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# TERMS OF SERVICE



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# CATCHPROBE TERMS OF SERVICE

This CatchProbe Terms of Service (“TOS”) are between CatchProbe, Inc. (“CatchProbe”) and the customer (“Customer”) who accepts this TOS, or accesses and/or uses the CatchProbe Solutions (as defined below). This TOS govern Customer’s subscription to the CatchProbe Solutions and constitute a binding contract in connection with any paid or Evaluation use of the Solutions.

This is a legal, enforceable contract between Customer and CatchProbe, and by executing this TOS, and where no signature box is available, by clicking the “Log In” button to access the Solutions, or otherwise indicating Customer’s consent to the TOS electronically or through access or use of the CatchProbe Solutions (and such time “Effective Date”), Customer expressly agree to be bound by this TOS. If Customer is entering this TOS on behalf of another entity or person, Customer hereby represents to CatchProbe that Customer has the authority to bind Customer and its affiliates to this TOS through such consent or use of the Solutions. If Customer does not have such authority, or if Customer does not agree to this TOS, Customer may not subscribe to or use the CatchProbe Solutions. CatchProbe’s may amend this TOS from time to time in its sole discretion, in which case the new TOS will supersede prior versions. Customer’s continued use of the Solutions or Services following the posting of updated terms of the TOS means that Customer accepts and agrees to the changes. Capitalized terms will have the meaning assigned to such terms where defined throughout this TOS. Each of CatchProbe or Customer is sometimes described in this TOS as a “Party” and together, “Parties,” which Parties agree as follows:

## 1. Definitions

**1.1. "Affiliate(s)"** means any entity that directly, or indirectly through intermediaries, controls, is controlled by, or is under common control with a Party. The license granted to Customer herein includes the right to connect Customer’s Affiliates’ Endpoints to the Solutions so as to provide the Solutions to such Affiliates’ Endpoints, provided that Customer agrees to remain fully responsible and liable under this TOS for Customer’s Affiliates’ use of the Solutions.

**1.2. “Confidential Information”** means all information disclosed (whether in oral, written, or other tangible or intangible form) by one Party (the “Disclosing Party”) to the other Party (the “Receiving Party”) concerning or related to this TOS or the Disclosing Party that is marked as confidential or proprietary, or that the Receiving Party knows or reasonably should know is confidential information of the Disclosing Party given the facts and circumstances surrounding the disclosure of the information by the Disclosing Party. Confidential Information includes, but is not limited to, this TOS, proprietary and/or non-public technical, business, commercial, financial and/or legal information, such as, without limitation, any and all Solutions information generally shared with Customer and as specifically related to Customer, Solutions Information gained by Customer through use of the Solutions, business plans, product information, pricing, financial plans, know how, Customer information, strategies, and other similar information, but excluding Customer Data and System Data.

**1.3. “Current Release”** means the most recent release of the Solutions.

**1.4. “Customer Data”** means all data and information associated with Customer, which is uploaded to, processed by, generated by, and/or stored within the Solutions by Customer or through Customer’s use of the Solutions or provided in support tickets, but excluding System Data.

**1.5. “Documentation”** means CatchProbe’s then-current published documentation such as technical user guides, installation instructions, articles or similar documentation specifying the functionalities of the Solutions and made available by CatchProbe to Customer.

**1.6. “Endpoint”** means physical or virtual computing devices and/or computing environments that can process data.

**1.7. “Enhancements”** means any updates, patches, bug fixes and versions to the Solutions made by CatchProbe and provided to Customer.

**1.8. “Evaluation”** means for the limited purpose of accessing and installing the Solutions for internal evaluation by Licensor who is considering purchase of CatchProbe Solutions but without any obligation to enter into any further agreement.

**1.9. “Intellectual Property Rights”** means all patents, copyrights, moral rights, trademarks, trade secrets and any other form of intellectual property rights recognized in any jurisdiction, including applications and registrations for any of the foregoing.

**1.10. “Purchase Order”** means a document agreed to in writing and executed among Customer and a Partner that references a Quote covering Customer’s subscription to Solutions or Evaluation offering.

**1.11. “Partner”** means an authorized CatchProbe partner such as a reseller.

**1.12. “Other CatchProbe Services and Products”** means CatchProbe Services and/or CatchProbe products that are not the Solutions.

**1.13. “Other Services”** means third party products, applications, services, software, networks or other systems or information sources that link to the Solutions through CatchProbe’s open APIs.

**1.14. “CatchProbe”** means CatchProbe, Inc.

**1.15. “CatchProbe Services”** means CatchProbe Support and Management services (“TAM”), CatchProbe’s products and services.

**1.16. “CatchProbe Support”** means services related to the Solutions, software tools and/or applications from CatchProbe, including but not limited to support services.

**1.17. “Site”** means CatchProbe’s website at <https://www.catchprobe.com/>.

**1.18. “Solution(s)”** means CatchProbe’s platform including its deception, detection and response solutions, and other solutions offered by CatchProbe over time, directly or through a Partner, together with the software underlying such products and services and any Enhancements.

**1.19. “System Data”** means anonymized data, any threat or potential threat detections collected by the Solutions generated by the Solutions.

**1.20. “Third Party Service”** means a third party that manages the installation, onboarding and/or operation of the Solutions on Customer’s behalf.

**1.21. “Quote”** means a quote from CatchProbe for the Solutions, CatchProbe Services, and/or other CatchProbe Services.

## 2. License

**2.1. Purchase Order.** For a Purchase Order to be valid, it must be executed by both the Customer and CatchProbe, by a Partner and Customer, or by a Partner if the executed Purchase Order references and accepts a corresponding Quote. Unless otherwise expressly specified in the Purchase Order executed by CatchProbe, this TOS shall supersede any conflicting terms in a Purchase Order.

**2.2. Scope of Agreement.** This TOS governs Customer’s purchase of a subscription to the Solutions. Customer agrees to accept all Enhancements necessary for the proper function of the Solutions as released by CatchProbe from time to time, and further agrees that CatchProbe shall not be responsible for the proper performance of the Solutions or security issues encountered with the Solutions related to Customer’s failure to accept Enhancements in a timely manner.

**2.3. Related Services and Products.** As an active Customer subscribing to the Solutions under this TOS, during the Subscription Term, Customer may receive and/or subscribe to Other CatchProbe Services and Products as detailed in a relevant Purchase Order listing any such Other CatchProbe Services and Products. Customer’s subscription to such Other CatchProbe Services and Products is subject in each case to applicable terms and conditions of this TOS as well as the specific terms for each such Other CatchProbe Services and Products.

**2.4. Documentation.** All use of the Solutions shall be in accordance with the then-current Documentation.

**2.5. Third Party Service.** If Customer enters into an agreement with a third party for a Third Party Service then Customer may allow such Third Party Service to use the Solutions provided that (i) as between the Parties, Customer remains responsible for compliance with this TOS; (ii) such Third Party Service only uses the Solutions for Customer’s internal purposes and not for the benefit of any third party or the Third Party Service, and agrees to this TOS in providing services to Customer; and (iii) Customer remains liable to CatchProbe for the Third Party Service’s use of the Solutions on Customer’s behalf.

## 3. Evaluations; Early Adoption and Beta Use.

**3.1. Evaluation Offering.** If Customer receives the Solutions for evaluation purposes, then Customer may use the Solutions for Customer’s own internal evaluation purposes (“Evaluation”) for a period of up to thirty (30) days from the start date of the Evaluation (the “Evaluation Period”), unless otherwise agreed in writing by CatchProbe.

**3.2. Evaluation License and Restrictions.** In addition to the license scope detailed elsewhere in this TOS, during Evaluation, Customer: (i) may install and use, solely during the Evaluation Period on the number of Endpoints as agreed to in writing between parties; (ii) shall comply with the use restrictions in Section 4 (Restrictions); and (iii) shall uninstall any portion of the Solutions residing on Customer’s Endpoints after the Evaluation Period and confirm to CatchProbe in writing (email accepted) of such deletion and uninstallation.

If the Evaluation offering is a subscription, Customer understands that CatchProbe may disable access to the subscription automatically at the end of the Evaluation period, without notice to Customer. During and following the Evaluation Period, the Parties shall discuss Evaluation results in good faith.

**3.3. Early Adoption or Beta Use.** If Customer is invited to and agrees to participate in CatchProbe's Early Adoption Program or Beta Program, Customer acknowledges that Early Adoption or Beta versions of the Solutions are prerelease versions of the Solutions and as such may contain errors, bugs, or other defects. Accordingly, Customer's use and testing of the Early Adoption and/or Beta versions of the Solutions is subject to the disclaimers stated in Section

**3.4 (DISCLAIMER OF WARRANTIES AND LIABILITY).** Additionally, Customer's use of Early Adoption and/or Beta versions of the Solutions is subject to CatchProbe's sole discretion as to length and scope of use, updates and support of such Early Adoption or Beta versions of the Solutions.

**3.4. DISCLAIMER OF WARRANTIES AND LIABILITY.** DURING EVALUATION, OR EARLY ADOPTION OR BETA USE OF THE SOLUTIONS, THE CATCHPROBE SOLUTIONS ARE OFFERED ON AN "AS IS" BASIS, WITHOUT ANY WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, NON-INFRINGEMENT, OR THOSE ARISING BY LAW, STATUTE, USAGE OF TRADE, OR COURSE OF DEALING. CUSTOMER ASSUMES ALL RISK AS TO THE RESULTS AND PERFORMANCE OF THE SOLUTIONS AND ACKNOWLEDGES THAT THE USE OF THE SOLUTIONS, TO THE EXTENT APPLICABLE, MUST BE MADE IN STRICT CONFORMANCE WITH CATCHPROBE'S INSTRUCTIONS. WITHOUT DEROGATING FROM THE FOREGOING, IT IS UNDERSTOOD AND AGREED THAT CATCHPROBE WILL NOT BE LIABLE FOR ANY NETWORK DOWNTIME, SOLUTIONS DOWNTIME, AND/OR IDENTIFYING AREAS OF WEAKNESS IN THE SOLUTIONS. FOR ALL EVALUATIONS, OR EARLY ADOPTION OR BETA USE OF THE SOLUTIONS, CATCHPROBE SHALL HAVE NO LIABILITY TO CUSTOMER OR ANY OTHER PERSON OR ENTITY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES WHATSOEVER, INCLUDING, WITHOUT LIMITATION, LOSS OF REVENUE OR PROFIT, LOST OR DAMAGED DATA, LOSS OF PROGRAMS OR INFORMATION OR OTHER INTANGIBLE LOSS ARISING OUT OF THE USE OF OR THE INABILITY TO USE THE SOLUTIONS, OR INFORMATION, OR ANY PERMANENT OR TEMPORARY CESSATION OF THE SOLUTIONS OR ACCESS TO INFORMATION, OR THE DELETION OR CORRUPTION OF ANY CONTENT OR INFORMATION, OR THE FAILURE TO STORE ANY CONTENT OR INFORMATION OR OTHER COMMERCIAL OR ECONOMIC LOSS, HOWEVER CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY (CONTRACT, TORT OR OTHERWISE), EVEN IF CATCHPROBE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR THAT THEY ARE FORESEEABLE. CATCHPROBE IS ALSO NOT RESPONSIBLE FOR CLAIMS BY ANY THIRD PARTY. WHILE THE SOLUTIONS ARE PROVIDED FREE OF CHARGE FOR EVALUATION, EARLY ADOPTION OR BETA PURPOSES ONLY, CATCHPROBE'S MAXIMUM AGGREGATE LIABILITY TO CUSTOMER SHALL NOT EXCEED US \$100. IN JURISDICTIONS WHERE THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES IS NOT ALLOWED THE LIABILITY OF CATCHPROBE SHALL BE LIMITED TO THE GREATEST EXTENT PERMITTED BY LAW. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO THE PARTIES OBLIGATIONS UNDER SECTION 8 (CONFIDENTIALITY) HEREIN.

**4. Restrictions** Except as expressly authorized by this TOS, Customer may not do any of the following: (i) modify, disclose, alter, translate or create derivative works of the CatchProbe Solutions (or any components thereof) or any accompanying Documentation; (ii) license, sublicense, resell, distribute, lease, rent, lend, transfer, assign or otherwise dispose of the Solutions (or any components thereof) or any Documentation; (iii) use the Solutions other than as permitted under this TOS, as directly related to Customer's internal business operations and in conformity with the Documentation, and not otherwise use the Solutions for any other commercial or business use, including without limitation, offering any portion of the Solutions as benefits or services to third parties; (iv) use the Solutions in violation of any laws or regulations, including, without limitation, to store or transmit infringing, libelous or otherwise unlawful or tortious material, or material in violation of third-party privacy rights; (v) use the Solutions to store, transmit or test for any viruses, software routines or other code designed to permit unauthorized access, disable, erase or otherwise harm software, hardware or data, or to perform any other harmful actions; (vi) probe, scan or test the efficacy or vulnerability of the Solutions, or take any action in an effort to circumvent or undermine the Solutions, except for the legitimate testing of the Solutions in coordination with CatchProbe, in connection with considering a subscription to the Solutions as licensed herein; (vii) attempt or actually disassemble, decompile or reverse engineer, copy, frame or mirror any part or content of the Solutions, or otherwise derive any of the Solutions' source code; (viii) access, test, and/or use the Solutions in any way to build a competitive product or service, or copy any features or functions of the Solutions; (ix) interfere with or disrupt the integrity or performance of the Solutions; (x) attempt to gain unauthorized access to the Solutions or their related systems or networks; (xi) disclose to any third party or publish in any media any performance information or analysis relating to the Solutions; (xii) fail to maintain all copyright, trademark and proprietary notices on the Solutions and any permitted copy thereof; or (xiii) cause or permit any Solutions user or third party to do any of the foregoing.

## **5. Ownership and Reservation of Rights.**

**5.1. Customer.** As between the Parties, Customer reserves all right, title and interest in and to Customer Data and all Intellectual Property Rights embodied in Customer Data.

**5.2. CatchProbe.** As between the Parties, CatchProbe reserves all right, title and interest in and to the Solutions (and any and all modifications to or derivative works of the Solutions), System Data, and any and all Intellectual Property Rights embodied in the CatchProbe Solution.

**5.3. Reservation of Rights.** Each Party reserves all rights not expressly granted in this TOS, and no licenses are granted by one Party to the other Party under this TOS, whether by implication, estoppel or otherwise, except as expressly set forth in this TOS.

## **6. Billing, Plan Modifications and Payments.**

**6.1. Fees.** The fees for the Solutions and any Other CatchProbe Services or Products shall be set forth in one or more valid Purchase Orders ("Fees"). All Fees are due payable to the applicable Partner as detailed in the applicable valid Purchase Order. If Customer fails to pay Fees within five (5) days of CatchProbe's notice to Customer that payment is past due or delinquent, CatchProbe will no longer assume responsibility to providing the Solutions under this TOS and, in addition to CatchProbe's other remedies, CatchProbe may suspend or terminate Customer's access to the Solutions. No refunds or credits for paid Fees will be issued to Customer, except as stated otherwise in Section 12.3 (Effects of Termination).



**6.2. Plan Modifications.** If Customer has more than the number of Endpoints Customer subscribes to under an applicable Purchase Order deployed during Customer's then-effective Subscription Term (a "Subscription Increase") or upgrade Customer's subscription to a different subscription plan ("Plan Upgrade"), CatchProbe shall invoice the applicable Partner for the incremental Fees associated with such Subscription Increase and/or Plan Upgrade on a pro rata basis at the price per Endpoint specified in the corresponding valid Purchase Order over the remaining period of such Subscription Term (which Fees shall be due and payable upon implementation of such Subscription Increase and/or Plan Upgrade). No Fees refund or credit shall be granted where Customer elects to not use the Solutions on previously subscribed Endpoints.

**6.3. Taxes.** The Parties agree that neither shall have any tax obligations towards the other and all tax matters are handled between each Party and the Partner. The foregoing shall apply with applicable changes to Purchase Orders among Customer and a Partner specifying different terms for late payments, tax liability, or indemnification obligations relating to such tax liability.

## 7. Privacy and Security.

**7.1. Processing Limitations and Security Obligation.** In providing Customer the Solutions and Other CatchProbe Services and Products, CatchProbe will (i) store, process and access Customer Data only to the extent reasonably necessary to provide Customer the Solutions and/or Other CatchProbe Services and Products, and to improve the Solutions and Other CatchProbe Services and Products; and (ii) implement and maintain commercially reasonable technical, physical and organizational measures to protect the security, confidentiality and integrity of Customer Data hosted by CatchProbe or CatchProbe's authorized third party service providers from unauthorized access, use, alteration or disclosure.

**7.2. Data Privacy.** In this TOS, "Personal Information" shall have the meaning ascribed to such term in CatchProbe's Privacy Policy. CatchProbe will handle Customer's Personal Information in accordance with this TOS, its Privacy Policy, and privacy laws applicable to the Personal Information the Solutions collect (expressly excluding specific privacy laws applicable to files the Solutions may collect or process if Customer has optional features enabled). Such privacy laws include the California Civil Code Sec. 1798.100 et seq. ("CCPA") and the EU General Data Protection Regulation 2016/679 ("GDPR") and CatchProbe shall act exclusively as a Service Provider (as defined by CCPA), and Data Processor (as defined in GDPR) and shall retain, use, disclose and process Personal Information solely for the purpose of providing and enhancing the Solutions and Other CatchProbe Services and Products on Customer's behalf. To the extent Customer provides to CatchProbe Personal Information of individuals residing in the European Economic Area ("EEA") the Parties agree that the terms of the Data Protection Addendum ("DPA") found at <https://www.catchprobe.com/documents> shall apply to CatchProbe's processing of such Personal Information.

## 8. Confidentiality.

**8.1. Obligations.** The Receiving Party will maintain in confidence, during the term of this TOS and for three (3) years following the effective date of termination of this TOS, the Confidential Information, and will not use such Confidential Information except as expressly permitted in this TOS (provided that Confidential Information defined as a trade secret under any applicable law shall be maintained in confidence so long as it retains its confidentiality status under such laws).

The Receiving Party will use the same degree of care in protecting the Confidential Information as the Receiving Party uses to protect its own confidential and proprietary information from unauthorized use or disclosure, but in no event less than reasonable care. Confidential Information will be used by the Receiving Party solely for the purpose of carrying out the Receiving Party's obligations under this TOS, and the Receiving Party will only disclose Confidential Information to its directors, officers, employees and/or contractors who have a need to know such Confidential Information in order to perform their duties under this TOS, and if such directors, officers, employees and/or contractors have executed a non-disclosure agreement with the Receiving Party with terms no less restrictive than the non-disclosure obligations contained in this Section 8.1. Provided, however, that each Party may disclose the terms and conditions of this TOS: (i) to legal counsel of such Party; (ii) to such Party's accountants, banks, financing sources and their advisors; (iii) in connection with the enforcement of this TOS or rights under this TOS; or (iv) in connection with an actual or proposed merger, acquisition, or similar transaction.

**8.2. Exceptions.** Confidential Information will not include information that: (i) is in or enters the public domain without breach of this TOS through no fault of the Receiving Party; (ii) the Receiving Party can reasonably demonstrate was in its possession prior to first receiving it from the Disclosing Party; (iii) the Receiving Party can demonstrate was developed by the Receiving Party independently, and without use of or reference to, the Confidential Information; or (iv) the Receiving Party receives from a third party without restriction on disclosure and without breach of a nondisclosure obligation. In addition, the Receiving Party may disclose Confidential Information that is required to disclose by law, or by a subpoena or order issued by a court of competent jurisdiction (each, a "Court Order"), and where such Court Order is shown the Receiving Party shall: (a) give the Disclosing Party written notice of the Order within 24 hours after receiving it; and (b) cooperate fully with the Disclosing Party before disclosure to provide the Disclosing Party with the opportunity to interpose any objections it may have to disclosure of the information required by the Court Order and seek a protective order or other appropriate relief. In the event of any dispute between the Parties as to whether specific information is within one or more of the exceptions set forth in this Section 8.2, Receiving Party will bear the burden of proof, by clear and convincing evidence, that such information is within the claimed exception(s).

**8.3. Remedies.** The Receiving Party acknowledges that any unauthorized disclosure of Confidential Information will result in irreparable injury to the Disclosing Party, which injury could not be adequately compensated by the payment of money damages. In addition to any other legal and equitable remedies that may be available, the Disclosing Party will be entitled to seek and obtain injunctive relief against any breach or threatened breach by the Receiving Party of the confidentiality obligations hereunder, from any court of competent jurisdiction, without being required to show any actual damage or irreparable harm, prove the inadequacy of its legal remedies, or post any bond or other security.

## **9. Representations, Warranties and Remedies.**

**9.1. General Representations and Warranties.** Each Party represents and warrants the following: (i) it is validly existing and in good standing under the laws of the place of its establishment or incorporation; (ii) it has full corporate power and authority to execute, deliver and perform its obligations under this TOS; (iii) the person signing this TOS on its behalf has been duly authorized and empowered to enter into this TOS; (iv) this TOS are valid, binding and enforceable against it in accordance with its terms; (v) it shall deliver (as to CatchProbe) and operate (as to Customer) the Solutions in material conformity with the Documentation and the terms herein; and (vi) it will perform its obligations under this TOS in accordance with applicable federal or state laws or regulations.



**9.2. Conformity with Documentation.** CatchProbe warrants that at any point in time during Customer's Subscription Term, the Current Release will substantially conform in all material respects with the Documentation. CatchProbe's sole obligation for material non-conformity with this warranty shall be, in CatchProbe's sole discretion, to use commercially reasonable efforts (i) to provide Customer with an error-correction or workaround to the reported nonconformity; (ii) to replace the non-conforming portions of the Solutions with conforming items; or (iii) if CatchProbe reasonably determines it cannot provide such remedies within a reasonable period of time, to terminate this TOS and refund applicable Fees pursuant to Section 12.3 (Effects of Termination). The above warranty will not apply: (a) if the Solutions are not used in compliance with the Documentation; (b) if any unauthorized modifications are made to the Solutions by Customer or any third party; (c) to use of releases of the Solutions that are not the Current Release or the Solutions released immediately preceding the Current Release; (d) to defects due to accident, abuse or improper use by Customer; or (e) to Evaluation or Early Adoption use of the Solutions.

**9.3. Disclaimer.** EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES SET FORTH IN THIS SECTION 9, EACH PARTY DISCLAIMS ANY AND ALL REPRESENTATIONS OR WARRANTIES (EXPRESS OR IMPLIED, ORAL OR WRITTEN) WITH RESPECT TO THIS TOS AND THE CATCHPROBE SOLUTIONS, WHETHER ALLEGED TO ARISE BY OPERATION OF LAW, STATUTE, CUSTOM OR USAGE IN THE TRADE, BY COURSE OF DEALING OR OTHERWISE, INCLUDING ALL WARRANTIES OF MERCHANTABILITY, FITNESS OR SUITABILITY FOR ANY PARTICULAR PURPOSE (WHETHER OR NOT SUCH PARTY KNOWS, HAS REASON TO KNOW, HAS BEEN ADVISED, OR IS OTHERWISE AWARE OF ANY SUCH PURPOSE), ACCURACY, NON- INFRINGEMENT, CONDITION OF TITLE. THIS DISCLAIMER AND EXCLUSION WILL APPLY EVEN IF ANY EXPRESS WARRANTY HEREIN FAILS OF ITS ESSENTIAL PURPOSE. CATCHPROBE DOES NOT GUARANTEE OR WARRANT THAT IT WILL FIND, LOCATE, DETECT, OR IDENTIFY ALL THREATS, VULNERABILITIES, MALWARE, AND MALICIOUS SOFTWARE, RESTORE CONTROL OF SYSTEMS WHERE UNAUTHORIZED ACCESS OR CONTROL HAS OCCURRED, AND CUSTOMER AND ITS AFFILIATES WILL NOT HOLD CATCHPROBE RESPONSIBLE FOR SUCH OR ANY CONSEQUENCES THEREOF.

## 10. Indemnification Obligations.

**10.1. Infringement Indemnity.** CatchProbe will indemnify Customer and Customer's directors, officers, employees, contractors, agents, or other authorized representatives ("Customer Indemnitees") from and against any and all third-party claims, suits, actions or proceedings (each a "Claim") alleging that Customer's use of the Solutions infringes or misappropriates a third party's valid Intellectual Property Right. CatchProbe's sole indemnification obligations under this Section 10.1 shall be that CatchProbe will, at its expense, defend any such Claim by reason of Customer's use of the Solutions as permitted hereunder, and pay damages, payments, deficiencies, fines, judgments, settlements, liabilities, losses, costs and expenses (including, but not limited to, reasonable attorneys' fees, costs, penalties, interest and disbursements) finally awarded by a court of competent jurisdiction or included in a settlement approved by CatchProbe. In the event of a Claim pursuant to this Section 10.1, CatchProbe may, at CatchProbe's option and at CatchProbe's expense: (i) obtain for Customer, the right to continue to exercise the license granted to Customer under this TOS; (ii) substitute the allegedly infringing component for an equivalent non-infringing component; or (iii) modify the Solutions to make them non-infringing. If (i), (ii), or (iii) is not obtainable on commercially reasonable terms, CatchProbe may terminate this TOS, after providing Customer a reasonable time (no less than 30 days) to transition to an alternative solution, unless CatchProbe determines in its reasonable discretion that such use of the Solutions will likely result in infringement and in such case may

terminate this TOS effective immediately with concurrent written notice to Customer. In the event of a termination of this TOS pursuant to this Section 10.1, all rights and licenses with respect to the Solutions will immediately cease and CatchProbe will refund to Customer all prepaid Fees for the Solutions attributable to the Subscription Term (as outlined in the applicable Purchase Order) following the termination of this TOS. CatchProbe's indemnification obligations do not extend to Claims arising from or relating to: (a) any negligent or willful misconduct of any Customer Indemnitees; (b) any combination of the Solutions (or any portion thereof) by any Customer Indemnitees or any third party with any equipment, software, data or any other materials where the infringement would not have occurred but for such combination, unless such combination is the customary, ordinary, and intended use of the Solutions; (c) any modification to the Solutions by any Customer Indemnitees or any third party where the infringement would not have occurred but for such modification; (d) the use of the Solutions by any Customer Indemnitees or any third party in a manner contrary to the terms of this TOS where the infringement would not have occurred but for such use; or (e) the continued use of the Solutions after CatchProbe has provided a substantially equivalent non-infringing software or service.

**10.2. Customer Indemnity.** Customer, at its sole expense, will indemnify CatchProbe and its directors, officers, employees and agents or other authorized representatives ("CatchProbe Indemnitees") from and against any Claim, and be liable for any related damages, payments, deficiencies, fines, judgments, settlements, liabilities, losses, costs and expenses (including, but not limited to, reasonable attorneys' fees, costs, penalties, interest and disbursements) arising out of: (a) Customer's use of the Solutions in breach of this TOS; (b) Customer's use of any third party IP; (c) breach or alleged breach of Customer's obligations under Sections 2.6 (Other Services), 2.7 (Third Party Service) or 4 (Restrictions) herein; or (d) the failure of Customer's administrators of Customer's account to maintain the confidentiality of their login information to such account.

**10.3. Procedures.** The indemnifying Party's indemnification obligations under this Section 10 are conditioned upon the indemnified Party: (i) giving prompt written notice of the Claim to the indemnifying Party once the indemnified Party becomes aware of the Claim (provided that failure to provide prompt written notice to the indemnifying Party will not alleviate an indemnifying Party's obligations under this Section 10 to the extent any associated delay does not materially prejudice or impair the defense of the related Claims); (ii) granting the indemnifying Party the option to take sole control of the defense (including granting the indemnifying Party the right to select and use counsel of its own choosing) and settlement of the Claim (except that the indemnified Party's prior written approval will be required for any settlement that reasonably can be expected to require an affirmative obligation of the indemnified Party); and (iii) providing reasonable cooperation to the indemnifying Party and, at the indemnifying Party's request and expense, assistance in the defense or settlement of the Claim.

## **11. Limitation of Liability.**

**11.1.** SUBJECT TO ANY SPECIFIC LIMITATIONS ON LIABILITY STATED IN THIS SECTION, IN NO EVENT WILL EITHER PARTY'S TOTAL LIABILITY ARISING OUT OF OR RELATED TO THIS TOS EXCEED THE FEES PAID OR PAYABLE BY CUSTOMER TO CATCHPROBE (OR ITS RESELLER) FOR 6 MONTHS SUBSCRIPTION FEES AT THE TIME OF THE EVENT OR EVENTS LEADING TO THE ALLEGED DAMAGES.

11.2. IN THE EVENT OF A BREACH OF SECTION 7 (PRIVACY AND SECURITY) BY CATCH-PROBE, CATCHPROBE'S TOTAL LIABILITY SHALL NOT EXCEED THE FEES PAID OR PAYABLE BY CUSTOMER TO CATCHPROBE (OR ITS RESELLER) FOR 12 MONTHS SUBSCRIPTION FEES EFFECTIVE AT THE TIME OF THE EVENT OR EVENTS LEADING TO THE ALLEGED DAMAGES.

11.3. THE LIMITATIONS ON LIABILITY IN SECTIONS 11.1 AND 11.2 SHALL NOT APPLY TO BREACHES OF SECTION 4 (RESTRICTIONS), SECTION 8 (CONFIDENTIALITY) OR TO EACH PARTY'S INDEMNIFICATION OBLIGATIONS (SECTIONS 10.1 AND 10.2).

11.4. IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY FOR ANY LOSS OF PROFITS, LOSS OF USE, LOSS OF REVENUE, LOSS OF GOODWILL, ANY INTERRUPTION OF BUSINESS, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND ARISING OUT OF, OR IN CONNECTION WITH THIS TOS, WHETHER IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, EVEN IF SUCH PARTY HAS BEEN ADVISED OR IS OTHERWISE AWARE OF THE POSSIBILITY OF SUCH DAMAGES. MULTIPLE CLAIMS WILL NOT EXPAND THIS LIMITATION. THIS SECTION 11 WILL BE GIVEN FULL EFFECT EVEN IF ANY REMEDY SPECIFIED IN THIS TOS IS DEEMED TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

## **12. Term, Termination and Effect of Termination.**

**12.1. Term.** Unless otherwise agreed to in writing among Parties or in a valid Purchase Order among Customer and a Partner, the term of this TOS will begin on the Effective Date and continue for twelve (12) months (the "Initial Subscription Term"), and thereafter this TOS and the underlying Solutions subscription shall renew for additional successive periods identical in length to the Initial Subscription Term ("Renewal Subscription Term" and collectively, "Subscription Term"), unless either Party notifies the other in writing no less than thirty (30) days prior to the close of the then-current Initial or Renewal Subscription Term of its intention not to renew. Any Subscription Term may also (i) be terminated in accordance with Section 12.2 below; or (ii) be terminated by CatchProbe in accordance with Section 10.1 (Infringement Indemnity).

**12.2. Termination.** In addition to CatchProbe's right to terminate this TOS pursuant to Section 10.1 (Infringement Indemnity), either Party may terminate this TOS, for cause, if the other Party: (i) materially breaches this TOS and does not cure such breach within thirty (30) days after its receipt of written notice of such breach; or (ii) becomes insolvent, makes an assignment for the benefit of creditors, or becomes subject to direct control of a trustee, receiver or similar authority. Additionally, CatchProbe may terminate this TOS immediately for cause by providing concurrent notice to Customer if CatchProbe believes that Customer is using the Solutions in any unauthorized manner likely to cause harm to CatchProbe, the Solutions or a third party.

**12.3. Effects of Termination.** Upon any termination or expiration of this TOS: (i) all rights and licenses granted to Customer under this TOS will immediately terminate; (ii) all of CatchProbe's obligations under this TOS (including, CatchProbe's performance of the CatchProbe Support) will immediately cease; (iii) there will be no refund for any pre-paid and unused Fees as of the termination date (except where Customer terminates this TOS under Section 12.2 due to CatchProbe's material breach or where CatchProbe terminates this TOS under Sections 9.2 (Conformity with Documentation) or

10.1 (Infringement Indemnity) herein, in which case any refunds shall be on a pro-rata basis for any remaining unused portion of a subscription left after such termination), and Customer will immediately pay CatchProbe any Fees due and payable under this TOS as of the termination date; (iv) upon receiving a written request from the Disclosing Party, the Receiving Party will promptly return to the Disclosing Party all Confidential Information of the Disclosing Party then in its possession or destroy all copies of such Confidential Information, at the Disclosing Party's sole discretion and direction; (v) Customer will immediately cease all use of the Solutions and destroy and/or permanently delete all copies of any components of the Solutions in Customer's possession and (vi) Customer will uninstall the Solutions on any of Customer's Endpoints within 30 days after termination of this TOS and, upon CatchProbe's request, provide written confirmation of such uninstallation. CatchProbe reserves the right to investigate suspected violations of Customer's obligations under Section 12.3(v) herein. Customer will immediately confirm, in writing, that it has complied with these Sections 12.3(iv) and 12.3(v) at CatchProbe's request. Notwithstanding any terms to the contrary in this TOS, Sections 4 (Restrictions), 5 (Ownership and Reservation of Rights), 6 (Billing, Plan Modifications and Payments), 7 (Privacy and Security), 8 (Confidentiality), 9.2 (Conformity with Documentation), 10 (Indemnification Obligations), 11 (Limitation of Liability), 12.3 (Effect of Termination) and 13 (General Provisions) will survive any termination of this TOS.

### **13. General Provisions.**

**13.1. Entire Agreement.** This TOS, together with all exhibits attached thereto (all of which are incorporated herein by reference), set forth the entire agreement and understanding of the Parties relating to Customer's subscription to the Solutions, and the Parties herein expressly agree that this TOS supersedes all prior or contemporaneous potentially or actually conflicting terms in agreements, proposals, negotiations, conversations, discussions and/or understandings, whether written or oral, with respect to such subject matter and all past dealing or industry customs (including without limitation any nondisclosure agreement among the Parties relating to any prior use of the Solutions, any Quote or Purchase Order and/or another agreement among the Parties in connection with Customer's consideration and/or evaluation of the Solutions), excluding only any written agreement executed by CatchProbe, expressly referencing this TOS and only to the extent expressly superseding specific terms in this TOS.

**13.2. Independent Contractors.** Neither Party will, for any purpose, be deemed to be an agent, franchisor, franchise, employee, representative, owner or partner of the other Party, and the relationship between the Parties will only be that of independent contractors. Neither Party will have any right or authority to assume or create any obligations or to make any representations or warranties on behalf of any other Party, whether express or implied, or to bind the other Party in any respect whatsoever.

**13.3. Governing Law and Venue.** This TOS will be governed by and construed in accordance with the laws of the State of California, without regard to conflict of law principles. The state or federal court in Santa Clara County, California will be the jurisdiction in which any suits should be filed if they relate to this TOS. Prior to the filing or initiation of any action or proceeding relating to this TOS, the Parties must participate in good faith mediation in Santa Clara County, California (except an action or proceeding required to protect or enforce a Party's Intellectual Property Rights). If a Party initiates any proceeding regarding this TOS, the prevailing Party to such proceeding is entitled to reasonable attorneys' fees and costs for claims arising out of this TOS.



**13.4. Publicity.** Customer agrees that CatchProbe may reference and use Customer's name and trademarks in CatchProbe marketing and promotional materials, including, but not limited to, the Site, solely for purposes of identifying Customer as CatchProbe's customer. Otherwise, neither Party may use the trade names, trademarks, service marks, or logos of the other Party without the express written consent of the other Party.

**13.5. Assignment.** Neither this TOS nor any right or duty under this TOS may be transferred, assigned or delegated by a Party, by operation of law or otherwise, without the prior written consent of the other Party and such consent shall not be unreasonably delayed or withheld. Any attempted transfer, assignment or delegation without such consent will be void and without effect. Notwithstanding the foregoing, each Party may assign this TOS to a successor of substantially all of its business or assets, whether by merger, sale of assets, sale of stock, sale of control, reorganization or otherwise, with written notice to the other Party, provided that such successor in interest agrees in writing to assume all of the assigning Party's obligations under this TOS. Subject to the foregoing, this TOS will be binding upon and will inure to the benefit of the Parties and their respective representatives, heirs, administrators, successors and permitted assigns.

**13.6. Export Compliance.** The Solutions, and CatchProbe Software or other components of the Solutions which CatchProbe may provide or make available to Customer for use by Customer's users are subject to U.S. export control and economic sanctions laws including the Export Administration Regulations and trade and economic sanctions imposed by Office of Foreign Asset Control ("OFAC"). Customer agrees not to violate such laws and regulations as they relate to Customer's access and use of the Solutions. Customer shall not access or use the Solutions if Customer is located in any jurisdiction in which the provision of the Solutions is prohibited under U.S. or other applicable laws or regulations, currently Cuba, Iran, North Korea, Syria, and the Crimea region of the Ukraine (a "Prohibited Jurisdiction"), and Customer agrees not to permit access to the Solutions to any government, entity or individual located in any Prohibited Jurisdiction, by any person or entity currently included on the Specially Designated Nationals and Blocked Persons List or the Consolidated Sanctions List maintained by OFAC ("Prohibited Person"), or otherwise in violation of any U.S. or other applicable export embargoes, prohibitions or restrictions. Customer agrees to comply with all applicable laws regarding the transmission of technology exported from the U.S. and the country in which Customer and users are located. Customer represents that, to the best of Customer's knowledge, neither Customer nor any of Customer's Affiliates is an entity that (a) is, or is directly or indirectly owned or controlled by, any person or entity currently included on the Specially Designated Nationals and Blocked Persons List or the Consolidated Sanctions List maintained by OFAC, (b) is, or is directly or indirectly owned or controlled by, any Prohibited Jurisdiction.

**13.7. Amendments and Waivers.** No modification, addition or deletion, or waiver of any rights under this TOS will be binding on a Party unless made in a written agreement executed by a duly authorized representative of each Party; provided that the foregoing shall not preclude the binding effect of any modifications to the TOS by CatchProbe which solely reflect newly added Other CatchProbe Products and Services, or modifications which augment Customer's rights under this TOS. No failure or delay (in whole or in part) on the part of a Party to exercise any right or remedy hereunder will operate as a waiver thereof or effect any other right or remedy, and no waiver of one breach or default or any delay in exercising any rights will not constitute a waiver of any subsequent breach or default. All rights and remedies hereunder are cumulative and are not exclusive of any other rights or remedies provided hereunder or by law.



**13.8. Notices.** Any legal notice (whether this TOS expressly state “written notice” or “notice”) or communication required or permitted to be given hereunder must be in writing, signed or authorized by the Party giving notice, and may be delivered by hand, deposited with an overnight courier, sent by confirmed email or mailed by registered or certified mail, return receipt requested, postage prepaid, in each case to the address of the receiving Party as identified in the signature box below, on a valid Purchase Order, in the case of CatchProbe to legal@catchprobe.com, or at such other address as may hereafter be furnished in writing by either Party to the other Party. Such notice will be deemed to have been given as of the date it is delivered. Notice is effective on the earlier of 5 days from being deposited for delivery or the date on the confirmed email or courier receipt.

**13.9. Severability.** If any provision of this TOS is deemed invalid, illegal, or incapable of being enforced by any rule of law or public policy, all other provisions of this TOS will nonetheless remain in full force and effect so long as the economic and legal substance of the transactions contemplated by this TOS is not affected in any manner adverse to any Party. Upon such determination that any provision is invalid, illegal, or incapable of being enforced, the Parties will negotiate in good faith to modify this TOS so as to affect the original intent of the Parties as closely as possible in an acceptable manner to the end that the transactions contemplated hereby are fulfilled.

**13.10. Force Majeure.** Except for payments due under this TOS, neither Party will be responsible for any failure to perform or delay attributable in whole or in part to any cause beyond its reasonable control, including but not limited to acts of God (fire, storm, floods, earthquakes, etc.), civil disturbances, disruption of telecommunications, disruption of power or other essential services, interruption or termination of service provided by any service providers being used by CatchProbe, labor disturbances, vandalism, cable cut, computer viruses or other similar occurrences, or any malicious or unlawful acts of any third party.