

PERCH TERMS OF SERVICE

THESE TERMS OF SERVICE TOGETHER WITH ANY ACCEPTED ORDERS (THE "**AGREEMENT**") IS A LEGAL AGREEMENT BETWEEN THE CUSTOMER LISTED IN THE ORDER OR ACCESSING THE SERVICES ("**CUSTOMER**" OR "**YOU**"), AND PERCH SECURITY, INC., A DELAWARE CORPORATION WITH A PLACE OF BUSINESS AT 4110 GEORGE ROAD, SUITE 200, TAMPA, FLORIDA 33634 ("**PERCH**"). BY INDICATING YOUR ACCEPTANCE OF THIS AGREEMENT OR ACCESSING OR USING THE SERVICES, YOU ARE ACCEPTING ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO THESE TERMS OF SERVICE, YOU MAY NOT USE THE SERVICES. YOU AGREE THAT THIS AGREEMENT IS ENFORCEABLE LIKE ANY WRITTEN AGREEMENT SIGNED BY YOU.

IF YOU ARE USING THE SERVICES AS AN EMPLOYEE, CONTRACTOR, OR AGENT OF A CORPORATION, PARTNERSHIP OR SIMILAR ENTITY, THEN YOU MUST BE AUTHORIZED TO SIGN FOR AND BIND SUCH ENTITY IN ORDER TO ACCEPT THE TERMS OF THIS AGREEMENT, AND YOU REPRESENT AND WARRANT THAT YOU HAVE THE AUTHORITY TO DO SO. THE RIGHTS GRANTED UNDER THIS AGREEMENT ARE EXPRESSLY CONDITIONED UPON ACCEPTANCE BY SUCH AUTHORIZED PERSONNEL.

AGREEMENT

The "**Effective Date**" of this Agreement is the date which is the earlier of: (a) Customer's initial access to the Services; or (b) the effective date of the first Order referencing this Agreement. This Agreement will govern Customer's initial purchase on the Effective Date as well as any future purchases made by Customer that reference this Agreement.

Purchase from Reseller: If Customer purchases the Services from an authorized reseller of Perch ("**Reseller**"), Customer's use of the Services will be governed by this Agreement, except that Customer will pay Reseller for the Services.

1.0 USE OF SERVICE.

1.1. Service License and Access. Perch grants Customer a non-exclusive, non-transferable license to access and use the Perch cyber threat intelligence services (the "**Services**") during the term designated on an Order. (the "**Subscription Term**"), solely for use by Customer and persons designated and granted access to the Services by Customer ("**Users**"), in accordance with: (a) the terms and conditions of this Agreement; (b) the materials that Perch makes generally available describing the use and/or functionality of the Hardware (as defined below), or the Services ("**Documentation**"), and the Perch ordering document ("**Order**"). "**Hardware**" means the third party equipment that Perch makes available for purchase for use with the Services. Customer may permit its Contractors and Affiliates (defined below), to serve as Users provided that any use of the Service by each such Contractor or Affiliate is solely for the benefit of Customer or such Affiliate. Customer shall be responsible for each User's compliance

with this Agreement. **"Affiliate"** means an entity that, directly or indirectly, owns or controls, is owned or is controlled by, or is under common ownership or control with a party. As used herein, **"control"** means the power to direct the management or affairs of an entity and **"ownership"** means the beneficial ownership of more than fifty percent (50%) of the voting equity securities or other equivalent voting interests of an entity. **"Contractor"** means the independent contractors and consultants permitted by Customer to serve as Users of the Services. **"Documentation"** means the materials that Perch makes generally available describing the use and/or functionality of the Hardware or the Services. Documentation may be provided, in any form, such as electronic, print or magnetic media, and includes product user manuals, reference manuals and installation guides or on-line help.

1.2. Affiliates. Customer Affiliates may purchase services from Perch directly by entering into an Order with Perch referencing this Agreement. By such Affiliate entering into an Order hereunder, the Affiliate agrees to be bound by the terms of this Agreement as if it were an original party hereto and for purposes of such Order, shall also be deemed **"Customer"** hereunder. Unless stated otherwise on an Order, Customer and its Affiliates who sign Orders under this Agreement shall be deemed to be jointly liable for a breach of this Agreement.

1.3. Customer Requirements. In order for Perch to provide the Services, in addition to any requirements set forth in the applicable Order, Customer shall ensure that it has the proper equipment to meet minimum eligibility requirements set forth below: (a) Network switch with a span port, mirror port, or equivalent. In some cases, this requirement can be replaced by access to other security controls. (b) Network traffic to monitor. (c) Customer will identify one individual to be Perch's primary Customer contact and another individual to be the secondary contact. Customer represents that these people have authorization to make decisions on behalf of Customer and may be relied upon by Perch when providing Services. (d) Customer shall provide a suitable working environment for any Hardware located at Customer's facility. Customer shall bear the risk of loss of any Hardware located at Customer's facility. Customer acknowledges that any timetable for the Services is dependent on a timely response to inquiries, email exchanges, and phone calls, from Perch.

1.4. Use and Restrictions. (a) Customer agrees to access and use the Services only for the lawful purposes as set forth herein and in accordance with any applicable law, regulation or generally accepted practices or guidelines in the relevant jurisdictions (including any laws regarding the export of data or software to and from the United States, or the export laws of other relevant countries as amended from time to time). (b) The Services shall not be used to publish, submit/receive upload/download, post, use, copy or otherwise reproduce, transmit, re-transmit, distribute or store any content/material or to engage in any activity that infringes, misappropriates or otherwise violates the intellectual property rights or privacy or publicity rights of Perch or any individual, group or entity, including but not limited to any rights protected by any copyright, patent, trademark laws, trade secret, trade dress, right of privacy, right of

publicity, moral rights or other intellectual property right now known or later recognized by statute, judicial decision or regulation. Customer may not use the Services, or Perch's network and equipment in any manner which: (i) interferes with or disrupts the Managed Services (or the servers and networks which are connected to the Services); (ii) impacts the privacy, integrity or security of Perch or other users of the Services; (iii) is legally actionable between private parties, (d) violates any local, state, federal or international law or regulation; or (iv) allows unauthorized access to or use of the Services. Customer may not attempt to probe, scan, penetrate or test the vulnerability of a Perch system or network, or to breach Perch's security or authentication measures, whether by passive or intrusive techniques, without Perch's express written consent. At Perch's sole discretion, the Services may be suspended or terminated for any violation of this Section 1.4. Perch shall promptly reinstate suspended Services when the reasons for the suspension are cured. (c) Customer will not (and will not permit any third party to): (i) sell, rent, lease, license, distribute, provide access to, sublicense, or otherwise make available the Services to a third party (except as expressly set forth in Section 1.1 with respect to Contractors and Affiliates or in a service bureau or outsourcing offering; (ii) use the Services for the benefit of a third party; (iii) reverse engineer, decompile, disassemble, or otherwise seek to obtain the source code or non-public APIs to the Services, except to the extent expressly permitted by applicable law (and then only upon advance written notice to Perch); or (iv) remove or obscure any proprietary or other notices contained in the Services. Customer agrees that its purchases are not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by Perch regarding future functionality or features.

2.0 CUSTOMER DATA.

2.1. Rights in Customer Data. "Customer Data" means any data that is uploaded by or on behalf of Customer to the Services. As between the parties, Customer or its licensors retain all right, title and interest (including any and all intellectual property rights) in and to the Customer Data as provided to Perch. Subject to the terms of this Agreement, Customer hereby grants to Perch a non-exclusive, worldwide, royalty-free right to use, copy, store, transmit, modify, create derivative works of, and display the Customer Data solely to the extent necessary to provide the Services to Customer, or to prevent or address service or technical problems under this Agreement, or as may be required by law.

2.2. Uploads of Customer Data. Customer will be responsible for uploading all Customer Data to the Services and will provide such Customer Data in a format consistent with the requirements set forth in the Documentation. Errors in loading Customer Data may cause Customer Data to be rejected by the Services and Perch will have no responsibility for any related impact on Customer's ability to access or use the Services.

2.3. Customer Data Integrity. Customer is solely responsible for the accuracy, content and legality of all Customer Data. Customer represents and warrants that Customer has sufficient rights in the Customer Data to grant the rights granted to Perch in Section 2.1 and that the Customer Data does not infringe or violate the intellectual property, publicity, privacy or other rights of any third party.

2.4 User ID and Password Protection. Customer will require that all permitted Users keep user ID and password information strictly confidential and not share such information with any unauthorized person. Perch will have no liability for actions taken using Customer's user IDs and passwords, including any unauthorized use or access caused by misuse or misappropriation of such user IDs and passwords. Customer will be responsible for restricting access by any User who is no longer authorized to access the Services.

3.0 CHANGES. Perch reserves the right to change or discontinue the sale of any or all Hardware, and to modify, change, improve, redesign or discontinue the Services, all without any liability to Customer. Perch may exercise these rights at any point during the Term provided, that Perch will honor existing Orders for the remainder of the then current Subscription Term.

4.0 INTELLECTUAL PROPERTY.

4.1. Perch Technology. Except for the limited license granted under Section 1.1, and Open Source Components, Perch reserves and retains all right, title and interest in and to the Hardware and the Services and any and all: (a) copies, reproductions, modifications, enhancements, adaptations, implementations, translations and other derivative works thereof; and (b) inventions, improvements, know-how, specifications, performance characteristics, designs, plans, methods, procedures, processes, techniques, software, technology, concepts, information or materials whatsoever comprising, relating to, based on or arising out of the Hardware and the provision of any Managed Services, (collectively the Hardware, Services and (a) and (b) are the "**Perch Technology**"); including the sole and exclusive ownership of all intellectual property rights relating thereto. Except as expressly provided in Section 1.1, no other licenses or other rights are transferred or granted to Customer, including any license by implication, estoppel or otherwise, or under any patent, trade secret, trademark or copyright. Further, Customer acknowledges that the Services are offered as an online, hosted solution, and that Customer has no right to obtain a copy of the underlying computer code for the Services. Notwithstanding anything to the contrary herein, Perch may freely use and incorporate into Perch's products and services any suggestions, enhancement requests, recommendations, corrections, or other feedback provided by Customer or by any users of the Services relating to Perch's products or services ("**Feedback**").

4.2. Service Data. "**Service Data**" means any data (other than Customer Data) relating to the operation, maintenance, functioning and support of the Services. Notwithstanding anything to the contrary in this Agreement, Perch has the right to collect and use Service

Data to develop, improve, support, and operate its products and services during and after the term of this Agreement. This Section does not give Perch the right to identify Customer as the source of any Service Data without written permission from Customer.

4.3. Marketing. Perch may use and display Customer's name, logo, trademarks, and service marks on Perch's website and in Perch's marketing materials in connection with identifying Customer as a customer of Perch. Upon Customer's written request, Perch will promptly remove any such marks from Perch's website and, to the extent commercially feasible, Perch's marketing materials. If Perch requests, Customer agrees to participate in a case study, press release and/or cooperate with Perch in speaking to the media, and to speak at a future Perch event.

5.0 CONFIDENTIALITY.

5.1 Either Party (the "**Disclosing Party**") may from time to time disclose Confidential Information (as defined below) to the other Party (the "**Recipient**"). As used herein, "**Confidential Information**" shall mean information that is disclosed by the Disclosing Party to the Recipient which is identified or reasonably understood to be confidential or proprietary, including but not limited to the following: (a) all information, data, reports, analyses, compilations, records, notes, summaries, discussions, studies, sketches, graphs, designs, photographs, drawings and other materials (in whatever form or media maintained) containing or reflecting information relating to a Disclosing Party, assets, liabilities, properties, accounts, financial information, budgets, operations, marketing studies, plans and materials, services, products, processes, trade secrets, intellectual property or other proprietary rights, know-how, concepts, ideas, inventions, discoveries, research and development, business plans, models or strategies, manufacturing or distribution methods, processes or systems, software and related documentation, object code, source code, database technologies, systems, structures, architectures, customers, customer lists, vendors, suppliers, advertisers, personnel, training techniques, pricing and other proprietary information, that may hereafter be disclosed, provided or made available to Recipient or its Representatives (as defined below), or to which Recipient or its Representatives otherwise become aware or gain access or possession; (b) all data, reports, analysis, compilations, extracts, summaries, writings, studies, interpretations, forecasts, records or other materials (whether documentary, electronic or otherwise) prepared by or on behalf of the Disclosing Party or any of its Representatives, that relate to or are based on or contain any of the information listed in (a) above or that reflect a summary or review or evaluation of any of the business, plans, operations, data, documents or customers and advertisers of the Disclosing Party; (c) the existence of any discussions or negotiations between the Parties; and/or (d) any other information which is marked or expressly designated as "**Confidential**" by the Disclosing Party or its Representatives, or by reason of its nature would reasonably be concluded to be of a confidential nature. The term Confidential Information shall not include any information that: (i) is or becomes generally available to the public other than as a result of a breach of this Agreement by Recipient or its Representatives; (ii) was known by the Recipient or its Representatives without restriction on use or

disclosure prior to the date of this Agreement (except for any information provided to it by the Disclosing Party in contemplation of this Agreement); (iii) is subsequently disclosed by a third party not under any confidentiality obligation to the Disclosing Party; (iv) is developed independently by the Recipient without reliance on the Disclosing Party's Confidential Information; or (v) is otherwise approved by written authorization from the Disclosing Party. "**Representatives**" shall mean directors, officers, employees, contractors, agents, legal and accounting advisers, and entities controlled by the Receiving Party.

5.2 The Recipient shall use, and ensure that its Representatives use, reasonable care, at least as protective as the efforts it uses with respect to its own confidential information, to safeguard the Disclosing Party's Confidential Information from use or disclosure other than as permitted hereby.

5.3 Exceptions. If the Recipient becomes legally compelled to disclose any Confidential Information, the Recipient shall: (a) to the extent legally permissible, provide prompt written notice to the Disclosing Party so that the Disclosing Party may seek a protective order or other appropriate remedy or waive its rights under this Section; and (b) disclose only the portion of Confidential Information that it is legally required to produce. If a protective order or other remedy is not obtained, or the Disclosing Party waives compliance, the Recipient shall, at the Disclosing Party's expense, use reasonable efforts to obtain assurance that confidential treatment will be afforded the Confidential Information.

Upon termination of this Agreement or at the written request by the Disclosing Party, the Recipient shall return all copies of Confidential Information in its possession or certify in writing to the Disclosing Party that its Confidential Information has been destroyed. This Section shall survive any termination, cancellation or expiration of this Agreement.

6.0 FEES AND PAYMENT; TAXES; PAYMENT DISPUTES.

6.1. Fees and Payment. All fees payable by Customer for the Services ("**Fees**"), and payment terms are as set forth in the applicable Order. Except as expressly set forth in this Agreement, all payment obligations are non-cancelable and Fees are non-refundable.

6.2. Taxes. Fees do not include Taxes. Customer is responsible for paying all Taxes associated with its purchases hereunder other than taxes based on income, property, or employees of Perch. If Perch has the legal obligation to pay or collect Taxes for which Customer is responsible under this Section, Perch will invoice Customer and Customer will pay that amount unless Customer provides Perch with a valid tax exemption certificate authorized by the appropriate taxing authority.

6.3. Payment Disputes. Perch will not exercise its rights under Section 7.2 (Termination for Cause) or Section 7.4(a) (Suspension of Service) with respect to non-payment by Customer if Customer is disputing the applicable charges reasonably and in good faith

and is cooperating diligently to resolve the dispute. If the parties are unable to resolve such a dispute within thirty (30) days, each party shall have the right to seek any remedies it may have under this Agreement, at law or in equity, irrespective of any terms that would limit remedies on account of a dispute. For clarity, any undisputed amounts must be paid in full.

7.0 TERM AND TERMINATION.

7.1. Term. This Agreement is effective as of the Effective Date and will remain in effect until terminated in accordance with its terms. If there is no Order currently in effect, either party may terminate this Agreement upon written notice to the other party. Each Order will automatically renew for one year unless either party gives the other written notice of non-renewal at least sixty (60) days before the end of the relevant term. The per unit pricing during any renewal term will increase.

7.2. Termination for Cause. Either party may terminate this Agreement (including all related Orders) if the other party: (a) fails to cure any material breach of this Agreement (including a failure to pay Fees) within thirty (30) days after written notice; (b) ceases operation without a successor; or (c) seeks protection under any bankruptcy, receivership, trust deed, creditors' arrangement, composition, or comparable proceeding, or if any such proceeding is instituted against that party and is not dismissed within 60 days. Except where an exclusive remedy is specified, the exercise of either party of any remedy under this Agreement, including termination, will be without prejudice to any other remedies it may have under this Agreement, by law or otherwise.

7.3 Survival. The following Sections will survive any expiration or termination of this Agreement: 1.4 (Use and Restrictions), 4 (Intellectual Property), 5 (Confidentiality), 6.1 (Fees and Payment), 6.2 (Taxes), 7 (Term and Termination), 8.2 (Warranty Disclaimer), 10 (Indemnification), 11 (Limitation of Remedies and Damages) and 12 (General Terms).

7.4. Suspension of Service. In addition to any of its other rights or remedies (including, without limitation, any termination rights) set forth in this Agreement, Perch reserves the right to suspend provision of services: (a) if Customer is thirty (30) days or more overdue on a payment; (b) if Perch deems such suspension necessary as a result of Customer's breach of Sections 1.4 (Use and Restrictions) or 2.3 (Customer Data Integrity); (c) if Perch reasonably determines suspension is necessary to avoid material harm to Perch or its other customers, including if the Services are experiencing denial of service attacks, mail flooding, or other attacks or disruptions outside of Perch's control; or (d) as required by law or at the request of governmental entities.

8.0 WARRANTY.

8.1. Services Warranty. Perch warrants that the Services will operate in substantial conformity with the applicable Documentation. In the event of a breach of this warranty,

Perch will use commercially reasonable efforts to correct the reported non-conformity, at no charge to Customer, or if Perch determines such remedy to be impracticable, either party may terminate the applicable Order and Customer will receive a refund of any unused Fees Customer has pre-paid for the Services purchased thereunder. The foregoing shall be Customer's sole and exclusive remedy for any breach of the warranty set forth in this Section. This warranty shall only apply: (a) if Customer makes a claim within thirty (30) days of the date on which Customer first noticed the non-conformity; (b) the Services have been properly installed and used at all times in accordance with this Agreement and the applicable Documentation; (c) no modification, alteration or addition has been made to the Services by persons other than Perch or its authorized representative; and (d) a defect in or malfunction of the Services have not been caused by Customer or its facilities, equipment or software, or third party software or equipment.

8.2. Warranty Disclaimer. [EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 8.0, PERCH AND ITS LICENSORS AND SUPPLIERS DISCLAIM ALL OTHER WARRANTIES WITH RESPECT TO THE HARDWARE AND SERVICES, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS. FURTHER, PERCH DOES NOT WARRANT THAT THE HARDWARE OR SERVICES WILL MEET CUSTOMER'S REQUIREMENTS OR SPECIFIC RESULTS OF USE, THAT THE USE OF THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE. CUSTOMER MAY HAVE OTHER STATUTORY RIGHTS, BUT THE DURATION OF STATUTORILY REQUIRED WARRANTIES, IF ANY, SHALL BE LIMITED TO THE SHORTEST PERIOD PERMITTED BY LAW.

9.0 SUPPORT. During a Subscription Term, Perch will provide Customer with support as described at <https://perchsecurity.com/support/>

10.0 INDEMNIFICATION. Customer will defend Perch from and against any claim by a third party arising from or relating to any Customer Data or any product or service offered by Customer in connection with or related to the Services, and will indemnify and hold harmless Perch from and against any damages and costs awarded against Perch or agreed in settlement by Customer (including reasonable attorneys' fees) resulting from such claim.

11.0 LIMITATION OF REMEDIES AND DAMAGES. UNDER NO CIRCUMSTANCES SHALL PERCH BE LIABLE TO CUSTOMER FOR ANY LOSS OF PROFITS, LOSS OF DATA, EQUIPMENT DOWNTIME, OR FOR ANY INDIRECT, INCIDENTAL, EXEMPLARY, CONSEQUENTIAL, OR SPECIAL DAMAGES RELATING TO OR ARISING OUT OF THIS AGREEMENT OR ANY ORDER, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL PERCH'S TOTAL CUMULATIVE LIABILITY IN CONNECTION WITH THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR OTHERWISE, EXCEED THE TOTAL AMOUNT OF CUSTOMER'S PAYMENT(S)

HEREUNDER FOR THE SERVICES DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE CLAIM. THE PARTIES AGREE THAT THIS SECTION 11 REPRESENTS A REASONABLE ALLOCATION OF RISK AND THAT WITHOUT CUSTOMER'S AGREEMENT TO THESE LIMITATIONS, THE FEES CHARGED FOR THE SERVICES WOULD BE HIGHER. THE FOREGOING PROVISIONS SHALL BE ENFORCEABLE TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. THE PARTIES AGREE THAT THE WAIVERS AND LIMITATIONS SPECIFIED IN THIS SECTION 11 WILL SURVIVE AND APPLY REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE AND WILL SURVIVE AND APPLY EVEN IF ANY LIMITED REMEDY SPECIFIED IN THIS AGREEMENT IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

12.0 GENERAL TERMS.

12.1. Assignment. Customer may not assign, delegate or transfer this Agreement, in whole or in part, or any of its rights or duties hereunder without the prior written consent of the other Party. Any attempted assignment in violation of this Agreement is void.

12.2. Severability; Interpretation. If a court of competent jurisdiction holds any provision of this Agreement to be unenforceable or invalid, that provision will be limited to the minimum extent necessary so that this Agreement will otherwise remain in effect. Section headings are inserted for convenience only and shall not affect the construction of the agreement.

12.3. Governing Law; Jurisdiction and Venue. This Agreement and all matters arising out of or relating to this Agreement shall be governed by the laws of the State of Delaware excluding its conflict of law provisions. All disputes arising under this Agreement shall be brought exclusively in the state and federal courts located in the City of Dover, Kent County, Delaware and Customer hereby submits to the personal jurisdiction of the above courts. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to this Agreement. IN THE EVENT OF ANY DISPUTE BETWEEN THE PARTIES IN ANY COURT IN ANY JURISDICTION, THE PARTIES HEREBY KNOWINGLY AND VOLUNTARILY, AND HAVING HAD AN OPPORTUNITY TO CONSULT WITH COUNSEL, WAIVE ALL RIGHTS TO TRIAL BY JURY, AND AGREE THAT ANY AND ALL MATTERS SHALL BE DECIDED BY A JUDGE WITHOUT A JURY TO THE FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW.

12.4. Notice. Any notice or communication required or permitted under this Agreement will be in writing to the parties at the addresses set forth in an Order or at such other address as may be given in writing by either party to the other in accordance with this Section and will be deemed to have been received by the addressee: (a) if given by hand, immediately upon receipt; (b) if given by overnight courier service, the first business day following dispatch; (c) if given by registered or certified mail, postage prepaid and return receipt requested, the second business day after such notice is deposited in the mail; or

(d) if given by email, immediately upon receipt, but notices related to termination of this Agreement or any claims (including without limitation breach, warranty or indemnity) may not be given via email except as expressly permitted in this Agreement or in an Order.

12.5. Modifications to this Agreement: From time to time, Perch may modify this Agreement. Unless otherwise specified by Perch, changes become effective for Customer upon renewal of the then-current Subscription Term or entry into a new Order after the updated version of this Agreement goes into effect. Perch will use reasonable efforts to notify Customer of the changes through communications via email or other means. Customer may be required to click to accept or otherwise agree to the modified Agreement before renewing a Subscription Term or entering into a new Order, and in any event continued use of the Service after the updated version of this Agreement goes into effect will constitute Customer's acceptance of such updated version.

12.6 Amendments; Waivers. No supplement, modification, or amendment of this Agreement will be binding, unless executed in writing by a duly authorized representative of each party to this Agreement, except as expressly set forth herein, including without limitation, Section 12.5. No waiver will be implied from conduct or failure to enforce or exercise rights under this Agreement, nor will any waiver be effective unless in a writing signed by a duly authorized representative on behalf of the party claimed to have waived. No terms or conditions stated in a Customer purchase order or any other Customer order documentation (excluding Orders) shall be incorporated into or form any part of this Agreement, and all such terms or conditions shall be null and void, notwithstanding any language to the contrary therein, whether signed before or after this Agreement.

12.6. Entire Agreement. This Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements and communications relating to the subject matter of this Agreement.

12.7. Third Party Beneficiaries. There are no third-party beneficiaries under this Agreement.

12.8. Force Majeure. Neither party will be liable to the other for any delay or failure to perform any obligation under this Agreement (except for a failure to pay Fees) if the delay or failure results from any cause beyond such party's reasonable control, including acts of God, labor disputes or other industrial disturbances, systemic electrical, telecommunications, or other utility failures, earthquake, storms or other elements of nature, blockages, embargoes, riots, acts or orders of government, acts of terrorism, or war.

12.9. Independent Contractors. The parties to this Agreement are independent contractors. There is no relationship of partnership, joint venture, employment, franchise

or agency created hereby between the parties. Neither party will have the power to bind the other or incur obligations on the other party's behalf without the other party's prior written consent.

12.10. Export Control. Customer agrees to comply with all export and import laws and regulations of the United States and other applicable jurisdictions. Without limiting the foregoing: (a) Customer represents and warrants that it is not listed on any U.S. government list of prohibited or restricted parties or located in (or a national of) a country that is subject to a U.S. government embargo or that has been designated by the U.S. government as a "**terrorist supporting**" country; (b) Customer will not (and will not permit any third parties to) access or use any Service in violation of any U.S. export embargo, prohibition or restriction; and (c) Customer will not submit to the Services any information that is controlled under the U.S. International Traffic in Arms Regulations.

12.11. Federal Government End Use Provisions. Perch provides the Services, including all related software and, to the extent applicable the Perch Technology, for ultimate federal government end use solely in accordance with the following: Government technical data and software rights related to the Service include only those rights customarily provided to the public as defined in this Agreement. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If a government agency has a need for rights not granted under these terms, it must negotiate with Perch to determine if there are acceptable terms for granting those rights, and a mutually acceptable written addendum specifically granting those rights must be included in any applicable agreement.

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