



Perry Weather Terms and Conditions

Last Updated: February 11, 2022

1. **DEFINITIONS.** For the purpose of these terms and conditions, the following terms have the following meaning:

- The term "**Perry Weather**" shall mean Perry Weather LLC.
- The term "**Customer**" shall mean the person or persons entering into this Agreement with Perry Weather as identified on the Order Form and/or Quote.
- The term "**Software**" shall mean software provided by Perry Weather to the Customer, such as web-based applications, mobile applications, alerting, or other software, as identified in the Order Form and/or Quote.
- The term "**Hardware**" shall mean hardware products provided by Perry Weather to the Customer, such as outdoor warning systems, weather stations, or other hardware, as identified in the Order Form and/or Quote. Hardware includes both Subscription Hardware and Sold Hardware as defined below.
- The term "**Subscription Hardware**" shall mean Hardware that shall be owned by Perry Weather and provided to Customer on a subscription basis as identified on the Order Form and/or Quote.
- The term "**Sold Hardware**" shall mean Hardware that is sold to Customer as identified on the Order Form and/or Quote.
- The term "**Meteorological Consulting**" shall mean weather forecasts, consulting services, advice, representations, or training provided by Perry Weather to the Customer.
- The term "**Order Form**" shall mean an ordering document or online order specifying the products and services to be provided hereunder that is entered into between Customer and Perry Weather, including any addenda and supplements thereto.
- The term "**Quote**" shall mean a quote for Hardware and/or Software provided by Perry Weather to Customer and referenced in an Order Form.

2. **AGREEMENT.** Perry Weather agrees to provide to Customer the applicable Software and/or Hardware upon the terms specified in the Order Form, Quote, and these Terms and Conditions (collectively, the "**Agreement**"). In the event of a conflict between the Order Form, Quote, and/or these Terms and Conditions, the terms in the Order Form shall control over both the Quote and these Terms and Conditions, and the terms of the Quote shall only control over a conflicting term in these Terms and Conditions.

3. **PAYMENT.** Customer will pay all fees specified in Order Form and/or Quote and agrees to the payment terms listed in each Order Form and/or Quote, as supplemented by these Terms and Conditions. Invoices are due upon receipt. Payments made by credit card will be subject to an additional processing fee. Late payment fees will be charged as follows: (a) one percent (1%) per month or part thereof will be charged for any payment that is more than 30 days late: (b) Payment should be made to: Perry Weather, 1355 Motor Circle, Dallas, TX 75207.

- 4. TERM AND TERMINATION.** The initial term of each subscription shall be as specified in the applicable Order Form and/or Quote. Except as otherwise specified in an Order Form and/or Quote, subscriptions will automatically renew for additional periods equal to the expiring subscription term, unless either party gives the other notice of non-renewal at least 30 days before the end of the relevant subscription term. Perry Weather may terminate this Agreement for convenience upon sixty (60) days written notice to Customer, after which Perry Weather shall refund the pro-rata portion of any amounts that have been paid in advance by Customer that are in the nature of subscription payments. The termination of this Agreement shall not entitle Customer to a refund, in whole or in part, of any amounts paid for Sold Hardware.
- 5. HARDWARE WARRANTY.** Perry Weather warrants that the Hardware shall conform in all materials respects to Perry Weather published specifications for a period of three (3) years from date of the Order Form. This warranty is extended only to the original Customer and only covers failures due to defects in materials or workmanship that occur during normal operation. It does not cover ordinary wear and tear, maintenance, damage that occurs in shipment, failures that are caused by products not supplied by Perry Weather, or failures that result from accident, misuse, abuse, neglect, mishandling, misapplication, alteration, modification, lightning, line power surge, or "Acts of God." Perry Weather's obligation under this warranty shall be limited to the repair or exchange of any Hardware, part or parts which may prove defective under normal use within three (3) years from date of the Order Form, and which Perry Weather's examination shall disclose to its satisfaction to be defective.
- 6. CONSULTING SERVICES.** It is understood and agreed that the Software and any Meteorological Consulting services provided to Customer by Perry Weather pursuant to this Agreement are only advisory in nature. As in the case of similar products or services provided by the meteorological consulting industry, the Software and Meteorological Consulting services are in part based on data provided by third parties and user input. Therefore, Perry Weather cannot and does not warrant or assume responsibility for the accuracy of the Software or Meteorological Consulting provided by Perry Weather. From time to time, Perry Weather may reasonably change, update, discontinue, or replace the Meteorological Services or features of the Software without notice and as it deems necessary.
- 7. DISCLAIMER OF WARRANTIES.** EXCEPT AS PROVIDED ABOVE, THE HARDWARE, METEOROLOGICAL CONSULTING SERVICES, SOFTWARE AND DATA DISPLAYED THEREIN ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. EXCEPT AS PROVIDED IN SECTIONS 5 AND 6 ABOVE, PERRY WEATHER MAKES NO WARRANTY, EXPRESS OR IMPLIED, TO CUSTOMER, OR TO ANY AUTHORIZED USER OR THIRD PARTY, INCLUDING ANY WARRANTIES OF QUALITY, ACCURACY, PERFORMANCE, COMPATIBILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. CUSTOMER ACKNOWLEDGES THAT PERRY WEATHER IS NOT RESPONSIBLE FOR THE ACCURACY OF ANY INFORMATION OR DATA CONTAINED IN THE HARDWARE, SOFTWARE, OR SERVICES AND PERRY WEATHER SHALL NOT BE LIABLE FOR ANY LOSSES RESULTING FROM CUSTOMER'S OR ANY AUTHORIZED USER'S RELIANCE ON ANY SUCH INFORMATION OR DATA UNDER ANY CIRCUMSTANCES. PERRY WEATHER DOES NOT WARRANT THAT THE HARDWARE, SOFTWARE, OR METEOROLOGICAL CONSULTING SERVICES WILL BE ERROR-FREE OR THAT THE HARDWARE OR SOFTWARE WILL WORK WITHOUT INTERRUPTIONS.
- 8. LIGHTNING DISCLAIMER.** It is not possible to predict or detect when and where lightning will strike or has struck with 100% accuracy. Perry Weather does not guarantee or warrant that the Hardware,

Software, or any associated Meteorological Consulting services, will be error-free or able to predict or detect lightning with any specified degree of accuracy. Customer acknowledges that lightning strikes are outside of Perry Weather's ability to control, detect, or predict and waives and releases Perry Weather and its data providers from any and all claims and liability related to any form of damage caused by lightning. Perry Weather uses data from Vaisala and other third parties in its Hardware, Software, and Meteorological Consulting. EXPERIENCE HAS PROVEN THAT THE TIMELINESS, RESOLUTION AND MANNER IN WHICH LIGHTNING DATA IS DISPLAYED DOES NOT SOLELY SUPPORT THE EFFECTIVE OR RELIABLE USE OF THE DATA IN MAKING DECISIONS OF AN IMMEDIATE OR SHORT-TERM NATURE THAT INVOLVE THE SAFETY OF PERSONNEL OR ASSETS. ANY SUCH APPLICATIONS OR SIMILAR USES BY CUSTOMERS ARE DONE AT THE RISK OF THE USER AND ARE NEITHER CONDONED NOR RECOMMENDED BY PERRY WEATHER, VAISALA, VAISALA'S SUPPLIERS, OR PERRY WEATHER'S OTHER THIRD-PARTY PROVIDERS.

9. **OWNERSHIP AND POSSESSION OF THE HARDWARE.** Title to any Subscription Hardware shall at all times remain in Perry Weather and Customer shall have only the right to retain the possession of said Subscription Hardware pursuant to the conditions in this Agreement. Customer shall give Perry Weather immediate notice of any claim, levy, lien, or legal process issued against the Subscription Hardware. Customer will not place, nor allow to be placed, the Subscription Hardware in the possession of any other party, save and except to return the Subscription Hardware to Perry Weather. Customer hereby agrees that it will not, nor will it allow, the Subscription Hardware to be encumbered in any form. Customer will not allow any lien to be placed upon the Subscription Hardware, will not pledge the Subscription Hardware as collateral for any debt, current or future, and will immediately notify Perry Weather of any legal actions, proceedings or the threat thereof, which might result in the encumbrance of the Subscription Hardware.
10. **OPERATION, ALTERATIONS, MAINTENANCE AND INSPECTION OF THE HARDWARE.** Customer shall be responsible for the maintenance and repair of Sold Hardware subject to the warranties set forth in Section 5. Perry Weather shall be responsible for maintenance and repair to any Subscription Hardware, including labor, material, parts, and similar items, necessitated by normal wear and tear; however, subject to the warranties in Section 5, Customer shall be responsible for maintenance and repair to Subscription Hardware made necessary by reasons other than normal wear and tear, such as vandalism, theft, hail, wind, or damage caused by neglect. In the case of maintenance or repair to Subscription Hardware required due to reasonable wear and tear, Perry Weather shall bear such expense and perform such maintenance and repair as soon as practical or, in the alternative, it may provide a reasonably similar replacement of said Subscription Hardware. Customer shall use the Hardware in a careful and proper manner and shall comply with all laws, ordinances, regulations and instruction from Perry Weather relating to the possession, use, or maintenance of the Hardware. Customer agrees that it will make no alterations to any Subscription Hardware without obtaining prior written permission from Perry Weather. If Customer desires that Perry Weather physically relocate Hardware after initial installation, additional service fees will apply. All additions and improvements to the Subscription Hardware of any kind shall immediately become the property of Perry Weather and subject to the terms of this Agreement. Customer agrees to keep the Subscription Hardware in good repair and operating condition, allowing for reasonable wear and tear. Customer shall promptly notify Perry Weather within three (3) business days following any event or occurrence that would require maintenance or repair to the Subscription Hardware. The amount payable under this Agreement shall not be reduced by the loss of use of any Hardware. Perry

Weather shall have the right at any time, following seventy-two (72) hours prior written notice to Customer, to enter the premises occupied by the Subscription Hardware and shall be given free access thereto and afforded necessary facilities for the purpose of inspection.

11. **RISK OF LOSS.** Customer hereby assumes all risks of loss of and damage to the Hardware from any cause and agrees to return any Subscription Hardware to Perry Weather in as good condition as when received, normal wear and tear excepted. No loss of or damage to the Hardware shall impair any obligation of Customer under this Agreement, and all such obligations shall continue in full force and effect until otherwise discharged.
12. **RETURN OF HARDWARE.** Upon termination of this Agreement, Customer agrees to deliver, at Customer's sole cost and expense, the Subscription Hardware in good condition, ordinary wear and tear resulting from proper use thereof alone excepted, and free and clear of encumbrances, to Perry Weather, or allow Perry Weather to enter the premises occupied by the Subscription Hardware to remove such Subscription Hardware. In the event Customer elects to have Perry Weather remove the Subscription Hardware, Customer agrees to pay an uninstallation fee equal to \$995 per unit or piece of Subscription Hardware removed.
13. **LIABILITY. CUSTOMER AND SUBSEQUENT USERS OF SOFTWARE AND HARDWARE HEREBY WAIVE AND RELEASE PERRY WEATHER FROM ANY LIABILITY FOR DAMAGE CAUSED BY METEOROLOGICAL CONSULTING, SOFTWARE AND HARDWARE OPERATION ON ANY PREMISES.**
14. **LIMITATION OF LIABILITY.** IN NO EVENT SHALL EITHER PARTY BE LIABLE UNDER THIS AGREEMENT TO THE OTHER PARTY, OR ANY THIRD PARTY, FOR ANY INCIDENTAL, CONSEQUENTIAL, NOMINAL, INDIRECT, STATUTORY, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, DIMINUTION IN VALUE, LOSS OF USE, LOSS OF TIME, INCONVENIENCE, LOST BUSINESS OPPORTUNITIES, DAMAGE TO GOOD WILL OR REPUTATION, AND COSTS OF COVER, REGARDLESS OF WHETHER SUCH LIABILITY IS BASED ON BREACH OF CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, AND EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR SUCH DAMAGES COULD HAVE BEEN REASONABLY FORESEEN. EACH PARTY'S ENTIRE AGGREGATE LIABILITY FOR ANY CLAIMS RELATING TO THIS AGREEMENT, INCLUDING ATTORNEYS' FEES, SHALL NOT EXCEED THE FEES PAID AND PAYABLE BY THE CUSTOMER TO PERRY WEATHER UNDER THIS AGREEMENT IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENTS GIVING RISE TO SUCH LIABILITY. THE LIMITATIONS IN THIS SECTION DO NOT APPLY TO CUSTOMER'S PAYMENT OBLIGATIONS OR CUSTOMER'S LIABILITY FOR DAMAGE TO THE HARDWARE. THIS SECTION SHALL SURVIVE THE TERMINATION OF THE AGREEMENT.
15. **DATA RIGHTS.** Perry Weather hereby grants to Customer a single, non-exclusive license to use any Software furnished to Customer as identified on the Order Form and/or Quote. Customer shall not have the right to assign, sublicense, distribute or otherwise transfer such license. No title to or ownership of the Software or any unmodified parts thereof is transferred to Customer under this license. Customer shall not copy any Software in whole or in part.
16. **INDEMNIFICATION.** Perry Weather will indemnify Customer as to any rightful claim that Customer's use or sale of Products infringes a United States patent or copyright. Customer agrees to indemnify, defend and hold Perry Weather, its affiliates, and their respective officers, directors, employees and agents harmless from and against all third-party claims, losses, liabilities, damages, expenses and costs, including attorney's fees and court costs, arising out of or relating to the Perry Weather

To the extent authorized by Texas law,

Hardware, Software, or Meteorological Consulting provided under this Agreement. The party seeking indemnification shall provide the indemnifying party with prompt written notice of any claim and give complete control of the defense and settlement of the indemnifying party, and shall cooperate with the indemnifying party, its insurance company and its legal counsel in its defense of such claim(s); if, however, Customer is indemnifying Perry Weather for a claim that Perry Weather, the Hardware, and/or the Software infringes the intellectual property rights of a third party, Perry Weather shall have complete control of the defense and settlement of said claim. This indemnity shall not cover any claim in which there is a failure to give the indemnifying Party prompt notice to the extent such lack of notice prejudices the defense of the claim. In the defense or settlement of a claim, or if use of the Hardware or Software is enjoined, Perry Weather may, at its expense and option: (a) procure for Customer the right to continue using the Hardware or Software; (b) replace or modify the Hardware or Software so they become non-infringing; or if neither of these is practical, (c) grant Customer a credit for the Hardware or Software as depreciated and accept return of the Hardware or Software as applicable. Depreciation shall be an equal yearly amount over the lifetime of the Hardware or Software, as established by Perry Weather. Perry Weather will not be liable to Customer for any claim that is based upon: (i) use of the Hardware or Software in modified form or in a manner for which they were not designed; (ii) use of the Hardware or Software in combination with goods or services not provided by Perry Weather; (iii) use of the Hardware or Software in practicing any process; or (iv) furnishing to Customer of any information, service or applications assistance. The foregoing states the entire liability of Perry Weather with respect to infringement of patents or copyrights by any Hardware or Software provided by Perry Weather.

17. **GOVERNING LAW, VENUE, ARBITRATION.** The validity, construction, and interpretation of the terms and conditions herein and all rights and duties of Perry Weather and Customer, and all matters related to the products and services covered by this Agreement, shall be governed by the substantive laws of the State of Texas without regard to conflict of laws rules that would confer the matter in question to a state other than Texas. Customer and Perry Weather agree that any action brought by Customer against Perry Weather shall be venued only in the City of Dallas in the State of Texas. Other than litigation by Perry Weather to collect an amount due from Customer pursuant to this Agreement or a suit for injunctive relief, any dispute, controversy or claim arising out of or related in any manner to this Agreement which cannot be amicably resolved by the Parties shall be solely and finally settled by arbitration administered by the American Arbitration Association in accordance with its commercial arbitration rules. Any claim shall be brought individually on behalf of the person or entity seeking relief, not on behalf of a class or other persons or entities not participating in the arbitration, and shall not be consolidated with the claim of any other person. Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof in Dallas, Texas. The arbitration shall take place before a panel of one (1) arbitrator sitting in Dallas, Texas. The arbitrator will make the initial determination of whether a dispute between the Parties is subject to this arbitration clause or is otherwise required to be arbitrated. The language of the arbitration shall be English. The arbitrators will be bound to adjudicate all disputes in accordance with the laws of the State of Texas. The decision of the arbitrators shall be in writing with written findings of fact and shall be final and binding on the Parties. Each Party shall bear its own costs relating to the arbitration proceedings irrespective of its outcome. This section provides the sole recourse for any disputes arising out of, in connection with, or related to this Agreement, except that a Party may seek a preliminary injunction or other injunctive relief in any court of competent

jurisdiction in Dallas, Texas if in its reasonable judgment such action is necessary to avoid irreparable



18. **EXTRAORDINARY CIRCUMSTANCES.** Except for Customer's payment obligations under this Agreement, neither Perry Weather nor the Customer shall be liable for nonperformance caused by circumstances beyond their control, including but not limited to, work stoppages, pandemics, floods, lightning and all other acts of God.
19. **ENTIRE AGREEMENT.** This Agreement is the entire agreement between Customer and Perry Weather regarding the subject matter of this Agreement, and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter.
20. **ASSIGNMENT.** Customer shall not assign this Agreement, or any interest in this Agreement, without Perry Weather's prior written consent, which consents shall be in Perry Weather's sole discretion. Customer shall not provide access to Software, or any part of it, to any third parties without Perry Weather's prior written consent, which consent shall be in Perry Weather's sole discretion. Perry Weather may assign this Agreement at its sole discretion. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the Parties, their respective successors and permitted assigns.
21. **EQUITABLE REMEDIES.** The parties agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof and that the parties shall be entitled to equitable relief, including injunctive relief or specific performance of the terms hereof, in addition to any other remedy to which they are entitled at law or in equity.
22. **ATTORNEYS' FEES.** In the event that any party institutes any legal suit, action, or proceeding, including arbitration, against the other party to enforce the covenants contained in this Agreement (or obtain any other remedy in respect of any breach of this Agreement), the prevailing party in the suit, action, or proceeding shall be entitled to receive, in addition to all other damages to which it may be entitled, the costs incurred by such party in conducting the suit, action, or proceeding, including reasonable attorneys' fees and expenses and court costs.
23. **NOTICES.** All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "Notice") shall be in writing to the parties at the addresses set forth in the Agreement (or to such other address that may be designated by the receiving party from time to time in accordance with this Section). All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), or email (with confirmation of transmission), or certified or registered mail (in each case, return receipt requested, postage pre-paid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt by the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.
24. **SEVERABILITY.** If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.
25. **WAIVER.** No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach, or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial

exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

26. RELATIONSHIP OF THE PARTIES. Nothing herein shall be construed to create a joint venture or partnership between the parties hereto or an employee/employer or agency relationship. Neither party hereto shall have any express or implied right or authority to assume or create any obligations on behalf of or in the name of the other party or to bind the other party to any contract, agreement, or undertaking with any third party.

27. MISCELLANEOUS. Each term and provision of this Agreement that should by its sense and context survive any termination or expiration of this Agreement, shall so survive regardless of the cause and even if resulting from the material breach of either Party to this Agreement. Each of the sections contained in this Agreement will be enforceable independently of every other section in this Agreement, and the invalidity or non-enforceability of any section will not invalidate or render unenforceable any other section contained in this Agreement. Perry Weather may amend this Agreement from time to time by sending Customer written notice thereof via email and/or a notice displayed within the web application. Such amendment will be deemed accepted and become effective immediately (the "Proposed Amendment Date") unless Customer gives Perry Weather written notice of rejection of the amendment within 30 days of the notice. In case of such rejection, this Agreement will continue under its original provisions, and the amendment will become effective at the start of Customer's next renewal term following the Proposed Amendment Date (unless Customer first terminates this Agreement pursuant to Section 4). This Agreement may not be amended in any other way except through a written agreement signed by Perry Weather and Customer. Rates are subject to increase annually, limited in non-renewal years to the greater of: the Consumer Price Index for all Urban Consumers (CPI), or three percent (3%). This Agreement may be executed in one or more counterparts, each of which when executed shall be deemed to be an original but all of which shall constitute one and the same Agreement.

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