



PerkWiz Terms and Conditions

These PerkWiz Terms of Use (this “**Agreement**”) apply to your access or use of the PerkWiz websites, mobile sites, and applications (collectively, the “**PerkWiz Sites**”) and the content, features, and services (the “**Services**”) made available by PerkWiz. In this Agreement, “**PerkWiz**” and “**we**” mean the PerkWiz company that is providing the Services to you, and with whom you are entering into this Agreement, which depends on the country in which you reside. The terms “**User**” and “**you**” mean any user of the Services. This Agreement incorporates PerkWiz’s standard policies, procedures, and terms and conditions for use of the Services that are referenced by name or by links in this Agreement (collectively, the “**PerkWiz Policies**”).

By accessing or using the Services or by clicking “accept” or “agree” to this Agreement,

1. You must be 18 years or older or at least the age of majority in the jurisdiction where you reside or from which you use this Service.
2. You acknowledge that PerkWiz will use the email address you provide as the primary method for communication.
3. To access and use the Services, you must register for a PerkWiz account (“Account”) by providing your full legal name, current address, phone number, a valid email address, and any other information indicated as required. PerkWiz may reject your application for an Account, or cancel an existing Account, for any reason, in our sole discretion.
4. You are responsible for keeping your personal information including password secure. PerkWiz cannot and will not be liable for any loss or damage from your failure to maintain the security of your Account and password.
5. You are responsible for all activity and content such as photos, images, videos, graphics, written content, audio files, code, information, or data uploaded, collected, generated, stored, displayed, distributed, transmitted or exhibited on or in connection with your Account (“Materials”).
6. A breach or violation of any term in the Terms of Service, including the AUP, as determined in the sole discretion of PerkWiz will result in an immediate termination of your services.

THIS AGREEMENT CONTAINS, AMONG OTHER THINGS, AN ARBITRATION PROVISION CONTAINING A CLASS ACTION WAIVER APPLICABLE TO USERS

WHO ARE RESIDENTS OF THE UNITED STATES (INCLUDING ITS POSSESSIONS AND TERRITORIES), MEXICO AND CANADA.

PerkWiz may update or revise this Agreement (including any PerkWiz Policies) from time to time. You agree that you will review this Agreement periodically. You are free to decide whether or not to accept a modified version of this Agreement, but accepting this Agreement, as modified, is required for you to continue using the Services. You may have to click “accept” or “agree” to show your acceptance of any modified version of this Agreement. If you do not agree to the terms of this Agreement or any modified version of this Agreement, you must terminate your use of the Services, in which case you will no longer have access to your Account (as defined below). Except as otherwise expressly stated by PerkWiz, any use of the Services (e.g., the use of the Booking Services (as defined herein), Hourly Services (as defined herein), Payment Services (as defined herein), or the purchase of PerkWiz Gift Card or Merchant Gift Card (each, as defined herein)) is subject to the version of this Agreement in effect at the time of use.

Part I - Booking Services

1. **Restaurant Bookings.** PerkWiz provides retailer booking services (the “**Booking Services**”) and hourly specials (the “**Hourly Services**”) through the PerkWiz Sites to User for the purpose of assisting User in securing dining reservations or joining a waitlist at participating third-party restaurants (each, a “**Restaurant**”). In response to a User’s online request for a Restaurant reservation or to join a waitlist through the PerkWiz Sites, PerkWiz contacts the Restaurant’s computerized database of reservations and waitlists, as applicable. The availability of reservations, estimated wait time or place in line on a waitlist is determined at the time of User’s query and based on information provided to PerkWiz by the Restaurant. Once a reservation or waitlist request is made by User through the PerkWiz Sites, PerkWiz will provide confirmation of the reservation or waitlist status to User by email or other electronic messages as has been agreed to by User. By using the Booking Services or Hourly Services, User agrees to receive reservation and waitlist confirmations, updates, modifications and/or cancellations by email or other electronic messages.

2. **No-Show Policy.** PerkWiz is committed to providing superior quality services to Users and Restaurants. To assist us in maintaining a consistently high level of service for the Restaurants and their patrons, Users must cancel any reservations that they will be unable to honor at least 30 minutes in advance of the reservation. You may cancel your reservation via the PerkWiz Sites or by calling the Restaurant directly. Some Restaurants may require a debit or credit card number to finalize your reservation. In order to use the Booking Services for these Restaurants, you must provide valid debit or credit card information. To confirm that the debit or credit card information you have

provided is accurate, we may place a temporary authorization on your debit or credit card at the time you provide your debit or credit card information. After we verify that your debit or credit card information is accurate, usually within a few days, the authorization will be removed. You may be required to cancel your reservation in accordance with the Restaurant's cancellation policy, which is disclosed at the time the reservation is made. PerkWiz uses this debit or credit card information as described in our privacy policy and shall have no liability for any charges made to the debit or credit card account for any failure to cancel your reservation in accordance with a Restaurant's cancellation policy.

If you are unable to keep your reservation and you fail to cancel at least 30 minutes in advance of the reservation, PerkWiz will send you an email letting you know that our records indicate that you were a no-show. Upon arriving at the Restaurant, it is the User's responsibility to notify the host that the User has a reservation. By using the Booking Services, User agrees to receive no-show notifications by email after a report that your reservation was not honored, whether or not that was in fact the case. Your Account will be suspended if you are a no-show for four reservations within a 12-month period. If you receive a no-show notification email in error, please email us for information on how to dispute it. User agrees that all final no-show determinations will be made by PerkWiz in its sole discretion.

If you wish to remove yourself from a waitlist you have joined through the Hourly Services, you can do so by managing your place in line through the PerkWiz Sites or by calling the Restaurant. Failure to appear at the Restaurant in a timely manner may result in the Restaurant bypassing your place on the waitlist for other guests or removing you from the waitlist entirely.

3. **PerkWiz Rewards.** Depending on your country of residency, you may be able to participate in PerkWiz's rewards program ("**PerkWiz Rewards**"). Where applicable, participation is subject to the terms and conditions.

4. **Usage Guidelines.** User agrees to use the Booking Services or Hourly Services only to book reservations or join waitlists at Restaurants and then honor those reservations or waitlist requests by arriving at the Restaurants on time and ordering and paying for meals. User further agrees not to book more than one reservation or join more than one waitlist for User's personal use during any one meal time (e.g., lunch, dinner, etc.). Administrative assistant and/or concierges may be able to book multiple reservations through PerkWiz's Administrative Assistant and/or Concierge programs, subject to any applicable program terms. Resale or attempted resale of reservations or waitlist spots is prohibited and is grounds for, among other things, cancellation of your reservations, removal from the waitlist or termination of your access to the Services.

Part II – Payment, Gift Card and Other Services

5. Payment, Gift Card and Other Services. Depending on your country of residency, PerkWiz may offer additional Services such as payment services made available by PerkWiz through the PerkWiz Sites (the “**Payment Services**”), electronic and physical gift cards and gift certificates issued by PerkWiz (each, an “**PerkWiz Gift Card**”), electronic gift cards and gift certificates issued by participating third-party restaurants (each, a “**Merchant Gift Card**”) and other services. The additional terms applicable to such Services are available here, and form a part of this Agreement.

Part III – Terms for All Services

6. Privacy Policy. PerkWiz is committed to helping you safeguard your privacy online. Please review our privacy policy for details about how we collect, use, and disclose information in connection with the Services.

7. Your Account. You may (but are not required to) create an account with PerkWiz through the PerkWiz Sites (“**Account**”) in order to use the Booking Services, Hourly Services or to purchase, gift, or redeem (as applicable) PerkWiz Gift Cards and Merchant Gift Cards. However, you must have an Account in order to use the Payment Services. When registering for an Account, you must provide true, accurate, current, and complete data about yourself on the PerkWiz registration form (“**Registration Data**”). You also agree to promptly update the Registration Data to keep it true, accurate, current, and complete. You are solely responsible for maintaining the confidentiality of your Account and the information in your Account, and, except as otherwise required by applicable law, you are solely responsible for all use of your Account, whether or not authorized by you. You agree to immediately notify PerkWiz of any unauthorized use of your Account or any other breach of security related to your use of the Services.

8. Communications from PerkWiz. If you use our Sites and Services, PerkWiz may communicate with you via electronic messages, including email, text message/SMS, or mobile push notifications in accordance with our privacy policy.

9. Technical Requirements. Use of the Services requires Internet access through your computer or mobile device. You are responsible for all mobile carrier data or text message charges resulting from your use of the Services, including from any notifications provided by the Services. In order to use the text message based services, you must maintain an active account with a carrier of electronic communications through mobile devices and you may not use a prepaid cellular phone to access such text message services. PerkWiz does not guarantee that the Services will be compatible with all devices or will be supported by all mobile carriers. You may be required to have JavaScript (or similar technologies) enabled to use the PerkWiz Site, and some features and portions of the PerkWiz Site (including, but not limited to, making, modifying, or canceling reservations) may not be accessible with JavaScript disabled.

10. Modifications to Services. PerkWiz reserves the right, in its sole discretion, to modify the Services from time to time and without notice, including, without limitation, by removing, adding, or modifying portions of the PerkWiz Sites, Restaurants, and/or Merchants. PerkWiz shall have no liability to you for any of the foregoing actions. If you object to any such changes, your sole recourse shall be to cease using the Services. Continued use of the Services following any such changes shall indicate your acknowledgment of such changes and satisfaction with all the Services.

11. Intellectual Property Rights and Grant of Rights to User. The features, information, and materials provided and depicted through the Services are protected by copyright, trademark, patent, and other intellectual property laws. All text, graphical content, video, data, and other content made available through the Services (collectively, the “**PerkWiz Content**”) are provided to User by PerkWiz or its partners or licensors solely to support User’s permitted use of the Services. The PerkWiz Content may be modified from time to time by PerkWiz in its sole discretion. Except as expressly set forth herein, no license is granted to User for any other purpose, and any other use of the Services or the PerkWiz Content by User shall constitute a material breach of this Agreement. PerkWiz and its partners or licensors retain all rights in the Services and PerkWiz Content and any associated patents, trademarks, copyrights, mask work rights, trade secrets, or other intellectual property rights. No license, right, or interest in any trademarks of PerkWiz or any third party is granted under this Agreement.

12. Application License. Subject to the terms and conditions of this Agreement, PerkWiz grants User a non-exclusive, non-transferable, revocable license to use the PerkWiz mobile applications, in object code form only, on User’s compatible mobile devices, solely to support User’s permitted use of the Services.

13. Use Restrictions. The Services and PerkWiz Content are offered solely for User’s personal use for the purposes described in this Agreement. Any and all other uses are prohibited. PerkWiz expressly reserves all its rights and remedies under applicable laws (including state, federal, and provincial/territorial laws). PerkWiz reserves the right, in its sole discretion, to refuse service, terminate Accounts, remove or edit content, cancel reservations, or deny access to the Services. You agree not to (and not to allow any third party to): (1) use any deep-link, robot, spider, scraper, or other automatic or manual device, process, or means to access, copy, search, or monitor any portion of the Services or PerkWiz Content, except as expressly authorized by PerkWiz; (2) take any action that imposes or may impose (in PerkWiz’s sole determination) an unreasonable or a disproportionately large load on the Services or PerkWiz’s infrastructure; (3) utilize any device, software, or routine that will interfere or attempt to interfere with the functionality of the Services; (4) rent, lease, copy, provide access to or sublicense any portion of the Services or PerkWiz Content to a third party; (5) use any portion of the Services or PerkWiz Content to provide, or incorporate any portion of the

Services or PerkWiz Content into, any product or service provided to a third party; (6) 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 notice to PerkWiz); (7) modify any Services or PerkWiz Content or create any derivative product from any of the foregoing; (8) remove or obscure any proprietary or other notices contained in the Services or PerkWiz Content; (9) use the Services or PerkWiz Content for any illegal purpose; or (10) publicly disseminate information regarding the performance of the Services or PerkWiz Content or access or use the Services or PerkWiz Content for competitive analysis or benchmarking purposes. Although the PerkWiz Sites may be accessible worldwide, not all features or services discussed, referenced, provided or offered through or on the PerkWiz Sites are available to all persons or in all geographic locations, or appropriate or available for use outside the United States. PerkWiz reserves the right to limit, in its sole discretion, the provision and quantity of any feature or service to any person or geographic area.

14. United States Government End Users. The Services constitute a “commercial item” as defined at 48 C.F.R. 2.101, consisting of “commercial computer software” and “commercial computer software documentation” as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, all U.S. Government end users acquire any PerkWiz Sites with only those rights set forth therein.

15. Export Control. You may not use, export, or re-export any PerkWiz Sites or other aspects of the Services (or any copy or adaptation of the foregoing) in violation of applicable law, including, without limitation, United States and foreign export laws and regulations. You represent and warrant that you are not located in 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 and that you are not listed on any U.S. Government list of prohibited or restricted parties.

16. Termination. PerkWiz may suspend your ability to use all or any element of the Services or may terminate this Agreement effective immediately, without notice or explanation. Without limiting the foregoing, PerkWiz may suspend your access to the Services if we believe you to be in violation of any part of this Agreement (including any PerkWiz Policies). After any suspension or termination, you may or may not be granted permission to use the Services or re-establish an Account, and, where applicable, you may lose access to and be unable to use any accumulated rewards as described in our Terms and Conditions. You agree that PerkWiz shall not be liable to you for any termination of this Agreement or for any effects of any termination of this Agreement. You are always free to discontinue your use of the Services at any time. You

understand that any termination of your Account may involve deletion of any content stored in your Account for which PerkWiz will have no liability whatsoever.

17. Reviews, Comments, Communications, and Other Content. The Services may permit you to submit, transmit, post or otherwise provide content, including, but not limited to, reviews, comments, ratings, photos, images, videos, sounds, text, data, links and location information; send emails and other communications; and submit suggestions, ideas, comments, questions, or other information (“**User Content**”). Any such User Content must not be illegal, threatening, obscene, racist, defamatory, libelous, pornographic, infringing of intellectual property rights, promoting of illegal activity or harm to groups and/or individuals, invasive of a third party’s publicity or privacy rights, purposely false or otherwise injurious to third parties, or objectionable and must not consist of or contain software, computer viruses, commercial solicitation, political campaigning, chain letters, mass mailings, any form of “spam” or references to illegal activity, malpractice, purposeful overcharging, false advertising, or health code violations (e.g., foreign objects in food, food poisoning, etc.). Your User Content should be unbiased and objective. You may not submit reviews, comments or ratings for which you are being compensated in any manner, or for your own restaurant or any restaurant of your employer, friend, relative or a competitor. You may not use a false email address, impersonate any person or entity, or otherwise mislead as to the origin of User Content. The name or handle you choose to provide to PerkWiz may be displayed publicly with such User Content. PerkWiz reserves the right (but has no obligation) to monitor, remove, or edit User Content in PerkWiz’s sole discretion, including if User Content violates this Agreement (including any PerkWiz Policies), but you acknowledge that PerkWiz may not regularly review submitted User Content. If you do submit User Content, and unless we indicate otherwise, you grant PerkWiz a nonexclusive, perpetual, royalty-free, irrevocable, and fully sublicensable (through multiple tiers, including to restaurants, partners and other third party websites and feeds) right to use, modify, reproduce, adapt, translate, publish, create derivative works from, distribute, display, and otherwise exploit such User Content throughout the world in any media, and, where applicable, you hereby waive any privacy or publicity rights or any similar rights in an individual’s name or likeness in addition to any moral or other rights you may have in the User Content you submit in favor of PerkWiz. You represent that you own, or have the necessary permissions to use and authorize the use of User Content as described herein. PerkWiz takes no responsibility and assumes no liability for any User Content submitted by you or any other User or third party, nor do we guarantee any confidentiality with respect to User Content.

18. Your Representations and Indemnity. You represent and warrant that you own or otherwise control all of the rights to any User Content submitted by you; that all User Content submitted by you is accurate; and that exploitation of such User Content by

PerkWiz and its other Users, partners, and licensees will not violate this Agreement, cause injury to any person or entity, or infringe any third-party rights (including, without limitation, intellectual property rights and rights of privacy or publicity). You will indemnify, hold harmless, and (at PerkWiz's request) defend PerkWiz, its affiliates, and its and their representatives, agents, directors, managers, officers, employees, and shareholders (collectively, the "**PerkWiz Parties**") from and against all claims resulting from (1) any User Content submitted by you, (2) your use of the Services, or (3) any breach or alleged breach by you of this Agreement.

19. Liability Limitations. EXCEPT AS EXPRESSLY SPECIFIED HEREIN, IN NO EVENT SHALL THE PerkWiz PARTIES BE LIABLE FOR ANY INJURIES, LOSSES, CLAIMS, OR DIRECT DAMAGES OR ANY SPECIAL, EXEMPLARY, PUNITIVE, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND, WHETHER BASED IN CONTRACT, TORT, OR OTHERWISE, AND EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, WHICH ARISE OUT OF OR ARE ANY WAY CONNECTED WITH (1) THIS AGREEMENT (INCLUDING ANY CHANGES THERETO), (2) ANY USE OF THE PerkWiz SITES, SERVICES, THE PerkWiz CONTENT, OR THE USER CONTENT, (3) ANY FAILURE OR DELAY (INCLUDING, BUT NOT LIMITED TO, THE USE OR INABILITY TO USE ANY COMPONENT OF ANY OF THE SERVICES), OR (4) YOUR VISIT TO ANY RESTAURANT OR THE PERFORMANCE, NON-PERFORMANCE, CONDUCT, OR POLICIES OF ANY RESTAURANT OR MERCHANT IN CONNECTION WITH THE SERVICES. IN ADDITION, YOU SPECIFICALLY UNDERSTAND AND AGREE THAT ANY THIRD PARTY DIRECTING YOU TO THE PerkWiz SITE BY REFERRAL, LINK, OR ANY OTHER MEANS IS NOT LIABLE TO USER FOR ANY REASON WHATSOEVER, INCLUDING, BUT NOT LIMITED TO, DAMAGES OR LOSS ASSOCIATED WITH THE USE OF THE SERVICES OR THE PerkWiz CONTENT. PerkWiz IS NEITHER AN AGENT OF NOR OTHERWISE ASSOCIATED WITH ANY RESTAURANT FOR WHICH A USER HAS MADE A RESERVATION, CLAIMED AN OFFER OR PROMOTION, OR PAID A BILL USING THE PAYMENT SERVICES OR ANY MERCHANT THAT ISSUES A MERCHANT GIFT CARD. IF YOU ARE A RESIDENT OF THE UK OR EU, THE LIMITATION OF LIABILITY IN THIS AGREEMENT SHALL NOT APPLY TO ANY DAMAGE ARISING FROM OUR WILLFUL MISCONDUCT AND GROSS NEGLIGENCE, NOR SHALL IT APPLY TO DAMAGE FROM INJURY TO LIFE, BODY OR HEALTH.

IF THE DISCLAIMER OF DIRECT DAMAGES ABOVE IS NOT ENFORCEABLE AT LAW, EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THE GIFT CARD TERMS, YOU EXPRESSLY AGREE THAT OUR LIABILITY TO YOU (FOR ANY CAUSE WHATSOEVER AND REGARDLESS OF THE FORM OF THE ACTION) WILL AT ALL TIMES BE LIMITED TO FIFTY US DOLLARS (\$50).

You and PerkWiz understand and agree that the disclaimers, exclusions, and limitations in this Section 19 and in Section 20 are essential elements of this Agreement and that they represent a reasonable allocation of risk. In particular, you understand that PerkWiz would be unable to make the Services available to you except on these terms and agree that this Agreement will survive and apply even if any limited remedy specified in this Agreement is found to have failed of its essential purpose.

20. Disclaimer of Warranties. YOU UNDERSTAND THAT USE OF THE SERVICES IS AT YOUR OWN RISK AND PerkWiz CANNOT GUARANTEE THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE. THE SERVICES, ALL PerkWiz CONTENT, AND ANY OTHER INFORMATION, PRODUCTS, AND MATERIALS CONTAINED IN OR ACCESSED THROUGH THE SERVICES, ARE PROVIDED TO USER ON AN "AS IS" BASIS AND WITHOUT WARRANTY OF ANY KIND. PerkWiz EXPRESSLY DISCLAIMS ALL REPRESENTATIONS, WARRANTIES, CONDITIONS, OR INDEMNITIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NON-INFRINGEMENT, OR ANY WARRANTY ARISING FROM A COURSE OF DEALING, PERFORMANCE, OR TRADE USAGE. PerkWiz DOES NOT WARRANT THAT YOUR USE OF THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE, THAT PerkWiz WILL REVIEW THE INFORMATION OR MATERIALS MADE AVAILABLE THROUGH THE SERVICES FOR ACCURACY OR THAT IT WILL PRESERVE OR MAINTAIN ANY SUCH INFORMATION OR MATERIALS WITHOUT LOSS. PerkWiz SHALL NOT BE LIABLE FOR DELAYS, INTERRUPTIONS, SERVICE FAILURES, OR OTHER PROBLEMS INHERENT IN USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS OR OTHER SYSTEMS OUTSIDE THE REASONABLE CONTROL OF PerkWiz.

THE FOREGOING DISCLAIMERS APPLY TO THE MAXIMUM EXTENT PERMITTED BY LAW. YOU MAY HAVE OTHER STATUTORY RIGHTS. HOWEVER, THE DURATION OF STATUTORILY REQUIRED WARRANTIES, IF ANY, SHALL BE LIMITED TO THE MAXIMUM EXTENT PERMITTED BY LAW.

21. Third-Party Websites, Applications and Services. The Services may contain hypertext links to websites and applications operated by parties other than PerkWiz. Such hypertext links are provided for User's reference only, and PerkWiz does not control such websites and is not responsible for their content. PerkWiz's inclusion of any hypertext links to such websites or applications does not imply any endorsement of the material on such websites or applications or any association with their operators. PerkWiz assumes no liability whatsoever for any such third-party websites, applications or any content, features, products, or services made available through such third-party websites or applications. Additionally, Apple Inc., Google, Inc., Microsoft Corporation or BlackBerry Limited will be a third-party beneficiary to this contract if you access the

Services using applications developed for Apple iOS, Android, Microsoft Windows, or Blackberry-powered mobile devices, respectively. These third party beneficiaries are not parties to this contract and are not responsible for the provision or support of the Services in any manner. Your access to the Services using these devices is subject to terms set forth in the applicable third party beneficiary's terms of service, including any license transferability and other usage rules therein.

22. Release. Restaurants and Merchants are solely responsible for their interactions with you and any and all claims, injuries, illnesses, damages, liabilities, and costs (“**Claims**”) suffered by you (or, if applicable, any recipient of an PerkWiz Gift Card or a Merchant Gift Card) as a result of your (or such recipient’s) interaction with or visit to any Restaurant or Merchant or from any promotion, offer, product or service of any Restaurant or Merchant. Users must resolve all disputes directly with Restaurants. To the maximum extent permitted by applicable law, you hereby release the PerkWiz Parties from any and all such Claims. IN CONNECTION WITH THE FOREGOING, IF YOU ARE A CALIFORNIA RESIDENT, YOU HEREBY WAIVE CALIFORNIA CIVIL CODE SECTION 1542, WHICH STATES: “A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH, IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.” You hereby expressly waive and relinquish all rights and benefits under that section and any law of any jurisdiction of similar effect with respect to the release of any unknown or unsuspected claims you may have against the PerkWiz Parties pertaining to the subject matter of this Section 22. If you are a resident of the UK or EU, this release shall not apply to any damage arising from our willful misconduct or gross negligence, nor shall it apply to damage from injury to life, body or health.

23. Notify Us of Infringers. If you believe any of the Services violate your copyright, notify our copyright agent in writing. The contact information for our copyright agent is at the bottom of this Section.

In order for us to take action, you must do the following in your notice:

- (a) provide your physical or electronic signature;
- (b) identify the copyrighted work that you believe is being infringed;
- (c) identify the item that you think is infringing your work and include sufficient information about where the material is located so that we can find it;
- (d) provide us with a way to contact you, such as your address, telephone number, or email;
- (e) provide a statement that you believe in good faith that the item you have identified as infringing is not authorized by the copyright owner, its agent, or the law to be used in connection with the Services; and

(f) provide a statement that the information you provide in your notice is accurate, and that (under penalty of perjury) you are authorized to act on behalf of the copyright owner whose work is being infringed.

Here is the contact information for our copyright agent:

Copyright Enforcement
copyright@PerkWiz.com

Again, we cannot take action unless you give us all the required information.

24. Severability. If any of the provisions, or portions thereof, of this Agreement are found to be invalid under any applicable statute or rule of law, then, that provision (or portion thereof) notwithstanding, this Agreement shall remain in full force and effect and such provision or portion thereof shall be deemed omitted.

25. Assignment. This Agreement and the rights granted and obligations undertaken hereunder may not be transferred, assigned, or delegated in any manner by User, but may be freely transferred, assigned, or delegated by PerkWiz.

26. Waiver. Any waiver of any provision of this Agreement, or a delay by any party in the enforcement of any right hereunder, shall neither be construed as a continuing waiver nor create an expectation of non-enforcement of that or any other provision or right.

27. ARBITRATION AGREEMENT AND JURY TRIAL WAIVER, CLASS ACTION WAIVER, AND FORUM SELECTION CLAUSE.

If you are a resident of the US (including its possessions and territories) or Canada, you agree that any and all controversies, disputes, demands, counts, claims, or causes of action (including the interpretation and scope of this clause, and the arbitrability of the controversy, dispute, demand, count, claim, or cause of action) between you and the PerkWiz Parties or their successors or assigns shall exclusively be settled through binding and confidential arbitration. If you are a resident in Mexico, you hereby expressly waive any right to exercise a class action before a Mexican court against PerkWiz and PerkWiz Parties, pursuant to the terms of the Federal Code of Civil Procedure (*Código Federal de Procedimientos Civiles*) and any other applicable Mexican legislation.

Arbitration shall be subject to the Federal Arbitration Act and not any state or provincial/territorial arbitration law. The arbitration shall be conducted before one commercial arbitrator with substantial experience in resolving commercial contract disputes from the American Arbitration Association (“**AAA**”). As modified by this Agreement, and unless otherwise agreed upon by the parties in writing, the arbitration will be governed by the AAA’s [Commercial Arbitration Rules](#) and, if the arbitrator deems them applicable, the [Supplementary Procedures for Consumer Related Disputes](#) (collectively, the “**Rules and Procedures**”).

In the case of arbitration and where permitted by law, you are thus agreeing to GIVE UP YOUR RIGHT TO GO TO COURT to assert or defend your rights EXCEPT for matters that you file in small claims court. Your rights will be determined by a NEUTRAL ARBITRATOR and NOT a judge or jury. You are entitled to a FAIR HEARING, BUT the arbitration procedures are SIMPLER AND MORE LIMITED THAN RULES APPLICABLE IN COURT. Arbitrator decisions are as enforceable as any court order and are subject to VERY LIMITED REVIEW BY A COURT.

In the case of arbitration and where permitted by law, you and PerkWiz must abide by the following rules: (1) ANY CLAIMS BROUGHT BY YOU OR PerkWiz MUST BE BROUGHT IN THE PARTY'S INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING; (2) THE ARBITRATOR MAY NOT CONSOLIDATE MORE THAN ONE PERSON'S CLAIMS, MAY NOT OTHERWISE PRESIDE OVER ANY FORM OF A REPRESENTATIVE OR CLASS PROCEEDING, AND MAY NOT AWARD CLASS-WIDE RELIEF; (3) in the event that you are able to demonstrate that the costs of arbitration will be prohibitive as compared to costs of litigation, PerkWiz will pay as much of your filing and hearing fees in connection with the arbitration as the arbitrator deems necessary to prevent the arbitration from being cost-prohibitive as compared to the cost of litigation; (4) PerkWiz also reserves the right in its sole and exclusive discretion to assume responsibility for all of the costs of the arbitration; (5) the arbitrator shall honor claims of privilege and privacy recognized at law; (6) the arbitration shall be confidential, and neither you nor we may disclose the existence, content or results of any arbitration, except as may be required by law or for purposes of enforcement of the arbitration award; (7) the arbitrator may award any individual relief or individual remedies that are permitted by applicable law; and (8) each side pays its own attorneys' fees and expenses unless there is a statutory provision that requires the prevailing party to be paid its fees and litigation expenses, and, in such instance, the fees and costs awarded shall be determined by the applicable law.

Notwithstanding the foregoing, either you or PerkWiz may bring an individual action in small claims court. Further, claims of defamation, violation of the Computer Fraud and Abuse Act, and infringement or misappropriation of the other party's patent, copyright, trademark, or trade secret shall not be subject to this arbitration agreement. Such claims shall be exclusively brought in the state or federal courts located in San Francisco County, California. Additionally, notwithstanding this agreement to arbitrate, either party may seek emergency equitable relief before the state or federal courts located in San Francisco County, California in order to maintain the status quo pending arbitration, and hereby agree to submit to the exclusive personal jurisdiction of the courts located within San Francisco County, California for such purpose. A request for interim measures shall not be deemed a waiver of the right to arbitrate.

With the exception of PerkWiz Parties (1) and (2) in this Section (prohibiting arbitration on a class or collective basis), if any part of this arbitration provision is deemed to be invalid, unenforceable, or illegal, or otherwise conflicts with the Rules and Procedures, then the balance of this arbitration provision shall remain in effect and shall be construed in accordance with its terms as if the invalid, unenforceable, illegal or conflicting part was not contained herein. If, however, either subpart (1) or (2) is found to be invalid, unenforceable, or illegal, then the entirety of this arbitration provision shall be null and void, and neither you nor PerkWiz shall be entitled to arbitration. If for any reason a claim proceeds in court rather than in arbitration (including any claims brought by parties outside the United States or Canada), the dispute shall be exclusively brought in state or federal court located in San Francisco County, California.

For more information on AAA, the Rules and Procedures, or the process for filing an arbitration claim, you may call AAA or visit their website at <http://www.adr.org>.

28. Choice of Law. This Agreement is made under and shall be governed by and construed in accordance with the laws of the State of California, U.S.A, consistent with the Federal Arbitration Act (to the extent permitted by applicable law), without giving effect to any principles that provide for the application of the law of another jurisdiction. You may also be entitled to certain consumer protection rights under the laws of your local jurisdiction and/or country of residency. If you are a resident of a European Union member country, parties may be able to resolve consumer disputes in the way of alternative dispute resolution on the ODR platform of the European Commission. The platform is available at <http://ec.europa.eu/consumers/odr>.

29. Payment of Fees You will pay the Fees applicable to your subscription to Online Service and/or POS Services (“Subscription Fees”) and any other applicable fees, including but not limited to applicable fees relating to the value of sales made through your store when using all payment providers other than PerkWiz Payments (“Transaction Fees”), and any fees relating to your purchase or use of any products or services such as PerkWiz Payments, POS Equipment, shipping, apps, Themes, domain names, Experts Marketplace, or Third Party Services (“Additional Fees”). Together, the Subscription Fees, Transaction Fees and the Additional Fees are referred to as the “Fees”. You must keep a valid credit card on file with us to pay for all incurred and recurring Fees. PerkWiz will charge applicable Fees to the credit card account that you authorize (“Authorized Card”), and PerkWiz will continue to charge the Authorized Card (or any replacement card) for applicable Fees until the Services are terminated, and any and all outstanding Fees have been paid in full. Unless otherwise indicated, all Fees and other charges are in U.S. dollars, and all payments shall be in U.S. currency. Subscription Fees are paid in advance and will be billed in 30 day intervals (each such date, a “Billing Date”). Transaction Fees and Additional Fees will be charged from time

to time at Perkwiz's discretion. You will be charged on each Billing Date for all outstanding Fees that have not previously been charged. Fees will appear on an invoice, which will be sent to the Account Owner via the email provided. As well, an invoice will appear on the Account page of your Perkwiz administration console. Users have approximately two weeks to bring up and settle any issues with the billing of Subscription Fees. If we are not able to process payment of Fees using the Authorized Card, we will make a second attempt to process payment using the Authorized Card 3 days later. If the second attempt is not successful, we will make a final attempt 3 days following the second attempt. If our final attempt is not successful, we may suspend and revoke access to your Account. Your Account will be reactivated upon your payment of any outstanding Fees, plus the Fees applicable to your next Billing Cycle. You will not be able to access your Account during any period of suspension. If the outstanding Fees remain unpaid for 60 days following the date of suspension, Perkwiz reserves the right to terminate your Account. All Fees are exclusive of applicable federal, provincial, state, local or other governmental sales, goods and services, harmonized or other taxes, fees or charges now in force or enacted in the future ("Taxes"). You are responsible for all applicable Taxes that arise from or as a result of your subscription to or purchase of Perkwiz's products and services. These Taxes are based on the rates applicable to the billing address you provide to us. Such amounts are in addition to the Fees for such products and services and will be billed to your Authorized Card. If you are exempt from payment of such Taxes, you must provide us with evidence of your exemption, which in some jurisdictions includes an original certificate that satisfies applicable legal requirements attesting to tax-exempt status. Tax exemption will only apply from and after the date we receive evidence satisfactory to Perkwiz of your exemption. If you are not charged Taxes by Perkwiz, you are responsible for determining if Taxes are payable, and if so, self-remitting Taxes to the appropriate tax authorities in your jurisdiction. You must maintain your current location in the administration menu of your Perkwiz store and promptly update your location if you move jurisdictions. If you change jurisdictions you must promptly update your location in the administration menu. Perkwiz does not provide refunds. WHICH MEANS A valid credit card is required for all stores. You will be billed for your Subscription Fees every 30 days. Any Transaction Fees or Additional Fees will be charged to your credit card. If we are not able to process payment of Fees using your credit card, we will try your credit card again 3 days following the initial failed attempt. If we are unable to process payment of Fees on the second attempt, we will attempt to process payment of Fees on your credit card a third and final time 3 days following the second attempt. If payment of Fees is unsuccessful after three attempts, Perkwiz may freeze your store. You may be required to remit Taxes to Perkwiz or to self-remit to your local taxing authority. No refunds.

12. Cancellation and Termination You may cancel your Account at any time by

emailing support@perkwiz.com and then following the specific instructions indicated to you in Perkwiz's response. Upon termination of the Services by either party for any reason: Perkwiz will cease providing you with the Services and you will no longer be able to access your Account; unless otherwise provided in the Terms of Service, you will not be entitled to any refunds of any Fees, pro rata or otherwise; any outstanding balance owed to Perkwiz for your use of the Services through the effective date of such termination will immediately become due and payable in full; and your store website will be taken offline. If you purchased a domain name through Perkwiz, upon cancellation your domain will no longer be automatically renewed. Following cancellation, it will be your sole responsibility to handle all matters related to your domain with the domain provider. If at the date of termination of the Service, there are any outstanding Fees owing by you, you will receive one final invoice via email. Once that invoice has been paid in full, you will not be charged again. We reserve the right to modify or terminate the Perkwiz Service or your Account for any reason, without notice at any time. Fraud: Without limiting any other remedies, Perkwiz may suspend or terminate your Account if we suspect that you (by conviction, settlement, insurance or escrow investigation, or otherwise) have engaged in fraudulent activity in connection with the Site.