

Terms & Conditions

This Master Service Agreement (“Agreement” or “MSA”), by and between Perfect Cloud Solutions, with offices at 12150 E Briarwood Ave Ste 204 Centennial, CO 80112, on behalf of itself and its parent, subsidiaries and affiliates (“PCS”) and the attached named client (“Client”) covers business transactions which PCS and Client may enter into from time to time.

NOW, THEREFORE, the parties hereto agree as follows:

DEFINITIONS

Addendum: In the event the parties wish to modify any provision or part of this Agreement they shall enter into one or more Addenda to be executed by both parties. Any such Addendum shall be deemed a part of this Agreement, and all obligations and liabilities of Client under this Agreement shall fully apply to all matters set forth in any Addendum. In the event of conflict between the terms of this Agreement and the terms of any Addendum, the terms of the applicable Addendum shall control.

Client: The party entering into this Agreement with PCS as identified in the upper right hand corner of page 1.

Client’s Data: Means the video, text (digital or otherwise), data, sounds, photographs, illustrations, graphics or other images, programs, code and other materials either provided to PCS by Client for PCS’ performance of the Service(s) or stored by Client, Client’s customers and/or persons under Client’s control through any Service(s) provided hereunder.

Client’s Space: The address affiliated with the Client in the upper right hand corner of page 1.

Good(s): Any products, including hardware, firmware or software licenses sold, licensed or otherwise provided to Client.

Service(s): Work and/or services performed and/or rendered by PCS hereunder.

Service Order Form (“SOF”): Sets forth a description, and the cost, of specific Good(s) and/or Service(s) to be performed, or provided, by PCS. Separate SOFs may be executed for different Good(s) and/or Service(s) and be subject to different Terms.

Term: The period of time during which PCS is obligated to provide Service(s) pursuant to mutually executed agreements and/or addendums. When Client has entered into multiple agreements and/or addendums, there can be multiple Terms or the Term can be coterminous depending on the provisions of the applicable agreements and/or addendums.

SECTION 1. TERM.

This Agreement shall remain in effect until terminated pursuant to Section 10 hereof. The commencement of any Term shall be on the first day that the Service(s) is/are ready for Client’s use, or in the event Client is required to engage in an act or omission or provide information in order for the Service(s) to be useable and Client fails to do so, on the first business day after receipt of notice from PCS. This Agreement shall remain effective for the term mentioned on the Client’s SOF following the commencement of this Agreement. This Agreement shall automatically renew on a month to month basis. Either party may terminate this Agreement upon thirty (30) days written notice provided all undisputed services have been paid in full. Upon early termination of this Agreement by Client, Client shall submit an early termination fee in value equivalent to one month’s charges accompanied by Client’s thirty (30) day written notice.

SECTION 2. CREDIT APPROVAL AND DEPOSITS

Client agrees to provide PCS with credit information as requested, and delivery of Service(s) is subject to credit approval. Client’s execution of this Agreement authorizes PCS’ continuing credit review and approval. PCS shall have the right to require Client to make one or more deposits as a condition of PCS’ continuation of Service(s); said deposit or deposits will be held by PCS as security for payment of Client’s service charges. No interest shall be earned on deposits. At such time as the provision of Service(s) to Client is terminated, the amount of the deposit will be credited to Client’s account and any credit balance will be refunded. PCS reserves the right to immediately terminate this Agreement in the event Client’s credit is not approved to secure payments hereunder.

SECTION 3. BILLING AND PAYMENT

3.1 Billing

One time set-up fees and first month's service payment are due upon order submission, provided however, if not paid at said time, same will be billed upon completion of set-up or as stated below. Recurring service charges are billed monthly in advance, and are due on the 1st day of each month. Usage and consumption charges are billed in arrears. Billing will commence when PCS has prepared Service(s) for Client's use whether or not Client is ready to use the Service(s) but in no event prior to the agreed to commencement date set forth in the applicable SOF. Further, if set up requires Client's acts and/or omissions or information from Client, in the event Client fails to timely provide same, billing will likewise commence.

3.2 Payment

Payment of undisputed amounts is due in accordance with the invoice, without other set off or deduction. If payment of undisputed amounts is not received within said time, the unpaid balance of the undisputed amounts of any invoice shall bear a late fee of 1.5% per month and Client shall pay all collection costs including, but not limited to, reasonable attorneys' fees, court costs and/or collection agency fees.

3.3 Out of Area Calling

This agreement limits the Client to unlimited calling within the contiguous United States. Calls made outside of the defined boundaries are subject to a per minute rate as per the attached International Calling Sheet. International calling is disabled by default and can be enabled upon written request from Customer.

3.4 Suspension of Service(s)

If the undisputed portion of PCS' invoice is not paid within fourteen (14) days of the due date of the invoice, PCS will suspend the Service(s) on the 29th of said month without written or verbal notice. Service will remain suspended until all undisputed amounts owed have been paid. To re-enable Service(s), PCS may require a reconnection fee and other charges set forth in Section 9.

3.5 Disputed Bills

Client may dispute an invoice or any portion thereof only by (i) submitting a written, detailed claim to PCS (c/o Accounting Dept.) describing such dispute within thirty (30) days of the invoice date and (ii) making full and timely payment of all undisputed amounts. In the event that Client has not disputed an invoice, or any portion thereof, within six (6) months of its date, Client shall forfeit all right to challenge the content of same.

3.6 Taxes and Fees

Prices for Good(s) and/or Service(s) are exclusive of applicable sales or use taxes, which, if applicable, shall be paid by Client but shall not include any tax on PCS' income.

3.7 Regulatory and Operational Changes

During the Term, in the event of the imposition of any new regulatory requirement, tax, tariff, increased power costs or similar circumstance beyond the control of PCS that increases the cost of Service(s), Client shall have thirty (30) days after receipt of written notice of the related price increase to terminate the affected Service without early termination charges.

SECTION 4. PERFORMANCE BY PCS

PCS will use industry standard efforts to: (i) maintain PCS' facilities and Equipment required to deliver Service(s), (ii) furnish Service(s) in accordance with the applicable Service Level Agreement ("SLA") and any relevant Service(s) descriptions, and (iii) provide additional Service(s), upon request and if appropriate resources are available, at PCS' then-current rates.

SECTION 5. GOOD(S)

5.1 Title

Title to Good(s) sold to Client shall pass upon full payment. Title to all other Good(s), Equipment and/or facilities furnished by PCS, shall remain with PCS.

5.2 Shipment

Client shall notify PCS and the shipping company, in writing, within two (2) business days after delivery of any defective, non-conforming or damaged Good(s). Failure to do so shall constitute acceptance of any such Good(s) and a waiver of any claim against PCS.

5.3 Exclusions

Good(s) installed by PCS for use in connection with the Service(s) shall not be used for any purpose other than that for which PCS installed it. In the event that Client or a third party attempts to operate or maintain any PCS installed or PCS-owned Equipment

without first obtaining PCS' written approval, Client shall pay PCS, in addition to any other remedies to which PCS is entitled, for any damage incurred, repair and/or replacement (at PCS' option) necessitated and service charges relating to the maintenance or inspection of said Equipment. PCS is not responsible for the installation, maintenance, compatibility, or performance of any equipment or software not provided by PCS. If such Equipment impairs the Service(s) or any of PCS' operating systems, Client remains liable for payment. If such Equipment causes or is likely to cause hazard or service obstruction, Client shall, upon notice, remedy the situation. PCS may, at Client's request and at PCS' then-current rates, render consulting service to remedy the difficulties caused by any of the foregoing.

5.4 Good(s) and/or Service(s) Selected

(i) PCS agrees to provide and Client agrees to purchase the Good(s) and/or Service(s) set forth on any duly executed agreement and/or addendum. In such event, PCS shall provide said Service(s) to Client using PCS employees or subcontractors of PCS, the choice of which is at PCS' sole discretion.

SECTION 6. CLIENT OBLIGATIONS

6.1 Client's Obligations.

A. Client shall pay: (i) charges applicable to the Good(s) and/or Service(s) on all applicable agreements and/or addendums [including charges incurred as a result of fraud or unauthorized use of the Service(s)]; (ii) additional fees or charges arising from supplemental Service requested by Client and/or Client's usage of facilities, bandwidth and/or network capacity above and beyond Client's entitlement as set forth in the applicable agreements and/or addendums; and (iii) other mutually agreed to charges.

B. Client will: (i) be solely responsible for all Client's Data and any party's reliance thereunder and (ii) allow PCS, for the sole purpose of its performance hereunder, to copy, display, distribute, download, and otherwise use Client's Data to transmit it over the Internet.

C. Client shall not and shall not permit others to rearrange, disconnect, remove, attempt to repair, or otherwise tamper with any of the facilities, Equipment or PCS-owned Equipment, except upon PCS' prior written consent.

D. When Service(s) occur at Client's offices as set forth in the address block in the top right hand corner of page one (1) of this Agreement, Client shall provide: (i) space, utilities, and HVAC necessary to maintain the proper environment for the Service(s), (ii) a safe, hazard free, working environment complying with applicable laws and regulations, and (iii) access and cooperation as may be required for provision of Good(s) and Service(s); and (iv) shall ensure PCS' Equipment remains free and clear of any liens or encumbrances.

E. Client shall notify PCS of any changes to its notice address or other contact information.

6.2 Compliance

Client shall comply with all applicable laws and regulations and with PCS' Policies and Procedures as may be in effect from time to time.

6.3 No Control over Client's Data

Client acknowledges and agrees that PCS exercises no control over, and accepts no responsibility for, the content of the information passing through PCS' network or the Internet. Client understands further that the Internet contains materials some of which are socially inappropriate or may be offensive; and is accessible by persons who may attempt to breach the security of PCS and/or its network(s). PCS has no control over and expressly disclaims any liability or responsibility whatsoever for such materials or third party actions. Client and its users and end users access the Service(s) at their own risk. PCS is not liable for Client's Data or any data transferred either to or from Client or stored by Client or any of Client's customers via the Service(s) provided by PCS.

SECTION 7. SERVICE LEVEL & DISCLAIMER OF WARRANTIES

7.1 Service Level

Service(s) shall conform to the SLA attached hereto or attached to an applicable SOF.

7.2 No Other Warranty

EXCEPT FOR THE SERVICE LEVEL REFERENCED IN SECTION 7.1, SERVICE(S) IS/ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS AND PCS EXCLUDES AND CLIENT HEREBY WAIVES ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED [OTHER THAN RELATING TO TITLE OF GOOD(S)] ARISING BY OPERATION OF

LAW OR OTHERWISE, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, AND TITLE, AS WELL AS ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE. PCS DOES NOT WARRANT OR GUARANTY THAT THE SERVICE(S) WILL CAUSE THE GOOD(S) TO OPERATE WITHOUT FAULT, ERROR OR INTERRUPTION.

SECTION 8. LIMITATION OF LIABILITY

8.1 Limitation of Liability.

A. EXCEPT AS PROVIDED IN SECTION 11.8 BELOW, THE LIABILITY OF PCS FOR DAMAGES ARISING OUT OF THE FURNISHING OF SERVICE(S) OR ANY OTHER MATTER HEREUNDER, INCLUDING BUT NOT LIMITED TO MISTAKES, OMISSIONS, INTERRUPTIONS, DELAYS, TORTIOUS CONDUCT, ERRORS OR OTHER DEFECTS, REPRESENTATIONS, USE OF SERVICE(S) OR ARISING OUT OF THE FAILURE TO FURNISH SERVICE(S), WHETHER CAUSED BY ACTS OF COMMISSION OR OMISSION, (INCLUDING CLIENT HARDWARE OR SOFTWARE FAILURES OR ANY OTHER DAMAGE OCCURRING AFTER THE PROVISION OF SERVICE(S) SUCH AS LOSS OF DATA OR OTHERWISE) SHALL BE LIMITED TO THE EXTENSION OF CREDIT ALLOWANCES DUE UNDER ANY APPLICABLE SLA. THE EXTENSION OF SUCH CREDIT ALLOWANCES OR REFUNDS SHALL BE CLIENT'S SOLE REMEDY FOR SERVICE(S) OUTAGES. IN THE EVENT CLIENT HAS OTHER DAMAGES PCS' TOTAL LIABILITY SHALL NOT EXCEED SERVICE PAYMENTS MADE BY CLIENT TO PCS OVER THE PRECEEDING TWELVE (12) MONTHS.

B. NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES (INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOST PROFITS OR LOST REVENUES), WHETHER CAUSED BY THE ACTS OR OMISSIONS OF A PARTY'S EMPLOYEES OR REPRESENTATIVES, CULPABLE NEGLIGENCE, OR WILLFUL MISCONDUCT REGARD-LESS OF WHETHER SUCH PARTY HAS BEEN INFORMED OF THE LIKELIHOOD OF SUCH DAMAGES.

C. PCS SHALL HAVE NO OBLIGATION OR LIABILITY FOR (i) ANY RECONFIGURATION, MODIFICATION, MISUSE OR ABUSE OF GOOD(S) OR SERVICE(S) BY CLIENT OR ITS AGENTS AND (ii) ANY CLIENT'S DATA.

8.2 Basis of Bargain and Failure of Essential Purpose

Client acknowledges and agrees that PCS has set its prices and entered into this Agreement in reliance on the warranties, limitations and disclaimers set forth herein, which reflect an allocation of risk between the parties (including the risk that a contract remedy may fail of its essential purpose and cause consequential loss) and form an essential basis of the bargain between the parties.

SECTION 9. SUSPENSION

9.1 Right to Suspend

PCS may suspend access or any or all Service(s) forthwith in the event that:

A. (i) Client fails to comply with any provision of Sections 3, 6 or 11 of this Agreement or (ii) PCS is entitled to terminate this Agreement pursuant to Section 10.1;

B. such suspension is: (i) for the purpose of carrying out maintenance pursuant to this Agreement; (ii) to substitute, change, reconfigure, relocate or rearrange Service(s); or (iii) in accordance with an order, instruction or request of any government entity; or

C. Client consumes Service(s) in an amount that materially exceeds Client's credit limit and Client, after written notice and a reasonable period for the parties to mutually agree on sufficient security for payment, has not provided same.

9.2 No Waiver

Suspension shall not be a waiver of any right of termination. If Service(s) has/have been suspended other than for Client's breach, Service(s) shall be restored as soon as reasonably possible and the applicable service charges shall be ratably abated. If Service(s) has/have been suspended for any other reason and Client requests that Service(s) be restored, PCS may restore Service(s) after satisfaction of conditions and imposition of charges as PCS reasonably requires.

SECTION 10. TERMINATION

10.1 Termination for Cause

PCS may terminate this Agreement: (i) without notice upon Client's failure to pay amounts due within 14 days (ii) for breach of a material provision of this Agreement, after fourteen (14) days written notice and failure to cure; (iii) if PCS is unable to provide

Service(s) hereunder due to Client's acts or omissions; (iv) upon any regulatory decision or governmental order requiring PCS to suspend Service(s) or which is reasonably likely to result in the loss of PCS' operating authority, upon reasonable notice; or (v) if Client files for bankruptcy or reorganization or fails to discharge an involuntary petition therefore within sixty (60) days after filing. Any termination hereunder, except under Section 10.1(iv), shall subject Client to applicable termination and other accrued charges.

10.2 Termination of MSA

Unless terminated earlier pursuant to Sections 10.1 or 10.3 of this Agreement, this Agreement shall remain effective for the term mentioned on the Client's SOF following the commencement of this Agreement. This Agreement shall automatically renew on a month to month basis. Either party may terminate this Agreement upon thirty (30) days written notice provided all undisputed services have been paid in full. Upon early termination of this Agreement by Client, Client shall submit an early termination fee equivalent to one month's recurring cost accompanied by Client's thirty (30) day written notice. Any equipment that is not completely paid as agreed per the SOF and/or provided and agreed to quote will be returned to Perfect Cloud Solutions within thirty (30) days or Client is subject to fees to replace equipment with like equipment at retail value. Any equipment included in the monthly recurring cost shall be returned to Perfect Cloud Solutions within thirty (30) days or Client is subject to fees to replace equipment with like equipment at retail value.

SECTION 11. PRIVACY POLICY

11.1 Privacy Policy

At PCS we value your privacy. This is why we take extra measures to make sure that your information is kept safe.

A. Information That We Collect

We collect a variety of personally identifiable information (also referred to as "personal data") about users of our services and visitors to our website in order to ensure an enjoyable user experience and seamless communications. When we use the term "personally identifiable information," we mean information that is directly associated with, or could be used to identify, a specific person. Such information includes a name, address, telephone number, e mail address, or information about activities directly linked to that person which would permit the physical or online contacting of that person.

We collect the following types of personally identifiable information through use of our website and telephone calls to PCS customer service:

- **Information You Give Us:** We collect information you give us—such as your name, billing address, telephone number, e-mail address, and/or credit card number—when you purchase or use a service, participate in a promotion, or register with us.
- **Information We Obtain from Other Sources:** We may obtain information about you from outside sources and add it to, or combine it with, your personally identifiable information, including information such as:
 - Credit information, which allows us to complete transactions for the purchase of PCS services, and
 - Commercially available demographic and marketing information from third parties, which aids us in serving you and informing you of services that may be of interest to you.

B. What We Use Your Information For

Our Internal Use: In general, we use personally identifiable information to serve our existing and prospective customers and to enhance and extend our customer relationships. By understanding how you use our services and our website, we are able to customize and personalize our interactions with you. More specifically:

- We use personally identifiable information for billing purposes, to provide services or complete transactions you have requested, to anticipate and resolve problems with your services, and to create and inform you of products or services from PCS or others that better meet your needs.
- Subject to your agreement, PCS uses e-mail, telemarketing, and direct mail to inform you about PCS products or services we think will interest you. If you do not wish to receive these types of communications you can choose at any time not to continue receiving them by contacting us by phone, email, or fax.

While you may choose not to receive marketing information from us, you will continue to receive bills, customer service-related notifications, and other similar information from us electronically or otherwise. You will also continue to receive communications directly related to each service you purchase or subscribe to.

C. Who Your Information Is Shared With

Information about our existing and prospective customers is one of our most important business assets, we seek to protect it and keep it confidential. We do not share personally identifiable information with unaffiliated third parties, nor do we sell it to third parties.

SECTION 12. MISCELLANEOUS

12.1 Force Majeure

Except with respect to accrued payment obligations, neither party shall be liable for any failure of performance due to causes beyond such party's reasonable control, including, but not limited to: acts of God, fire, flood or other catastrophes; any law, order, regulation, or governmental action; national emergencies, insurrections, riots, acts or attempted acts of terrorism or wars; unavailability of rights-of-way; or strikes or other labor difficulties not involving PCS, provided however, the affected party shall use commercially reasonable efforts to eliminate such event.

12.2 No Competitive Service(s)

Client may not at any time, without PCS' prior written consent, permit any PCS facility to be used for the resale of Internet access or managed Service(s) to PCS' Clients.

12.3 Non-Solicitation

Neither party shall knowingly solicit for employment, offer employment to or employ the other party's employees during and for a period of two (2) years following termination of this Agreement. In the event of a breach of this provision the parties agree that appropriate liquidated damages shall be payment by the breaching party of one hundred (100%) percent of the new annual compensation of the employed individual.

12.4 Assignment or Transfer

Neither party may transfer or assign this Agreement, or any of its rights or obligations hereunder without the other's prior written consent, which will not be unreasonably withheld. Each party shall remain liable for nonpayment by its respective assignee or transferee. Notwithstanding the foregoing, PCS may assign or transfer this Agreement without notice to a PCS affiliate or successor in interest. Provided, however, this Agreement shall be for the benefit of not only Client but its affiliates including subsidiaries, divisions, and companies with which it shares at least a minimum of fifty (50%) percent common ownership.

12.5 Notice

Notice shall be in writing to the address set forth hereinabove and properly given: (i) immediately, if delivered in person, via facsimile, or electronic mail; (ii) after one (1) day, if sent by overnight courier; or (iii) after three (3) days, when sent by first class U.S. Mail.

12.6 Marketing

Client agrees that PCS may refer to Client and may briefly describe Client's business in PCS' marketing materials, on the PCS website and any press releases that PCS may choose to issue. Client hereby grants PCS a limited license to use any Client trade names and trademarks only for this purpose.

12.7 Indemnification by Client

Client shall indemnify, defend and hold harmless PCS, its officers, directors, members, employees, subcontractors, representatives, landlords and/or mortgagees from claims, losses, damage, expense (including reasonable attorney's fees and court costs), or liability (including liability for infringement of a third party's intellectual property rights), personal injury, death or property damage caused by or arising from:

A. the Client's Data or any communication transmitted via the Service(s) or maintained in connection with any Good(s) provided hereunder;

B. the acts or omissions of Client or a third party under Client's control, including their respective employees or representatives, in connection with the Good(s) or Service(s) provided hereunder.

12.8 Indemnification by PCS

PCS shall indemnify, defend and hold harmless Client, its officers, directors, employees, subcontractors, and representatives, from claims, losses, damage, expense (including reasonable attorney's fees and court costs), or liability (including liability for infringement of a third party's intellectual property rights), personal injury, death and property damage or caused by or arising from PCS' negligence or willful misconduct.

12.9 Indemnification Procedure

With respect to a Party's obligation to indemnify (the "Indemnifying Party") the other Party (the "Indemnified Party"): (i) the Indemnified Party shall provide prompt written notice of any such claim, action or demand; (ii) the Indemnified Party shall allow the Indemnifying Party to control the defense and related settlement negotiations, provided, however, that the Indemnified Party shall have the right to participate in such defense with counsel of its own choosing at the Indemnifying Party's expense; (iii) the Indemnified Party shall provide the Indemnifying Party, at the Indemnifying Party's request, with reasonable assistance in the defense of such claim, action or demand, so long as the Indemnifying Party reimburses the Indemnified Party for the Indemnified Party's reasonable out-of-pocket expenses associated therewith; and (iv) the Indemnifying Party shall not settle a claim in a manner that causes the Indemnified Party to incur unindemnified liability, take action, or suffer other injury, without the Indemnified Party's written consent, which consent shall not unreasonably be withheld. The Indemnifying Party shall not be relieved of its indemnification obligations herein for the Indemnified Party's failure to comply with such requirements, except to the extent that the Indemnifying

Party has been prejudiced by the Indemnified Party's actions or inactions.

12.10 Confidentiality

Unless the parties have entered into a non-disclosure or mutual non-disclosure agreement, the following shall apply: "Confidential Information" means any information that is marked "confidential" or "proprietary" or any other similar term or in relation to which its confidentiality should by its nature be inferred or, if disclosed orally, is identified as being confidential at the time of disclosure and, within two (2) weeks thereafter, is summarized, appropriately labeled and provided in tangible form. Confidential Information does not include information that is (i) rightfully in the receiving party's possession without prior obligation of confidentiality from the disclosing party; (ii) a matter of public knowledge; (iii) rightfully furnished to the receiving party by a third party without confidentiality restriction; or (iv) independently developed by the receiving party without reference to the disclosing party's Confidential Information. Each party shall (i) use Confidential Information of the other party only for the purposes of exercising rights or performing obligations in connection with this Agreement or any SOF hereunder; and (ii) protect from disclosure to any third parties any Confidential Information disclosed by the other party for a period commencing upon the date of disclosure until two (2) years thereafter, except with respect to Client data to which PCS may have access in connection with the provision of Service(s), which shall remain Confidential Information until one of the exceptions stated in the above definition of Confidential Information applies. Notwithstanding the foregoing, either party may disclose Confidential Information (a) to an Affiliate for the purpose of fulfilling its obligations or exercising its rights hereunder as long as such Affiliate complies with the foregoing; and (b) if required by law provided the receiving party has given the disclosing party prompt notice unless precluded by law.

12.11 Export Control

The Service(s) and the technology included therein provided under this Agreement may be subject to governmental restrictions on (i) exports from the U.S.; (ii) exports from other countries in which such Service(s) and technology included therein may be produced or located; (iii) disclosures of technology to foreign persons; (iv) exports from abroad of derivative products thereof; and (v) the importation and/or use of such Service(s) and technology included therein outside of the United States or other countries (collectively, "Export Laws"). Client shall comply with all Export Laws and PCS export policies to the extent such policies are made available to Client by PCS. Diversion contrary to U.S. law or other Export Laws is expressly prohibited.

12.12 Relationship of Parties

The parties are independent contractors and this Agreement does not establish any partnership, joint venture, employment, franchise or agency relationship between them.

12.13 Severability

Should any provision of this Agreement be held to be void, invalid, or inoperative, the remaining provisions of this Agreement shall not be affected and shall continue in effect and the invalid provision shall be deemed modified to the least degree necessary to remedy such invalidity and maintain the parties' original intent.

12.14 No Waiver; All Rights Cumulative

Failure to enforce any provision of this Agreement shall not be construed as a waiver. The parties' rights shall be deemed cumulative, such that the exercise of one shall not preclude the exercise of others.

12.15 Third Party Beneficiaries

The parties do not intend any provision of this Agreement to be enforceable by or to benefit any third party. Provided, however, this Agreement shall be for the benefit of not only Client but its affiliates including subsidiaries, divisions, and companies with which it shares at least a minimum of fifty (50%) percent common ownership. Provided, further, in the event any such affiliated company purchases Good(s) and/or Service(s) under this Agreement Client shall remain primarily liable even though PCS will bill such affiliate directly at the affiliate's request.

12.16 Intellectual Property Rights

PCS shall remain the sole owner of and retain all right, title and interest in any Service(s), technical information and/or intellectual property rights (IPR) provided to Client hereunder, including, without limitation, all trademark, trade names, service marks, copyrights, computer programs, general utility programs, software, methodology, databases, specifications, systems designs, applications, enhancements, documentation, manuals, know-how, formulas, hardware, audio/visual equipment, tools, libraries, discoveries, inventions, techniques, writings, designs and other IPR either used or developed by PCS or its agents in connection with the provision of Service(s) hereunder ("PCS Technology"). Any PCS Technology will not be work for hire. In return for payment of all fees and charges, PCS grants to Client a royalty free, non-exclusive, non-transferable, non-assignable license to use any IPR provided with Service(s) hereunder. PCS shall be free to provide similar IPR to other parties and shall retain the right to unrestricted use of any data, any and all related concepts, know-how, techniques or IPR either acquired or developed as a result of this Agreement.

12.17 Supplemental Terms

The terms contained in any SOF, SLA, SOW or other related documents are intended to supplement this Agreement's terms.

12.18 Headings

The titles and headings of the sections and subsections in this Agreement are intended solely for convenience of reference and are not intended for any other purpose whatsoever, or to explain, modify or place any construction upon or on any of this Agreement's provisions.

12.19 Survival

The following sections of this Agreement shall survive termination: Section 3, Section 5, Section 7, Section 8, Section 10.3 and Section 11.

12.20 Governing Law & Jurisdiction

This Agreement shall be governed by the laws of the State of Delaware applicable to contracts to be fully performed therein. The jurisdiction and venue for actions related to this Agreement shall be the State and Federal Courts located in Delaware. Provided, that PCS may bring an action in such Courts or in the jurisdiction where Client's principal place of business is located.

12.21 Entire Understanding

This Agreement and any SOF, SLA, SOW or other related documents executed hereunder, constitute the parties' entire understanding and supersede any oral representations, understandings and offers related to the subject matter hereof. In the event Client is an existing Client with an unexpired MSA or DCA, Colocation and/or Hosting Agreement said agreement(s) shall be superseded by this Agreement and any SOFs thereunder shall become subject to this Agreement. This Agreement can be modified in writing by a document duly signed by authorized persons of both parties.

12.22 Counterparts

This Agreement may be executed in counterparts, including facsimile transmissions and/or electronic signatures, each of which shall be deemed an original against any party whose signature appears on such counterpart and all of which together shall constitute one and the same Agreement.

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