

**Last Revised: 12/07/2017**

## **TERMS OF SERVICE**

### **INTRODUCTION**

Misty Robotics, Inc. (“**Misty Robotics**”, “**we**”, “**our**”, or “**us**”) provides the website located at <https://mistyrobotics.com/> including all of its webpages and subpages (collectively, the “**Site**”) and may provide software that may be downloaded to your smartphone or tablet to access services (each a “**Mobile Applications**”). The Site, the Mobile Applications, and the online and offline services which Misty Robotics provides to you in connection with the Site and Mobile Applications, including the ability to monitor and control Misty Robotics hardware products (“**Products**”), are referred to as the “**Services**”.

These Terms of Service (these “**Terms**”) are a legal agreement between you and Misty Robotics governing your access to and use of the Services only. Your purchase of a Product is governed by the limited warranty provided with that Product (“**Limited Warranty**”) and any additional terms and conditions of sale provided by Misty Robotics and/or our resellers at the time of purchase. The software embedded in the Product (including all updates thereto) (“**Product Software**”) is governed by the End User License Agreement (“**EULA**”). Your access to and use of the Misty Robotics Developer Materials, as defined in the Misty Robotics Developer Terms (“**Developer Terms**”), is governed by such Developer Terms.

**BY USING THE SERVICES, YOU AGREE TO BE BOUND BY THESE TERMS. IF YOU DO NOT AGREE TO THESE TERMS YOU MAY NOT ACCESS OR USE THE SERVICES.**

You represent and certify that you are of legal age to form a binding contract and are not a person barred from receiving services under the laws of the United States or other applicable jurisdictions. To register an Account with Misty Robotics, you must be 18 years or over. If you are between the age of 13 and 18, you will only use the Services under the supervision of a parent or legal guardian who agrees to be bound by these Terms. Any use or access to the Services by individuals under the age of 13 (or equivalent minimum age in the jurisdiction where you reside) is strictly prohibited and is a violation of these Terms. In the event that you are agreeing to these Terms on behalf of a third party entity, you represent and warrant that you have sufficient right to bind such third party to these Terms. The term “you,” as used in these Terms, means any person or entity who accesses or uses the Services and any person or entity who creates an Account and accepts these Terms.

**AS DESCRIBED BELOW, YOU ARE CONSENTING TO AUTOMATIC SOFTWARE UPDATE OF THE SERVICES AND OF THE PRODUCTS. IF YOU DO NOT AGREE, YOU SHOULD NOT USE THE SERVICES.**

These Terms give you specific legal rights, and you may also have other legal rights in addition, which vary from jurisdiction to jurisdiction. The disclaimers, exclusions, and limitations of liability in these Terms will not apply to the extent prohibited by applicable law. Some jurisdictions do not allow the exclusion of implied warranties or the exclusion or limitation of incidental or consequential damages or other rights, so those provisions of these Terms may not apply to you.

In the case of inconsistencies between these Terms and information included in any other materials related to the Services (e.g., promotional materials and mailers), these Terms will always govern and take precedence.

Please [click here](#) to view a printable version of these Terms.

## 1. SERVICES.

**1.1 Accounts and Registration.** The Services are provided in order to, among other things, enable you to control, access, monitor, and otherwise use Misty Robotics Products. You may access and use certain features of the Services by creating a Misty Robotics User Account (your “**Account**”). You may log into your Account to use such Services using a unique username and password. You are responsible for safeguarding your password and you agree not to disclose your password to any third party. You are solely responsible for any activities or actions taken under your username, whether or not you have authorized such activities or actions. You agree that the information that you provide to Misty Robotics about yourself upon registration of your Account, and at all other times, (“**User Data**”) will be true, accurate, current and complete, and you further agree that you will maintain and promptly update the User Data to ensure that it remains true, accurate, current and complete. You may not impersonate any other person or use a username or password that you are not authorized to use. Misty Robotics reserves the right to require you to change your password for any reason at any time. If you become aware of any unauthorized use of your Account, you agree to notify Misty Robotics immediately at [legal@mistyrobotics.com](mailto:legal@mistyrobotics.com). Misty Robotics is not liable for any loss or damage arising from your failure to comply with the above requirements.

**1.2 Site License.** Subject to these Terms, Misty Robotics grants you a personal, limited, revocable, non-exclusive, non-transferable, and non-sublicensable right to: (a) access and use the Services specifically made available to you as permitted by Misty Robotics, including, in order to control, access, monitor, and otherwise use Products you own or are authorized to use (the “**Permitted Purpose**”), (b) download, install, and use the Mobile Application(s) made available by Misty Robotics for public use on your own handheld mobile device solely for the Permitted Purpose. This license is exclusive to you and you may not sublicense the use of the Services.

**1.3 Availability.** Misty Robotics uses reasonable efforts to ensure that the online features of the Services are available 24 hours a day, 7 days a week. However, there will be occasions when the Services will be interrupted for maintenance, upgrades and emergency repairs or due to failure of telecommunications links and equipment that are beyond the control of Misty Robotics. Misty Robotics will use reasonable commercial efforts to minimize such disruption where it is within the reasonable control of Misty Robotics. You agree that Misty Robotics shall not be liable to you for any unavailability, modification, suspension or discontinuance of the Service. You are responsible for obtaining access to the Services and understand that such access may involve third party fees (such as Internet service provider or airtime charges). In addition, you must provide and are responsible for all equipment necessary to access and use the Services, including the Product itself.

**1.4 Automatic Updates.** Misty Robotics may from time to time develop patches, bug fixes, updates, upgrades and other modifications to improve the performance of the Services or the Product Software (“**Updates**”). These may be automatically installed by Misty Robotics in its discretion without providing any additional notice or receiving any additional consent. You consent to this automatic update. If you do not want such Updates, your remedy is to stop using the Product and the Services. If you do not cease using the Product or the Services, you will receive Updates automatically. You acknowledge that you may be required to install Updates to use the Services and the Product Software and you agree to promptly install any Updates Misty Robotics provides. Your continued use of the Services and the Product Software following such Update is your

agreement to these Terms with respect to the Services, and to the EULA with respect to updated Product Software.

**1.5 Limitations.** You expressly agree that you are solely responsible for any and all acts and omissions that occur through your use of the Site, and you agree not to engage in any unacceptable uses of the Services, which include, without limitation, use of the Services to: (a) register an Account or otherwise access or use the Services if you have not acknowledged reading and agreed to abide by these Terms; (b) interfere, disrupt or attempt to gain unauthorized access to other accounts for the Services or any other computer network; (c) create user accounts by automated means or under fraudulent or false pretenses; (d) create or transmit unsolicited electronic communications such as spam to users or promote any products or services; (e) harass, threaten or intentionally embarrass or cause harm or distress to another person or group; (f) collect and publish any information about any of our users; (g) adapt, modify or reverse engineer any portion of the Services; (h) use any spider, robot, retrieval application, or any other device to retrieve any portion of the Services; (i) disseminate, store or transmit viruses, worms, Trojan horses or other malicious code or program; (j) encourage conduct that would constitute a criminal or civil offense; (k) violate any applicable federal, state, local or international law or regulation; (l) exploit any person, including but not limited to exploiting any child under 18 years of age; (m) invade the privacy of any person, including but not limited to submitting personally identifying or other private information about a person without their consent (or their parent's consent in the case of a child under 13 years of age); (n) solicit personal information from a child under 18 years of age; (o) submit false or misleading information to Misty Robotics; (o) access the Services in order to build a similar or competitive service; or (p) engage in any other activity deemed by Misty Robotics to be in conflict with the spirit of these Terms or the Privacy Policies. Data protection and privacy laws where you live may impose certain responsibilities on you and your use of the Products and Services. You agree that you (and not Misty Robotics) are responsible for ensuring that you comply with any applicable laws when you use the Products and Services, including but not limited to (i) any laws relating to the recording or sharing of video or audio content that includes third parties, or (ii) any laws requiring notice to or consent of third parties with respect to your use of any recording device.

**1.6 Product Transfers.** If you transfer a Product to a new owner, your right to use the Services with respect to that Product automatically terminates, and the new owner will have no right to use the Product or Services under your Account (as described below) and will need to register for a separate Account with Misty Robotics.

**1.7 App Store Terms.** You acknowledge and agree that the availability of the Mobile Application is dependent on the third party websites from which you download the mobile apps, e.g., the App Store from Apple or the Android app market from Google (each an "**App Store**"). You acknowledge that these Terms are between you and Misty Robotics, and not with an App Store. Each App Store may have its own terms and conditions to which you must agree before downloading Mobile Apps from it. You agree to comply with, and your license to use the Mobile Apps is conditioned upon your compliance with, such App Store terms and conditions. To the extent such other terms and conditions from such App Store are less restrictive than, or otherwise conflict with, the terms and conditions of these Terms, the more restrictive or conflicting terms and conditions in these Terms apply.

## **2. ACCESSORIES AND SKILLS**

**2.1 Misty Accessories and Skills.** From time to time, Misty Robotics may develop additional skills, features, or functionality for the Product (each a “**Skill**”) and/or physical electro-mechanical attachments for the Product (each an “**Accessory**”). These Terms do not apply to Skills or Accessories. Each Skill provided by Misty Robotics is governed by the EULA and any additional terms and conditions presented to you in connection with such Skill. Each Accessory made available by Misty Robotics is governed by its own limited warranted (if any) and the terms and conditions of sale presented at the time of sale. Misty Robotics also enables third parties to develop Skills and Accessories (each a “**Third Party Product**”). You decide whether and which Third Party Product to use, and you are solely responsible for your purchase (if applicable) and use of such Third Party Product.

**2.2 Privacy Implications of Third Party Products.** Your use of Third Party Products may enable third parties to access data and personal information about you and your use of the Products. You understand that the Products may be enabled with recording devices such as cameras and microphones, and your use of a Third Party Product may allow such third party to control such recording devices and access content that has been recorded or captured. We strongly encourage you to become familiar with the privacy practices and other policies of the applicable third party before purchasing or use its Third Party Products.

**2.3 No Inspection; No Investigation.** Misty Robotics does not control, inspect, investigate, or otherwise review Third Party Products, even if Misty Robotics has featured or promoted a Third Party Product. Misty Robotics does not and cannot ensure that third parties are in compliance with the Misty Robotics Developer Terms. Your use of a Third Party Product is at your sole risk and, between you and us, you hereby assume all risk of harm or injury resulting from any Third Party Product. You acknowledge and agree that Misty Robotics makes no representation or warranty about the safety of any Third Party Product. Misty Robotics is not responsible for your use of any Third Party Product or any injury, death, property damage (including, without limitation, to your Product or your home), or other harm or losses arising from or relating to your use of any Third Party Products. You should contact the applicable third party with any questions about their Third Party Products.

### **3. USER USER MATERIALS AND SUBMISSIONS**

**3.1 Copyright in Your User Materials.** In connection with your access to, or use of, the Services, you may have the opportunity upload or provide certain information, data, text, software, music, sound, photographs, graphics, video, messages, or other materials (“**User Materials**”). Misty Robotics does not claim ownership rights in any such User Materials that you make available. By submitting your User Materials and accepting the consideration set forth in these Terms, you unconditionally grant to Misty Robotics a non-exclusive, perpetual, irrevocable, worldwide, fully-paid, transferable right and license, with the right to sublicense through multiple levels of sublicensees, under all of your intellectual property rights in the User Materials, to (a) reproduce, create derivative works of, distribute, publicly perform, publicly display, digitally transmit, and otherwise use the User Materials in any medium or format, whether now known or hereafter discovered and (b) exercise any and all other present or future rights in the User Materials. As between you and Misty Robotics, you remain the owner of all User Materials that you make available in connection with the Services. You represent and warrant to Misty Robotics that you are the owner of the copyright to the User Materials or that you have written permission from the copyright owner to use such User Materials. In addition, you warrant that all moral rights in any User Materials have been waived. You agree to indemnify and hold Misty Robotics harmless for any violation of this provision. Notwithstanding the foregoing, the term “User Materials” specifically excludes any

information, data, text, software, or other materials you provide to Misty Robotics or upload to the Site in connection with your use of the Misty Robotics Developer Materials. All such materials are governed by the Developer Terms.

**3.2 Distribution of User Materials.** You agree that you will not contribute any User Materials that: (a) is defamatory, abusive, harassing, threatening, or an invasion of a right of privacy of another person; (b) is illegal or encourages or advocates illegal activity or the discussion of illegal activities with the intent to commit them, including a submission that is, or represents an attempt to engage in, child pornography, stalking, sexual assault, fraud, trafficking in obscene or stolen material, drug dealing and/or drug abuse, harassment, theft, or conspiracy to commit any criminal activity; (c) infringes or violates any right of a third party including any copyright, patent, trademark, trade secret or other proprietary or contractual rights, right of privacy (specifically, you must not distribute another person's personal information of any kind without their express permission) or publicity, or any confidentiality obligation; or (d) contains a virus or other harmful component, or otherwise tampers with, impairs or damages the Services or any connected network, or otherwise interferes with any other person or entity's use or enjoyment of the Services.

**3.3 Review of User Materials and Materials.** While Misty Robotics does not and cannot review all third party material uploaded in connection with the Services, and is not responsible for its content, Misty Robotics reserves the right to remove, delete, move, or edit User Materials that it, in its sole discretion, deems abusive, defamatory, obscene, in violation of the law, including but not limited to copyright or trademark law, or otherwise unacceptable. Misty Robotics will not be liable for any User Materials submitted by you or any other party.

**4. PRICING AND PAYMENT.** Certain features of the Services may now, or in the future, be provided for a fee. Any such fee will be posted with the Services and are subject to change without notice. You agree to pay Misty Robotics in advance any applicable fees for the Services provided by Misty Robotics under these Terms. Misty Robotics will bill your credit card for all fees. You will provide Misty Robotics with accurate and complete billing information including legal name, address, telephone number, and credit card or debit card billing information. If such information is false or fraudulent, Misty Robotics reserves the right to terminate your use of, or access to, the Services in addition to seeking any other legal remedies. Misty Robotics is not responsible for any charges or expenses (e.g., for overdrawn accounts, exceeding credit card limits, etc.) resulting from charges billed by Misty Robotics. Each charge will be considered valid unless disputed by you in writing within thirty (30) days after the billing date. No adjustments will be made for disputed charges made more than thirty (30) days after the billing date. All fees will be paid in U.S. dollars and are due as set forth on the Sites. Misty Robotics' fees are exclusive of all taxes, levies, or duties imposed by taxing authorities, and you will be responsible for payment of all such taxes, levies, or duties, excluding only United States (federal or state) taxes based solely on Misty Robotics' income.

## **5. THIRD PARTY SOFTWARE AND LINKING.**

**5.1 Open Source Software.** Certain items of software included with the Services may be subject to "open source" or "free software" licenses ("**Open Source Software**"). Nothing in these Terms limits your rights under, or grants you rights that supersede, the terms and conditions of any applicable end user license for the Open Source Software. If required by any license for particular Open Source Software, Misty Robotics makes

such Open Source Software, and any Misty Robotics' modifications to that Open Source Software, available by written request to Misty Robotics at the email or mailing address included in these Terms.

**5.2 Third Party Sites.** The Sites may contain links to other websites operated by third parties (“**Third Party Sites**”). Such Third Party Sites are not under our control. Misty Robotics provides these links only as a convenience and does not review, approve, monitor, endorse, warrant, or make any representations with respect to such Third Party Sites. Your use of these Third Party Sites is at your own risk.

**6. SUSPENSION AND TERMINATION.** Misty Robotics reserves the right to suspend or terminate your Account and your access to and use of the Services, at any time, without notice, for any reason, including but not limited to (a) your breach of these Terms, or any other policies or guidelines set forth by Misty Robotics, or (b) conduct that Misty Robotics believes is harmful to other users of the Services, Misty Robotics, or any third party. Further, you agree that Misty Robotics shall not be liable to you or any third party for any termination or suspension of your Account or termination or suspension of your access to the Services. Misty Robotics reserves the right at any time and from time to time to modify or discontinue, temporarily or permanently, the Services (or any part thereof) with or without notice. You agree that Misty Robotics shall not be liable to you or to any third party for any modification, suspension or discontinuance of the Services.

**7. PRIVACY.** Misty Robotics respects the privacy of its users. Misty Robotics collects, uses and discloses information about you in accordance with the Misty Robotics Privacy Policy and the [Privacy Statement for Products] (the “**Privacy Policies**”). You understand and agree that, notwithstanding any measures taken to prevent unauthorized disclosure, use of or connection to the Internet provides the opportunity for unauthorized third parties to circumvent such precautions and illegally gain access to confidential information. Accordingly, Misty Robotics cannot and does not guarantee the privacy, security or authenticity of any information so transmitted over or stored in any system connected to the Internet.

**8. OWNERSHIP AND INTELLECTUAL PROPERTY.** You acknowledge that all intellectual property rights, including without limitation copyrights, patents, trademarks, and trade secrets, in the Product, Product Software, and Services (i.e., the Site and Mobile Applications) are owned by Misty Robotics its licensors. Your possession, access, and use of the Product, Product Software, and Services do not transfer to you or any third party any rights, title, or interest in or to such intellectual property rights. Misty Robotics and its affiliates and licensors and suppliers reserve all rights not granted in these Terms. The Services are licensed to you, not sold, under these Terms. You may not copy or incorporate any of the content of the Services into any work, including your own website without the written consent of Misty Robotics. You must have a license from us before you can post or redistribute any portion of the Services. Other than with respect to your User Materials, Misty Robotics retains full and complete title to all content on the Services, including any downloadable software and all data that accompanies it. You may not modify the Services, create derivative works of the Services, or reverse engineer, reverse compile, reverse assemble or do any other operation with the Services that would reveal any source code, trade secrets, know-how or other proprietary information. Nothing in these Terms shall be construed or interpreted as granting or providing rights to you to use, reproduce, modify, distribute, perform, display, possess or control the source code or any other aspect of the Services. You may not remove or modify any notice of confidentiality, trade secret, trademark or copyright encoded, embodied, or displayed in connection the Services. You may use the Services only while these Terms remain in effect. Under no

circumstances shall you have any rights of any kind in or to the Services after any termination or expiration of your agreement to these Terms for any reason.

## **9. DISCLAIMERS OF WARRANTY.**

**9.1** The warranty for the Products and Product Software are set forth in the Limited Warranty and the EULA, respectively.

**9.2** THE SERVICES ARE PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS AND WITHOUT WARRANTIES OF ANY KIND. MISTY ROBOTICS EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. NO ADVICE OR INFORMATION GIVEN BY MISTY ROBOTICS, ITS EMPLOYEES OR AFFILIATES SHALL CREATE A WARRANTY.

**9.3** MISTY ROBOTICS MAKES NO WARRANTY THAT THE SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE OR ERROR FREE, THAT THE SERVERS ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS, THAT THE SERVICES WILL BE AVAILABLE, OR THAT DATA WILL BE SECURE FROM UNAUTHORIZED ACCESS.

**9.4** MISTY ROBOTICS DOES NOT WARRANT, ENDORSE, GUARANTEE, OR ASSUME RESPONSIBILITY FOR ANY THIRD PARTY PRODUCT OR ANY OTHER PRODUCT OR SERVICE ADVERTISED OR OFFERED BY A THIRD PARTY THROUGH OR IN CONNECTION WITH THE PRODUCTS OR SERVICES, OR ANY HYPERLINKED WEBSITE OR SERVICE, AND MISTY ROBOTICS WILL NOT BE A PARTY TO OR IN ANY WAY MONITOR ANY TRANSACTION BETWEEN YOU AND THIRD-PARTY PROVIDERS OF SUCH PRODUCTS OR SERVICES.

**9.5** MISTY ROBOTICS MAKES NO REPRESENTATIONS CONCERNING ANY USER MATERIALS CONTAINED IN OR ACCESSED THROUGH THE SERVICES, AND MISTY ROBOTICS WILL NOT BE RESPONSIBLE OR LIABLE FOR THE ACCURACY, COPYRIGHT COMPLIANCE, LEGALITY OR DECENCY OF MATERIAL CONTAINED IN OR ACCESSED THROUGH THE SERVICES. MISTY ROBOTICS MAKES NO REPRESENTATIONS OR WARRANTIES REGARDING SUGGESTIONS OR RECOMMENDATIONS OF SERVICES OR PRODUCTS OFFERED OR PURCHASED THROUGH THE SERVICES.

**10. PROPRIETARY AND PRIVACY PROTECTION FOR OTHER USERS’ USER MATERIALS ON THE SITES.** Misty Robotics hereby notifies you that all the information, content, image files, software and materials on the Sites may be protected by U.S. and international copyright and other intellectual property laws and by other applicable laws, including privacy laws. Misty Robotics is unable to provide you with permission to copy display or distribute material for which you do not own the copyright or other intellectual property rights. You may not copy or distribute such material without the written consent of the owner, and you are solely responsible for any copyright or other intellectual property law violations that you may incur as a result of your activities on the Sites. Misty Robotics has the absolute right to terminate your Account or exclude you from the Services if you violate the intellectual property rights or other rights of third parties. You agree to indemnify and hold Misty Robotics harmless for any violation of this provision.

## **11. INDEMNITY; LIMITATION OF LIABILITY**

**11.1** You agree to indemnify, and hold Misty Robotics, its officers, directors, employees and agents, harmless from and against any claims, liabilities, damages, losses, and expenses, including without limitation reasonable attorney's fees and costs, arising out of or in any way connected with (a) your access to or use of the Services or any Product; (b) your access to or use of any Third Party Products; (c) your violation of these Terms; or (d) your violation of any third party right, including without limitation any intellectual property right or any publicity, confidentiality, property or privacy right. Misty Robotics reserves the right, at your expense, to assume the exclusive defense and control of any matter for which you are required to indemnify Misty Robotics and you agree to cooperate with our defense of such claims. Misty Robotics agree not to settle any such claim without Misty Robotics' prior written consent. Misty Robotics will use reasonable efforts to notify you of any such claim, action or proceeding upon becoming aware of it.

**11.2** YOU ACKNOWLEDGE THAT YOUR ACCESS TO AND USE OF THE SERVICES AND ANY RELIANCE UPON THE SAME IS AT YOUR SOLE RISK, THAT YOU ASSUME FULL RESPONSIBILITY FOR ALL COSTS ASSOCIATED WITH ALL NECESSARY SERVICING OR REPAIRS OF THE PRODUCT AND ANY EQUIPMENT YOU USE IN CONNECTION WITH YOUR USE OF THE SERVICES. YOU AGREE THAT, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, UNDER NO CIRCUMSTANCES SHALL MISTY ROBOTICS BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, USE, IMAGES, DATA OR OTHER INTANGIBLES, EVEN IF MISTY ROBOTICS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, THAT RESULT FROM THE USE OR THE INABILITY TO USE THE SERVICES, FROM ANY CHANGES TO THE SERVICES OR FROM UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR TRANSMISSIONS OR USER MATERIALS. YOU SPECIFICALLY ACKNOWLEDGE THAT DOWN-TIME AND COMPUTER VIRUSES ARE RISKS INHERENT IN THE USE OF THE INTERNET AND SOFTWARE PRODUCTS, AND YOU AGREE TO ASSUME RESPONSIBILITY FOR ANY HARM OR DAMAGES OF ANY KIND OR CHARACTER WHATSOEVER RESULTING FROM THESE POSSIBLE HARMS. YOU ALSO SPECIFICALLY ACKNOWLEDGE THAT YOU MAY BE DISCLOSING SENSITIVE, PRIVATE AND CONFIDENTIAL INFORMATION ABOUT YOURSELF IN YOUR USE OF THE SERVICES AND YOU AGREE TO ASSUME RESPONSIBILITY FOR ANY HARM OR DAMAGES OF ANY KIND OR CHARACTER WHATSOEVER RESULTING FROM YOUR RELEASE OF SUCH USER MATERIALS.

**11.3** IF YOU ARE DISSATISFIED WITH THE SERVICES OR WITH ANY OF THESE TERMS, OR FEEL MISTY ROBOTICS HAS BREACHED THESE TERMS, YOUR SOLE AND EXCLUSIVE REMEDY IS TO DISCONTINUE USING THE SERVICES. THE TOTAL LIABILITY OF MISTY ROBOTICS TO YOU FOR ANY CLAIM ARISING FROM OR RELATING TO THESE TERMS OR USE OF THE PRODUCTS OR SERVICES SHALL NOT EXCEED THE AMOUNT PAID BY YOU FOR THE SERVICES OR THE PRODUCT DURING THE TWELVE MONTHS PRECEDING THE EVENT GIVING RISE TO THE LIABILITY. IT IS THE INTENTION OF YOU AND MISTY ROBOTICS THAT THIS PROVISION BE CONSTRUED BY A COURT AS BEING THE BROADEST LIMITATION OF LIABILITY CONSISTENT WITH APPLICABLE LAW.

**11.4** SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF INCIDENTAL, CONSEQUENTIAL OR OTHER TYPES OF DAMAGES, SO SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU. NOTHING IN THESE TERMS AND IN PARTICULAR



WITHIN THIS “INDEMNITY; LIMITATION OF LIABILITY” CLAUSE SHALL ATTEMPT TO EXCLUDE LIABILITY THAT CANNOT BE EXCLUDED UNDER APPLICABLE LAW.

**12. RELEASE.** You hereby release and forever discharge us (and our officers, employees, agents, successors, and assigns) from, and hereby waive and relinquish, each and every past, present, and future dispute, claim, controversy, demand, right, obligation, liability, action, and cause of action of every kind and nature (including personal injuries, death, and property damage), that has arisen or arises directly or indirectly out of, or relates directly or indirectly to, any interactions with, or act or omission of, other users of the Service, any Third Party Site, or any Third Party Product. IF YOU ARE A CALIFORNIA RESIDENT, YOU HEREBY WAIVE CALIFORNIA CIVIL CODE SECTION 1542 IN CONNECTION WITH THE FOREGOING, 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.”

**13. GENERAL.**

**13.1 Modification.** Misty Robotics may modify these Terms at any time. Modifications become effective immediately upon your first access to or use of the Sites or Services after the “Last Revised” date at the top of these Terms. Your continued access to or use of the Sites or Services after the modifications have become effective will be deemed your conclusive acceptance of the modified Terms. If you do not agree with the modifications, do not access or use the Sites or Services.

**13.2 Applicable Law and Dispute Resolution.** These Terms shall be governed by the laws of the State of Colorado without giving effect to any conflict of laws principles that may require the application of the law of another jurisdiction. If you believe that Misty Robotics has not adhered to these Terms, please contact us by e-mail at [legal@mistyrobotics.com](mailto:legal@mistyrobotics.com). We will do our best to address your concerns. If you feel that your complaint has been addressed incompletely, we invite you to let us know for further investigation. If you and Misty Robotics are unable to reach a resolution to the dispute, you and Misty Robotics will settle the dispute exclusively under the rules of the American Arbitration Association ([www.adr.org](http://www.adr.org)) at its Denver, Colorado office. Any election to arbitrate by one party will be final and binding on the other. YOU UNDERSTAND THAT IF EITHER PARTY ELECTS TO ARBITRATE, NEITHER PARTY WILL HAVE THE RIGHT TO SUE IN COURT OR HAVE A JURY TRIAL. YOU AND MISTY ROBOTICS AGREE THAT ANY ARBITRATION WILL BE LIMITED TO THE DISPUTE BETWEEN MISTY ROBOTICS AND YOU INDIVIDUALLY. YOU ACKNOWLEDGE AND AGREE THAT YOU AND MISTY ROBOTICS ARE EACH WAIVING THE RIGHT TO PARTICIPATE AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS ACTION OR REPRESENTATIVE PROCEEDING. Further, unless both you and Misty Robotics otherwise agree in writing, an arbitrator may not consolidate more than one person’s claims, and may not otherwise preside over any form of any class or representative proceeding. Regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to the use of the Services or these Terms must be brought, if at all, within one year from the accrual of the claim or cause of action or be forever barred. Notwithstanding the foregoing, Misty Robotics may seek injunctive or other equitable relief to protect its confidential information and intellectual property rights or to prevent loss of data or damage to its servers in any court of competent jurisdiction.

**13.3 No Resale of Services.** You agree not to reproduce, duplicate, copy, sell, trade, resell or exploit for any commercial purposes, any portion of the Services, use of the Services, or access to the Services.

**13.4 Independent Contractors.** No joint venture, partnership, employment, or agency relationship exists between you and Misty Robotics as a result of these Terms or use of the Services.

**13.5 Enforcement.** If any legal action is brought to enforce these Terms, the prevailing party will be entitled to reimbursement of its attorneys' fees, court costs, and other collection expenses, in addition to any other relief it may receive from the other party.

**13.6 Force Majeure.** Misty Robotics will not be liable by reason of any failure or delay in the performance of its obligations hereunder on account of strikes, shortages, riots, insurrection, fires, flood, storm, explosions, acts of God, war, governmental action, labor conditions, earthquakes, material shortages or any other cause which is beyond Misty Robotics' reasonable control.

**13.7 Waiver.** The failure of Misty Robotics to enforce any right or provision in these Terms will not constitute a waiver of such right or provision unless acknowledged and agreed to by Misty Robotics in writing.

**13.8 Construction.** The headings of Sections of these Terms are for convenience and are not to be used in interpretation.

**13.9 Survivability.** Sections 2, 3, 5, 6, 7, 8, 9, 11, 12 and 13 will survive any expiration or termination of these Terms.

**13.10 Contact.** Misty Robotics is located in Boulder, Colorado. Any questions, comments or suggestions, including any report of violation of these Terms should be provided Misty Robotics as follows:

By E-mail:                    legal@mistyrobotics.com

By Postal Mail:            2540 Frontier Ave., Suite 101, Boulder, CO 80301

**13.11 Entire Agreement.** These Terms constitute the entire agreement between you and Misty Robotics with respect to the Services, superseding any prior agreements between you and Misty Robotics. The failure of Misty Robotics to exercise or enforce any right or provision of these Terms shall not constitute a waiver of such right or provision. If any provision of these Terms is found by a court of competent jurisdiction to be invalid, you and Misty Robotics nevertheless agree that the court should endeavor to give effect to the parties' intentions as reflected in the provision, and the other provisions of these Terms shall remain in full force and effect.