of Registration.** Except as specifically provided herein, all Registration Expenses incurred in connection with the registration, qualification or compliance pursuant to Section 2.2 herein shall be borne by the Company. All Selling Expenses incurred in connection with the registrations hereunder, shall be borne by the Holders selling the securities, as the case may be. Notwithstanding the foregoing, the Holders shall be solely responsible for the fees and expenses of any counsel retained by the individual Holders in connection with such registration and any transfer taxes or Selling Expenses incurred by the Holders in connection therewith.

**2.4 Obligations of the Company.** In connection with the registration of Registrable Securities pursuant to Section 2.2 hereunder, the Company shall:

(a) Use its best efforts to cause such registration statement and shall keep such registration statement effective until the Holder or Holders have completed the distribution thereof.

(b) Prepare and file with the SEC such amendments and supplements to such registration statement and the prospectus used in connection with such registration statement as may be necessary to comply with the provisions of the Securities Act with respect to the disposition of all securities covered by such registration statement for the period set forth in paragraph (a) above, including such amendments and supplements as may be necessary for the Holders to sell their Registrable Shares in an underwritten offering.

(c) Furnish to the Holders such number of copies of a prospectus, including a preliminary prospectus, in conformity with the requirements of the Securities Act, and such other documents as they may reasonably request in order to facilitate the disposition of Registrable Securities owned by them.

(d) Use its best efforts to register and qualify the securities covered by such registration statement under such other securities or Blue Sky laws of such jurisdictions as shall be reasonably requested by the Holders; *provided that*, the Company shall not be required in connection therewith or as a condition thereto to qualify to do business or to file a general consent to service of process in any such states or jurisdictions.

(e) In the event of any underwritten public offering, enter into and perform its obligations under an underwriting agreement, in usual and customary form, with the managing underwriter(s) of such offering, and otherwise cooperate with the Holders as requested in connection with such

offering, including, without limitation causing its Chief Executive Officer and Chief Financial Officer to participate in a "road show" in connection with such underwritten offering.

(f) Notify each Holder of Registrable Securities covered by such registration statement at any time when a prospectus relating thereto is required to be delivered under the Securities Act of the happening of any event as a result of which the prospectus included in such registration statement, as then in effect, includes an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading in the light of the circumstances then existing.

(g) Use its best efforts to furnish, on the date that such Registrable Securities are delivered to the underwriters for sale, if such securities are being sold through underwriters, (i) an opinion, dated as of such date, of the counsel representing the Company for the purposes of such registration, in form and substance as is customarily given to underwriters in an underwritten public offering, addressed to the underwriters, and (ii) a letter dated as of such date,

from the independent certified public accountants of the Company, in form and substance as is customarily given by independent certified public accountants to underwriters in an underwritten public offering addressed to the underwriters.

(h) Cause the Registrable Securities to be listed or included on each securities exchange on which similar securities are then listed or included.

**2.5 Furnishing Information.** It shall be a condition precedent to the obligations of the Company to take any action pursuant to Section 2.2, that the selling Holders shall furnish to the Company such information regarding themselves, the Registrable Securities held by them and the intended method of disposition of such securities and such other information as shall be required to effect the registration of their Registrable Securities and otherwise comply with the Securities Act.

**2.6 Indemnification.** In the event any Registrable Securities are included in a registration statement under Section 2.2:

(a) To the extent permitted by law, the Company will indemnify and hold harmless each Holder and the partners, officers, directors and stockholders of each Holder, any underwriter (as defined in the Securities Act) for such Holder and each person, if any, who controls such Holder or underwriter within the meaning of the Securities Act or the Exchange Act, against any losses, claims, damages, or liabilities (joint or several) to which they may become subject under the Securities Act, the Exchange Act or other federal or state law, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon any of the following statements, omissions or violations (collectively a "Violation") by the Company: (i) any untrue statement or alleged untrue statement of a material fact contained in such registration statement, including any preliminary prospectus or final prospectus contained therein or any amendments or supplements thereto, (ii) the omission or alleged omission to state therein a material fact required to be stated therein, or necessary to make the statements therein not misleading, or (iii) any violation or alleged violation by the Company of the Securities Act, the Exchange Act, any state securities law or any rule or regulation promulgated under the Securities Act, the Exchange Act or any state securities law in connection with the offering covered by such registration statement. The Company will pay as incurred to each such Holder, partner, officer, director, stockholder, underwriter or controlling person any legal or other expenses reasonably incurred by them in connection with investigating or defending any such loss, claim, damage, liability or action arising from or related to a Violation (subject to recoupment if this indemnification is determined to be inapplicable); provided however, that the indemnity agreement contained in this Section 2.6(a) shall not apply to amounts paid in settlement of any such loss, claim, damage, liability or action if such settlement is effected without the consent of the Company, which consent shall not be unreasonably withheld, nor shall the Company be liable in

4

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any such case for any such loss, claim, damage, liability or action to the extent that it arises out of or is based upon a Violation which occurs in reliance upon and in conformity with written information furnished expressly for use in connection with such registration by such Holder, partner, officer, director, stockholder, underwriter or controlling person of such Holder.

(b) To the extent permitted by law, each Holder will, if Registrable Securities held by such Holder are included in the securities as to which such registration, qualification or compliance is being effected, severally and not jointly, indemnify and hold harmless the Company, each of its directors, its officers and each person, if any, who controls the Company within the meaning of the Securities Act, any underwriter and any other Holder selling securities under such registration statement or any of such other Holder's partners, directors, officers or stockholders or any person who controls such Holder, against any losses, claims, damages or liabilities to which the Company or any such person may become subject under the Securities Act, the Exchange Act or other federal or state law, insofar as such losses, claims, damages or liabilities (or actions in respect thereto) arise out of or are based upon any Violation, in each case to the extent (and only to the extent) that such Violation occurs in reliance upon and in conformity with written information furnished by such Holder under an instrument duly executed by such Holder and stated to be specifically for use in connection with such registration; and each such Holder will pay as incurred any legal or other expenses reasonably incurred by the Company or any such person in connection with investigating or defending any such loss, claim, damage, liability or action if it is judicially determined that there was such a Violation; *provided, however*, that the indemnity agreement contained in this Section 2.6(b) shall not apply to amounts paid in settlement of any such loss, claim, damage, liability or action if such settlement is effected without the consent of the Holder, which consent shall not be unreasonably withheld; *provided further*, that in no event shall any indemnity under this Section 2.6 exceed the net proceeds from the offering received by such Holder.

(c) Promptly after receipt by an indemnified party under this Section 2.6 of notice of the commencement of any action (including any governmental action), such indemnified party will, if a claim in respect thereof is to be made against any indemnifying party under this Section 2.6, deliver to the indemnifying party a written notice of the commencement thereof and the indemnifying party shall have the right to participate in, and, to the extent the indemnifying party so desires, jointly with any other indemnifying party similarly noticed, to assume the defense thereof with counsel mutually satisfactory to the parties; *provided, however*, that an indemnified party shall have the right to retain its own counsel, with the fees and expenses to be paid by the indemnifying party, if representation of such indemnified party by the counsel retained by the indemnifying party would be inappropriate due to actual or potential differing interests between such indemnified party and any other party represented by such counsel in such proceeding. The failure to deliver written notice to the indemnifying party within a reasonable time of the commencement of any such action, if materially prejudicial to its ability to defend such action, shall relieve such indemnifying party of any liability to the indemnified party under this Section 2.6, but the omission so to deliver written notice to the indemnifying party will not relieve it of any liability that it may have to any indemnified party otherwise than under this Section 2.6.

(d) If the indemnification provided for in this Section 2.6 is held by a court of competent jurisdiction to be unavailable to an indemnified party with respect to any losses, claims, damages or liabilities referred to herein, the indemnifying party, in lieu of indemnifying such indemnified party thereunder, shall to the extent permitted by applicable law contribute to the amount paid or payable by such indemnified party as a result of such loss, claim, damage or liability in such proportion as is appropriate to reflect the relative fault of the indemnifying party on the one hand and of the indemnified party on the other in connection with the Violation(s) that resulted in such loss, claim, damage or liability, as well as any other relevant equitable considerations. The relative

5

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fault of the indemnifying party and of the indemnified party shall be determined by a court of law by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission to state a material fact relates to information supplied by the indemnifying party or by the indemnified party and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission; *provided*, that in no event shall any contribution by a Holder hereunder exceed the net proceeds from the offering received by such Holder.

(e) The obligations of the Company and Holders under this Section 2.6 shall survive completion of any offering of Registrable Securities in a registration statement and the termination of this Agreement. No indemnifying party, in the defense of any such claim or litigation, shall, except with the consent of each indemnified party, consent to entry of any judgment or enter into any settlement which does not include as an unconditional term thereof the giving by the claimant or plaintiff to such indemnified party of a release from all liability in respect to such claim or litigation.

**2.7 Assignment of Registration Rights.** The right to cause the Company to register Registrable Securities pursuant to this Section 2 may be assigned by a Holder to a transferee or assignee of Registrable Securities which (a) is a subsidiary, parent, general partner, limited partner, retired partner, member, retired member or affiliate of a Holder, (b) is a Holder's immediate family member or trust for the benefit of an individual Holder or immediate family members, or (c) acquires at least 50,000 shares of Registrable Securities (as adjusted for stock splits, combinations and similar events); *provided, however*, (i) the transferor shall, within ten (10) days after such transfer, furnish to the Company written notice of the name and address of such transferee or assignee and the securities with respect to which such registration rights are being assigned and (ii) such transferee shall agree to be subject to all restrictions set forth in this Agreement by executing a counterpart signature page hereto (which shall not be deemed to be an amendment hereto).

**2.8 Amendment of Registration Rights.** Any provision of this Section 2 may be amended and the observance thereof may be waived (either generally or in a particular instance and either retroactively or prospectively), only with the written consent of the Company and the Holders of at least a majority of the Registrable Securities then outstanding. Any amendment or waiver effected in accordance with this Section 2.8 shall be binding upon each Holder and the Company. By acceptance of any benefits under this Section 2, Holders of Registrable Securities hereby agree to be bound by the provisions hereunder.

**2.9 "Market Stand-Off" Agreement.** Each Holder hereby agrees that such Holder shall not sell or otherwise transfer or dispose of any Common Stock (or other securities) of the Company held by such Holder (other than those included in the registration) for a period specified by the representative of the underwriters of Common Stock (or other securities) of the Company, if any, not to exceed one hundred eighty (180) days following the effective date of a registration statement of the Company filed under the Securities Act in connection with a firm commitment underwritten public offering; provided that all officers and directors of the Company and each holder of of at least 1% of the Company's voting securities enter into similar agreements. Each Holder agrees to execute and deliver such other agreements as may be reasonably requested by the Company or the underwriter which are consistent with the foregoing or which are necessary to give further effect thereto. The provisions of this Section 2.9 shall not apply to any registration statement related solely to securities offered under any employee benefit plan, including any registration statement filed on Form S-8 and similar or successor forms, or any registration statement relating to a transaction subject to Rule 145 under the Securities Act and filed on Form S-4 and similar or successor forms.

**2.10 Rule 144 Reporting.** With a view to making available to the Holders the benefits of certain rules and regulations of the SEC which may permit the sale of the Registrable Securities to the public

6

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without registration under Rule 144 or any similar or analogous rule, the Company agrees to use its best efforts to file with the SEC, in a timely manner, all reports and other documents required to be filed by the Company under the Exchange Act and to furnish each Holder, upon request, a written statement as to its compliance with such requirements and such other reports and documents as the Holder may reasonably request in availing itself of any rule or regulation of the SEC allowing it to sell any Registrable Securities without registration.

## SECTION 3. COVENANTS OF THE COMPANY

### 3.1 Basic Financial Information and Reporting.

(a) The Company will maintain true books and records of account in which full and correct entries will be made of all its business transactions pursuant to a system of accounting established and administered in accordance with generally accepted accounting principles consistently applied, and will set aside on its books all such proper accruals and reserves as shall be required under generally accepted accounting principles consistently applied.

(b) Within 90 days after the end of each fiscal year of the Company, the Company will furnish each Holder a balance sheet of the Company, as at the end of such fiscal year, and a statement of income and a statement of cash flows of the Company, for such year, all prepared in accordance with generally accepted accounting principles consistently applied.

(c) If the following information is not made available generally by the Company in filings with the SEC, the Company will furnish each Holder within 45 days after the end of the first three quarterly accounting periods in each fiscal year, a balance sheet of the Company as of the end of each such quarterly period, and statements of income, cash flows and stockholders equity of the Company for such period and for the current fiscal year to date, prepared in accordance with GAAP, with the exception that no notes need be attached and year end audit adjustments may not have been made.

(d) Upon the request of an Investor who beneficially owns in excess of 250,000 Shares, the Company will furnish to such Investor, prior to the beginning of a fiscal year an annual budget and operating plans for such fiscal year (and if so requested, any subsequent revisions thereto)

**3.2 Inspection Rights.** Each Holder shall have the right to visit and inspect any of the properties of the Company or any of its subsidiaries, and to discuss the affairs, finances and accounts of the Company or any of its subsidiaries with its officers, and to review such information as is reasonably requested all at such reasonable times and as often as may be reasonably requested; *provided, however*, that the Company shall not be obligated under this Section with respect to a competitor of the Company or with respect to information which the Board of Directors determines in good faith is confidential and should not, therefore, be disclosed.

**3.3 Confidentiality of Records.** Each Holder agrees to use, and to use its best efforts to insure that its authorized representatives use, the same degree of care as such Holder uses to protect its own confidential information to keep confidential any information furnished to it which the Company identifies in writing as being confidential or proprietary (so long as such information is not in the public domain), except that such Holder may disclose such proprietary or confidential information to any partner, subsidiary or parent of such Holder for the purpose of evaluating its investment in the Company as long as such partner, subsidiary or parent is advised of, and agrees to comply with, the confidentiality provisions of this Section 3.3 Reservation of Common Stock. The Company will at all times reserve and keep available such number of shares of Common Stock as is issuable upon the conversion of the Series A Preferred Stock and the exercise of the Warrants.

7

**3.4 Indemnification with respect to Holders; Advancement.** Subject to Section 2.6 hereof, the Company hereby agrees to hold harmless and indemnify the Holders, the Holders' direct and indirect subsidiaries, affiliated entities and corporations, and each of their partners, officers, directors, employees, stockholders, agents, and representatives (collectively, referred to as the "Holder Indemnitees") against any and all expenses (including attorneys' fees), damages, judgments, fines, amounts paid in settlements, or any other amounts that an Holder Indemnitee incurs as a result of any claim or claims made against him or it in connection with any threatened, pending or completed action, suit, arbitration, investigation or other proceeding arising out of, or relating to the compliance by the Company of its obligations under this Agreement.

The Company's indemnity obligations set forth above are subject to the Holders providing prompt written notice of a claim. The Company shall control the defense of any such action and, at its discretion, may enter into a stipulation of discontinuance or settlement thereof; provided that the Company may not discontinue any action or settle any claim in a manner that does not unconditionally release the Holders without the Holders' prior written approval. The Holders shall, at the Company's expense and reasonable request, cooperate with the Company in any such defense and shall make available to the Company at the Company's expense all those persons, documents (excluding attorney/client or attorney work product materials) reasonably required by the Company in the defense of any such action. The Holders may, at their expense, assist in such defense.

The Company's liability to any Holder Indemnitee under this section shall be limited to the amount received by the Company from such Holder Indemnitee, and the Company's aggregate cumulative liability under this Section shall be limited to the amount received by the Company pursuant to the transactions contemplated by this Agreement.

**3.5 Election of Director.** Immediately following the Closing under the Purchase Agreement, notwithstanding that the condition for the release from escrow of the Shares has not been satisfied, and continuing until the Shares are released to the Investors or the Company, the Investors shall have the right to designate to the Board of Directors one member who shall be elected by the Board of Directors to fill a vacancy created therein substantially in accordance with the terms of the Certificate of Designation as if the Shares were outstanding.

## SECTION 4. MISCELLANEOUS

**4.1 Governing Law.** This Agreement shall be governed by and construed under the laws of the State of Delaware as applied to agreements among Delaware residents entered into and to be performed entirely within Delaware.

**4.2 Survival.** Except as expressly provided herein, the representations, warranties, covenants, and agreements made herein shall survive any investigation made by any Holder and the closing of the transactions contemplated hereby. All statements as to factual matters contained in any certificate or other instrument delivered by or on behalf of the Company pursuant hereto in connection with the transactions contemplated hereby shall be deemed to be representations and warranties by the Company hereunder solely as of the date of such certificate or instrument.

**4.3 Successors and Assigns.** Except as otherwise expressly provided herein, the provisions hereof shall inure to the benefit of, and be binding upon, the successors, assigns, heirs, executors, and administrators of the parties hereto and shall inure to the benefit of and be enforceable by each person who shall be a holder of Registrable Securities from time to time; *provided, however*, that prior to the receipt by the Company of adequate written notice of the transfer of any Registrable Securities specifying the full name and address of the transferee, the Company may deem and treat the person listed as the holder of such shares in its records as the absolute owner and holder of such shares for all purposes, including the payment of dividends.

**4.4 Entire Agreement.** This Agreement, the Exhibits and Schedules hereto, the Series A Preferred Stock Purchase Agreement between each of the Holders and the Company and the other documents delivered pursuant thereto constitute the full and entire understanding and agreement between the parties with regard to the subjects hereof and no party shall be liable or bound to any other in any manner by any representations, warranties, covenants and agreements except as specifically set forth herein and therein.

**4.5 Severability.** In case any provision of the Agreement shall be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

**4.6 Amendment and Waiver.**

(a) Except as otherwise expressly provided, this Agreement may be amended or modified only upon the consent of (i) the Company, and (ii) the holders of at least a majority of the Series A Preferred Stock.

(b) Except as otherwise expressly provided, the obligations of the Company and the rights of the Holders under this Agreement may be waived only with the consent of the holders of at least a majority of the Series A Preferred Stock.

**4.7 Delays or Omissions.** It is agreed that no delay or omission to exercise any right, power, or remedy accruing to any Holder, upon any breach, default or noncompliance of the Company under this Agreement shall impair any such right, power, or remedy, nor shall it be construed to be a waiver of any such breach, default or noncompliance, or any acquiescence therein, or of any similar breach, default or noncompliance thereafter occurring. It is further agreed that any waiver, permit, consent, or approval of any kind or character on any Holder's part of any breach, default or noncompliance under the Agreement or any waiver on such Holder's part of any provisions or conditions of this Agreement must be in writing and shall be effective only to the extent specifically set forth in such writing. All remedies, either under this Agreement, by law, or otherwise afforded to Holders, shall be cumulative and not alternative.

**4.8 Notices and Consents.** All notices and consents required or permitted hereunder must be in writing and shall be deemed effectively given: (a) upon personal delivery to the party to be notified, (b) when sent by facsimile if sent during normal business hours of the recipient; if not, then on the next business day, (c) five days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (d) one business day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All communications shall be sent to the party to be notified at the address as set forth on the signature pages hereof or Exhibit A hereto or at such other address as such party may designate by ten (10) days advance written notice to the other parties hereto.

**4.9 Titles and Subtitles.** The titles of the sections and subsections of this Agreement are for convenience of reference only and are not to be considered in construing this Agreement.

**4.10 Attorneys' Fees.** In the event that any suit or action is instituted to enforce any provision in this Agreement, the prevailing party in such dispute shall be entitled to recover from the losing party all fees, costs and expenses of enforcing any right of such prevailing party under or with respect to this Agreement, including without limitation, such reasonable fees and expenses of attorneys and accountants, which shall include, without limitation, all fees, costs and expenses of appeals.

**4.11 Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

**IN WITNESS WHEREOF**, the parties hereto have executed this **INVESTOR RIGHTS AGREEMENT** as of the date set forth in the first paragraph hereof.

**PERFICIENT, INC.**

By: /s/ JOHN T. MCDONALD

Name: John T. McDonald

Title: Chief Executive Officer

(Address)

**INVESTORS:**

**Exhibit A**

Investor	Number of Shares of Series A Preferred Stock
Daniel Hilliard	20,000
Hilliard Limited Partnership	10,000
Daniel Hilliard TTEE Flint Trust Amended 6/19/98 UA DTD 12/20/97 FBO Wallace J Hilliard	100,000
Julie A. Maccoux & Neal J. Maccoux JT TEN	12,000
Andrew Hilliard	20,000
Hilliard Family Foundation Inc.	12,000
Daniel Hilliard TTEE Wallace J. Hilliard Irrevocable Trust UA DTD 10/25/99	5,000
Paul Hilliard	10,000
Chris Cline	10,000
Richard Chernick	5,000
Frederick Seipp	5,000
Watershed-Perficient, LLC	625,000
WWC Capital Fund, L.P.	600,000
Samuel J. Fatigato	50,000
John T. McDonald	100,000
Eric Simone	50,000
Jalak Investments BV	250,000