

## RESELLER AGREEMENT

This Reseller Agreement (the "Agreement") is entered into as of the last date executed by all parties, 2023 (the "Effective Date") by and between you ("Reseller"), and Fathom Forward, Inc., a company incorporated in North Carolina with its principal place of business at the 2806 Reynolda Rd., MB 157, Winston Salem, NC 27106 ("FF").

### 1. Definitions:

- a. "Perimify™" is the intellectual property, brand, product, and service of FF and refers to any and all products that are marketed under its name and that make up the Perimify™ system including, but not limited to, Hubs, Access Point Monitors (APMs), mobile applications, packaging, hardware, website, and all cloud-based monitoring services, all of which are defined in the installation and user manual
- b. "Product" means the physical hardware that is required and used for the standard operation of a Perimify™ system, including but not limited to Hubs, Access Point Monitors (APMs), packaging, hardware, all of which are defined in the installation and User Guide.
- c. "Dealer" means any individual or entity that has applied to become a reseller and has received written notice of approval from Perimify™ or FF delivered by personal delivery, email, facsimile or recognized overnight courier.
- d. "Customer" means any individual or entity that the Reseller presents Perimify™ to for consideration of trial and/or purchase.
- e. "Order" means any purchase or request for Product from FF including the number of Products ordered, and the applicable fees.
- f. "Service" means the cloud-based network service provided by FF via any website(s) owned or operated by FF, including but not limited to [www.perimify.com](http://www.perimify.com) and the Perimify™ mobile application for Customers and/or users' communication with local systems and cloud-based network services.
- g. "Subscription" refers to a Customer's purchase of cloud-based services that enable certain features and functionalities of the Perimify™ system.
- h. "Support" means the Customer support offered by FF to facilitate a Customer's use of the Perimify™ Products and/or Service, through [www.perimify.com/support](http://www.perimify.com/support), [support@perimify.com](mailto:support@perimify.com), or other designated web services provided by FF.
- i. "Territory" means all 50 United States, and Puerto Rico.
- j. "User Guide" means the online installation manual and user guide for Products and Service, accessible via [www.perimify.com/support](http://www.perimify.com/support), as updated from time to time. FF reserves the right to update at any time without prior notice, in FF's sole discretion.
- k. "Perimify™ Website" means any website created, owned, or maintained by FF for the purpose of communicating information to customers and transacting business with Resellers, including but not limited to [www.perimify.com](http://www.perimify.com).

## **2. Resale Rights and Obligations:**

- a. Authorization to Resell. FF hereby grants to Reseller the nonexclusive, nontransferable, nonsublicensable right to resell Perimify™ Products to their Customers. This right excludes cloud-based subscription services, which shall be purchased by Customers and/or end-users directly from Perimify™, using their own unique login credentials from the Perimify™ Website. Products shall only be sold to Customers and end-users residing within the Territory and for use within the Territory.
- b. No Sub-Distributors. Reseller shall not authorize any other company or entity to resell the Products or Service (for example, as a sub-distributor) without FF's prior written consent, which shall be granted solely in FF's discretion
- c. E-Commerce Sales. Reseller shall not list Perimify™ products for sale on any third party e-commerce websites, including but not limited to Amazon.com, eBay.com, Walmart.com, etc. Reseller may only promote and list for sale Perimify™ products on web domains that are owned and maintained by the Reseller.

## **3. Marketing Rights and Obligations:**

- a. Authorization to Demonstrate and Market. FF hereby grants to Reseller the nonexclusive, nontransferable, nonsublicensable right to demonstrate and market the Product, Service, and Support to its Customers.
- b. Press Releases. Each party may issue one or more press releases announcing the relationship contemplated under this Agreement, provided each such press release shall be subject to the other party's prior written approval, not to be unreasonably withheld or delayed.
- c. Compliance with Laws and Ethical and Brand Representation Standards. Reseller shall comply with all applicable laws and regulations in its marketing activities hereunder and shall not engage in any deceptive, misleading, illegal or unethical marketing activities that may be detrimental to FF, Perimify™, or the Products or Service. Additionally, Reseller shall present Perimify™ and the Products and Service to Customers and the public and perform its obligations hereunder in a manner that, in FF's judgment, reflects well upon FF and its brands (including, but not limited to, Perimify™). Reseller shall comply in all respects with the U.S. Foreign Corrupt Practices Act (the "FCPA") in its activities under this Agreement and shall promptly inform FF in writing upon becoming aware of any violations of the FCPA in connection with this Agreement. Without limiting the foregoing, Reseller warrants that it has not offered or paid, and will not offer or pay, any money or anything else of value, to any person for the purpose of securing any improper advantage in violation of the FCPA or other applicable law.
- d. Representations to Customers. Reseller shall not make any representations, warranties or guarantees to Customers concerning the Products, Services or Support that are inconsistent with or in addition to those made in this Agreement, in the Installation and User Guide, or in FF's published marketing materials.

- e. Trademark Usage Guidelines. Reseller shall comply at all times with Perimify's™ Trademark usage guidelines as published by FF from time to time. Reseller is hereby granted a nonexclusive, nontransferable, nonsublicensable, and limited license to use the Perimify™ mark, solely for purposes of carrying out this agreement.
  - f. Branding Elements; Co-Branding. Reseller shall not alter any Perimify™ branding elements in marketing materials.
- 4. Order Processing.** Upon receipt of an order for Products from a Customer, Reseller shall submit to FF (i) an electronic order through the Perimify™ Website, using its DEALER login credentials, or (ii) a Reseller purchase order. FF will use commercially reasonable efforts to fulfill all FF approved orders in a timely manner.
- 5. Fees:**
- a. No FF Fees to Reseller. FF shall not charge any fees to Reseller for Products ordered pursuant to this Agreement, over and above (i) the wholesale price listed on the DEALER Products page of the Perimify™ Website, (ii) any applicable shipping cost, and (iii) any applicable sales tax. FF reserves the right to amend wholesale pricing at its sole discretion. The wholesale price is considered confidential and Reseller shall not share the wholesale price with third parties without the express prior written consent of FF.
  - b. Reseller's Fees to Customer. Reseller is free to charge its Customers whatever fees it deems appropriate for Products and installation services, which may include, but are not limited to, labor, custom brackets, and special mounting hardware.
  - c. Manufacturer's Suggested Retail Price (MSRP). FF may publish MSRP for Perimify™ Products and Services on the Perimify™ Website, or other websites designated by FF. FF reserves the right to amend MSRP at its sole discretion. Reseller is under no obligation to charge the MSRP to a Customer.
  - d. Service Subscriptions. Cloud-based service subscriptions shall not be resold by Reseller at any time. Customers and/or end-users must register for cloud-based service subscriptions (Service) directly with Perimify™ through the mobile App or at the Perimify™ Website, or other websites designated by FF.
  - e. Taxes. Reseller is solely responsible for calculating, collecting, and paying all direct or indirect local, state, federal or foreign taxes, levies, duties or similar governmental assessments of any nature, including value-added, or use taxes associated with its Orders or sales pursuant to this Agreement. Reseller shall provide FF with a tax-exempt certificate prior to entering into any transactions with Customers, or in a commercially reasonable timeframe following approval of Reseller's application to become a Dealer.

## **6. Invoicing and Payment:**

- a. Reseller Responsible for Invoicing Customer. Reseller is solely responsible for collecting all fees due from Customers for the Perimify™ Products and installation of related Products and shall invoice Customer directly for such fees.
- b. FF Invoicing to Reseller. Reseller shall pay FF per the terms of FF's invoice. Any amount remaining unpaid more than 30 days after the invoice date shall accrue interest at the rate of 2% per month. FF and Reseller may negotiate Order process and payment terms , but no such terms are enforceable unless and until agreed to by FF in writing. Reseller's obligation to pay FF is in no way dependent upon Reseller's ability to collect amounts due from Customers or end-users.

## **7. Support.**

- a. If Reseller is contacted by a Customer or end-user seeking Support and/or assistance for the Products or Service, Reseller shall first determine if the issue is related to the physical installation of Products performed by the Reseller. If the issue is related to the physical installation of Products performed by the Reseller, Reseller shall: (i) resolve the issue, (ii) attempt to remedy the issue with the aid of the troubleshooting guide located on the Perimify™ Website. If Reseller determines that the issue is not related to the physical installation of Products, Reseller shall immediately refer the user to FF via email at [support@perimify.com](mailto:support@perimify.com). Reseller acknowledges that its immediate referral of unresolved Customer Support cases to FF is critical to FF's ability to timely provide Support to users.
- b. Reseller represents and warrants that its installation and servicing of Products will be performed in a timely, skillful, professional, diligent, and workmanlike manner by competent personnel, and that such work shall conform to or exceed the standards generally observed in the industry.

## **8. Term and Termination:**

- a. Term. This Agreement shall begin on the Effective Date and continue for three years, after which point it shall renew automatically for additional one-year terms, unless either party gives notice in writing at least thirty (30) days prior to the renewal date of an intention not to renew.
- b. Termination without Cause. Either party may terminate this Agreement without cause at any time, effective upon ninety (90) days' written notice to the other party.
- c. Termination for Cause. Either party may terminate this Agreement and/or any Order hereunder (i) upon 15 days written notice of a material breach by the other party, unless the other party has cured such breach within the 15-day period, or (ii) immediately upon written notice to the other if the other party ceases to conduct its business in the ordinary course or becomes the subject of a bankruptcy, insolvency or similar proceeding that is not dismissed within 30 days of filing.

- d. Effects of Expiration or Termination. Expiration or termination of this Agreement shall not relieve the parties of any rights or obligations accruing prior to such expiration or termination. Upon any expiration or termination (i) FF may elect to either (a) buy back all Product Reseller has purchased from FF at the same price upon which Reseller paid minus a 10% restocking fee, or (b) permit Reseller to market and resell, pursuant to the terms of this Agreement, Product already in Reseller's possession and any Product for which Reseller has already placed an Order; (ii) Reseller shall immediately cease all representations that it is a Perimify™ Reseller except to the extent such representations are required to complete resale of Product pursuant to sub-subsection (i); (iii) Reseller shall cease support activities under Section 7 of this Agreement and instead refer all support questions to FF; and (iii) each party shall return to the other all Confidential Information of the other party in its possession or control. Following any termination or expiration, except termination for cause in accordance with subsection (c) of this section, FF may elect to require that Reseller complete any Order outstanding at the time of such termination or expiration, which Order(s) shall continue to be governed by this Agreement as if it had not been terminated ("Legacy Orders"), unless agreed to in writing by both parties.
- e. Survival. The obligations of the parties set forth in Sections 2(b)-(c), 3(c)-(d), 6, 9, 10, 11, 12, 13, and 14 shall survive any expiration or termination of this Agreement.

**9. Warranties:**

- a. FF. FF warrants solely for the benefit of Reseller that the Products and Service will materially conform to the User Guide and claims found on the Perimify™ Website. Reseller's sole remedy for a breach of this warranty shall be to obtain replacement Product at no charge to Reseller. This warranty does not apply to any damage resulting from unauthorized use or negligence on the part of the Reseller.
- b. Customer. All Perimify™ Products will be covered by a one (1) year warranty from the original date of purchase. The warranty will be extended during such times as a user maintains a cloud service subscription with FF, but only for so long as the user maintains its cloud service subscription in good standing, for a maximum of two (2) years beyond the expiration of the one-year warranty, for a total of up to three (3) years of coverage. If Reseller is contacted by a Customer seeking warranty claims for Perimify™ Products, Reseller shall immediately refer such Customer to Perimify™ at support@perimify.com. Reseller acknowledges that its immediate referral of Customer support cases to FF is critical to FF's ability to timely provide support to users.
- c. No Other Warranties. EXCEPT AS SPECIFICALLY PROVIDED HEREIN, THE PRODUCT AND SERVICE IS PROVIDED ON AN "AS IS" BASIS WITHOUT WARRANTY OF ANY KIND. FF EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, REGARDING THE PRODUCT AND SERVICE, INCLUDING, BUT

NOT LIMITED TO, WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT, AND IMPLIED WARRANTIES ARISING FROM A COURSE OF DEALING OR COURSE OF PERFORMANCE. FF DOES NOT WARRANT THAT THE SERVICE WILL OPERATE UNINTERRUPTED OR BE ERROR-FREE, OR THAT ALL DEFECTS WILL BE CORRECTED.

**10. Indemnification:**

- a. Indemnification by FF. FF shall, at its own expense, defend Reseller and its affiliates, directors, officers and employees (“Reseller Indemnified Parties”) against any claim, arbitration, demand, suit or action (a “Claim”), and shall indemnify and hold harmless the Reseller Indemnified Parties from and against any damages, costs (including but not limited to reasonable attorney fees and costs) or amounts agreed to in a monetary settlement, arising out of or in connection with such Claim, to the extent the Claim is made or brought by or on behalf of a third party alleging that the Products and/or Service infringe any copyright or patent, or misappropriate any trade secret, of such third party. FF has no obligation under this section or otherwise to the extent any claims are based on (i) any installation, servicing, repairs, or use of the Products and/or Service not contemplated hereunder or in the User Guide, (ii) any use of the Products and/or Service in combination with other Products not contemplated hereunder or in the User Guide, if the infringement is caused by such combination, (iii) use or modification of the Products and/or Service by any person other than as permitted hereunder, (iv) any marketing claims or other actions by Reseller not in compliance with the terms of this Agreement; or (v) is based upon the negligence or willful misconduct of Reseller. THIS SUBSECTION (A) STATES FF’S ENTIRE LIABILITY AND RESELLER’S SOLE AND EXCLUSIVE REMEDY FOR INFRINGEMENT CLAIMS AND ACTIONS.
- b. Indemnification by Reseller. Reseller agrees to enforce the terms of its resale agreements with Customer as required by this Agreement and to notify FF of any known breach of such terms. Reseller shall, at its own expense, defend FF and its affiliates, directors, officers and employees (“FF Indemnified Parties”) against any Claim, and shall indemnify and hold harmless the FF Indemnified Parties from and against any damages, costs (including but not limited to reasonable attorney’s fees and costs) or amounts agreed to in a monetary settlement, arising out of or in connection with such Claim, to the extent the Claim is (i) made or brought by or on behalf of a Customer in connection with Products and/or Services resold by Reseller hereunder, (ii) is made or brought on behalf of a third party and is based upon the negligence or willful misconduct of Reseller, or (iii) is based or arises out of any actual or alleged breach by Reseller of this Agreement.
- c. Mutual Obligations for Indemnification. Each party’s obligations in this section are conditioned on the other party providing the following: (i) prompt notice of any claim for which indemnification is sought; however, any delay or failure to notify

the indemnifying party shall not relieve the indemnifying party of any liability except to the extent that the indemnifying party demonstrates that the defense of such action has been materially prejudiced by such delay or failure to notify the indemnified party shall permit the indemnifying party to control the litigation and settlement of the Claims and (ii) the indemnified party shall provide reasonable assistance and cooperation at the expense of the indemnifying party, including by making its documents, employees, and agents available as reasonably necessary; provided, however, that the indemnifying party may not enter into any settlement imposing any liability or obligation on the indemnified party without the indemnified party's consent unless there is no finding or admission that the indemnified party has engaged in any wrongdoing or violated any law or the rights of any person or entity and the sole relief provided is monetary damages that the indemnifying party pays in full.

- d. Equitable Relief. Reseller acknowledges that any breach of its obligations with respect to the proprietary and/or intellectual property rights of FF may cause FF irreparable injury for which there are no adequate remedies at law, in which case FF shall be entitled to equitable relief in addition to all other remedies available to it.

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

- a. Consequential and Incidental Damages. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY HEREUNDER FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES OF ANY KIND, INCLUDING ANY DAMAGES FOR LOSS OF USE, LOSS OF BUSINESS, OR LOSS OF PROFITS OR REVENUE, UNDER ANY THEORY OF LAW AND WHETHER OR NOT THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OR SUCH DAMAGE.
- b. Overall Limitation. EXCEPT FOR BREACHES OF INTELLECTUAL PROPERTY RIGHTS AND INDEMNIFICATION OBLIGATIONS, NEITHER PARTY'S TOTAL LIABILITY TO THE OTHER PARTY HEREUNDER SHALL EXCEED A SUM EQUAL TO THE AMOUNT PAID BY RESELLER TO FF DURING THE PRECEDING 12 MONTHS.

#### **12. Confidentiality:**

- a. Confidential Information. "Confidential Information" means any confidential or proprietary information of a party hereto (the "Disclosing Party") that is disclosed to the other party hereto (the "Receiving Party"), whether orally or in writing or through any media, including financial, business and technical information, ideas, trade secrets, procedures, methods, systems and concepts; provided, however, that Confidential Information shall not include information that Receiving Party can show was: (i) in the public domain or otherwise publicly available when disclosed to Receiving Party; (ii) communicated to Receiving Party by a third party without any obligation of confidentiality and without any breach of confidentiality by such third party; (iii) in Receiving Party's possession free of any

- obligation of confidentiality when disclosed to Receiving Party; or (iv) independently developed by Receiving Party without use of the Confidential Information and without breach of any obligation of confidentiality.
- b. **Obligation of Confidentiality.** Receiving Party acknowledges that Confidential Information may contain valuable trade secrets and other proprietary information of the Disclosing Party and remains the sole and exclusive property of the Disclosing Party. Receiving Party shall (i) use Confidential Information only for the purpose for which it is provided, (ii) restrict disclosure of Confidential Information to its employees who have a need to know, (iii) not disclose Confidential Information to any third party without Disclosing Party's consent, and (iv) protect Confidential Information in the same way it protects its own Confidential Information of a similar nature, but in no event exercising less than reasonable care.
  - c. **Compelled Disclosure.** Notwithstanding the foregoing, Receiving Party shall not be in violation of this section if it discloses Confidential Information in response to a valid order by a court or other governmental entity, provided that Receiving Party provides Disclosing Party as prompt notice as practicable of such impending disclosure and reasonable assistance (at Disclosing Party's expense) to permit Disclosing Party to contest the order or seek confidential treatment.

### **13. Intellectual Property:**

- a. **Ownership.** FF retains all right, title and interest in and to the Product and Service, any modifications thereto and all material provided by FF to Reseller, Customers and users. FF reserves all rights not expressly granted to Reseller by this Agreement.
- b. **Trademark Cross-License**
  - i. **License Grant.** Either party may use the name, logo, trademarks and service marks ("Trademarks") of the other party subject to the other party's usage policies or prior approval, during the term of this Agreement and solely for purposes related to the performance of this Agreement. Notwithstanding the foregoing, each party reserves the right to require prior written approval for each advertisement, brochure, piece of marketing collateral, or other item containing any Trademark of the other party.
  - ii. **Restrictions.** In no event shall either party use a Trademark of the other party with any disparaging, unlawful or derogatory material. Neither party shall use any Trademark in a manner that may diminish or otherwise damage the other party's goodwill in that Trademark. Each party shall promptly terminate any Trademark use upon notice by the other party, or upon termination or expiration of this Agreement. Nothing contained in this Agreement shall be deemed to grant any party any right, goodwill, title or interest in the Trademarks of the other party. Neither party shall register any Trademark (or any trademarks confusingly similar to any



- Trademark) of the other party and shall not challenge, directly or indirectly, the same.
- iii. Each party shall own and continue to own all rights it may have in intellectual property developed, invented, gathered, or created by it before or during the term of this Agreement. Except for the license grant set forth in subsection (b)(i) of this Section, this Agreement shall not be construed to grant to either party any right, title, or interest in any intellectual property rights owned by the other party.
  - iv. Assistance. Each party shall, upon reasonable request by the other party, provide any necessary assistance to perfect or enforce intellectual property protection for the Trademarks, logos, and/or service marks of the other party. Any expenses associated with such a request shall be paid by the party requesting assistance.
- c. Suggestions. Reseller agrees that FF shall have a royalty-free, worldwide, perpetual license to use or incorporate into the Product and Service any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by Reseller relating to the Product and/or Service.

**14. Miscellaneous:**

- a. Neither party may assign, delegate or otherwise transfer any of its rights or obligations under this Agreement, whether by operation of law or otherwise, to any third party without the other party's prior written consent. This Agreement will bind and inure to the benefit of the parties' successors and permitted assignees.
- b. Force Majeure. If the performance of this Agreement or any obligation (other than payment obligations), is prevented or restricted by any condition beyond the reasonable control of the affected party, the party so affected, upon giving prompt notice to the other party, will be excused from such performance to the extent of such condition.
- c. Governing Law; Venue. This Agreement, and any claim or dispute arising out of or related to this Agreement shall be governed exclusively by the laws of the State of North Carolina, without regard to its conflicts of laws rules. The state and federal courts located in Forsyth County, North Carolina shall have exclusive jurisdiction to adjudicate any dispute arising out of or relating to this Agreement. Each party hereby consents to the exclusive jurisdiction of such courts. Each party also hereby waives any right to jury trial in connection with any action or litigation in any way arising out of or related to this Agreement.
- d. Independent Contractors. The parties are independent contractors, and no agency, partnership, joint venture or employee-employer relationship is created by this Agreement.
- e. Notices. All required or permitted notices and consents must be in writing and sent to the addressee at the address set forth below, or such address as the parties may specify in writing from time to time, and must be delivered by personal delivery, email, facsimile or recognized overnight courier. Notices shall be deemed given upon delivery.

- f. Severability. If any provision of this Agreement is adjudged invalid or unenforceable, the remaining provisions will continue in full force and effect, and the parties agree to replace the affected provision with a valid provision that most closely approximates its intent and economic effect.
- g. No Waiver. No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.
- h. Amendment. This Agreement may not be modified or amended except in a writing signed by both parties.
- i. Complete Agreement. This Agreement reflects the complete and final agreement between the parties, and supersedes, integrates and replaces all prior and contemporaneous communications, negotiations and understandings, with respect to the subject matter hereof.

BY CLICKING THE "ACCEPT" BUTTON YOU: (i) ESTABLISH AN EFFECTIVE DATE FOR THIS AGREEMENT, (ii) REPRESENT THAT YOU ARE DULY AUTHORIZED TO ENTER INTO A BINDING AGREEMENT ON BEHALF OF YOUR COMPANY AND (iii) ACCEPT THESE TERMS AND AGREE THAT YOU ARE LEGALLY BOUND BY THEM. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, DO NOT CLICK THE "ACCEPT" BUTTON.