

## Liquid Robotics, Inc.

### WGMS Software Terms and Conditions

IMPORTANT - USE OF THE SOFTWARE PRODUCT (AS DEFINED BELOW) IS SUBJECT TO RESTRICTIONS. CAREFULLY READ THESE TERMS AND CONDITIONS BEFORE USING THIS SOFTWARE PRODUCT.

These WGMS Software Terms and Conditions, together with the Order (as defined below), constitute a legal contract concerning the use of the Software Product between the Customer (as defined below) and Liquid Robotics, Inc. (“LRI”), having its principal place of business at 1329 Moffett Park Dr., Sunnyvale, CA 94089. USE, DOWNLOAD, OR INSTALLATION OF THE SOFTWARE PRODUCT, OR SUBMITTING AN ORDER THAT REFERENCES THESE TERMS AND CONDITIONS, OR SELECTING AN “ACCEPT” OR SIMILAR ONLINE BUTTON ASSOCIATED WITH THESE TERMS AND CONDITIONS, INDICATES THAT CUSTOMER COMPLETELY AND UNCONDITIONALLY AGREES TO THE TERMS AND CONDITIONS SET FORTH HEREIN AND AGREES TO BE BOUND BY AND COMPLY WITH THE SAME. If Customer does not agree to these terms and conditions, Customer may not use, download or install the Software Product, should promptly contact a sales representative at LRI, and, if supplied with a copy of the Software Product, must return the Software Product to LRI.

#### 1. DEFINITIONS.

1.1. **“Agreement”** means the agreement between the Customer and LRI concerning the Software Product that consists of these WGMS Software Terms and Conditions and the Order terms that are referenced herein.

1.2. **“Customer”** means the entity purchasing a license or subscription for the Software Product, as identified in the Order.

1.3. **“Documentation”** has the meaning given in Section 1.7 below.

1.4. **“Licensed Configuration”** means, with respect to deployments of the Licensed Software on Customer’s premises, the permitted hardware and software configuration associated with the particular license purchased by Customer, as described in the Order and/or LRI’s applicable Documentation.

1.5. **“Limited Purpose”** means control and view the status of LRI’s Wave Glider unmanned vehicles, up to the quantity of vehicles for which Customer has paid all applicable license or subscription fees, in accordance with and for the purposes described in the Documentation.

1.6. **“Order”** means an online LRI order form, or a written task order, purchase order, LRI order form, or similar contractual document, that references these WGMS Software Terms and Conditions and is submitted by Customer and accepted by LRI.

1.7. **“Software Product”** means: (a) LRI’s software solution for remote management of Wave Glider vehicles, currently known as WGMS, for which Customer is obtaining a license or subscription, as specified in the Order, (b) associated manuals and other user documentation furnished by LRI to Customer in relation to the same (the **“Documentation”**), and (c) any fixes, patches, updates, upgrades, customizations and/or enhancements to any of the foregoing that LRI furnishes to Customer (except to the extent covered by a separate written agreement between Customer and LRI). If Customer has an LRI-hosted subscription, references to the Software Product will, where the context permits, also be interpreted as including LRI’s

service of hosting and providing access to the Software Product's functionality.

## 2. USE OF SOFTWARE PRODUCT.

2.1. **License and Subscription Types.** LRI offers the Software Product either as a subscription-based, LRI-hosted online application (referred to as "**Hosted WGMS**") or as perpetually licensed software deployed on Customer's premises (referred to as "**Enterprise WGMS**" or "**Enterprise WGMS Light**," depending on the Licensed Configuration). As more specifically indicated herein, certain terms and conditions of this Agreement apply only to Hosted WGMS or to Enterprise WGMS or Enterprise WGMS Light. The applicability of those terms and conditions will be determined by the license or subscription type indicated in Customer's Order.

2.2. **Authorization.** Subject to the terms and conditions of this Agreement (including without limitation Customer's timely payment of all fees and compliance with all other obligations and restrictions set forth in this Agreement), LRI authorizes Customer:

- (i) to access and use the functionality of the Software Product as hosted by LRI, for the Limited Purpose, throughout Customer's applicable subscription period, if Customer has a Hosted WGMS subscription; or
- (ii) to deploy the Software Product, solely in the form furnished by LRI to Customer, on Customer's own server(s) in compliance with the Licensed Configuration, and to use the Software Product as so deployed for the Limited Purpose, on a perpetual basis (subject to termination as provided in this Agreement), if Customer has an Enterprise WGMS or Enterprise WGMS Light license.

This authorization is non-exclusive, non-transferable (unless assignment is approved by LRI in accordance with Section 8.3), non-subliceasable, and subject to any applicable restrictions or limitations set forth in the Order, such as any stated limits on the quantity or type of users, servers or vehicles. Unless otherwise indicated in the Order, any user limit indicates the maximum number of individuals who may at any time possess login credentials or otherwise be enabled to use the Software Product under Customer's license or subscription, and multiple individuals may not share the same login credentials.

2.3. **Copies.** If Customer is supplied with a copy of the Software Product (in connection with a perpetual license), Customer may make one additional copy of the Software Product solely for archival, back-up and disaster recovery purposes and may only use that copy if the original installed copy of the Software Product is no longer used. Otherwise, Customer will not reproduce the Software Product, and will install and use only the copy or copies furnished by LRI.

2.4. **Third-Party Software.** If the Software Product is provided with or includes third-party software or materials (including third-party open-source materials), such third party software or materials may be subject to other terms and conditions and are not governed by this Agreement to the extent it conflicts with the applicable third-party terms and conditions. Any third party software is set forth on Attachment A hereto, and is fully incorporated herein. Each third party component contains or is accompanied by its own license agreement, which LRI identified on Attachment A hereto or which is included in one of the "README" files associated with the third party software identified on Attachment A (or in a file or files referenced therein).

2.5. **Reservation of Rights; Restrictions.** All rights not expressly granted to Customer by this Agreement are expressly reserved by LRI and its licensors. Customer shall not, nor will Customer allow anyone else to, directly or indirectly: (i) sell, rent, lease, sublicense, distribute or otherwise transfer the

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Software Product or any portion thereof; (ii) except as expressly permitted in this Agreement, use, copy, display, or perform the Software Product, or any portion thereof; (iii) connect to any LRI server or any server software associated with the Software Product except using a device or authorization information issued, authorized or approved by LRI; (iv) reverse compile, disassemble or otherwise reverse engineer the Software Product or any portion thereof, except and only to the limited extent expressly permitted by applicable law notwithstanding this limitation; (v) modify, translate or create derivative works based on the Software Product or any portion thereof; (vi) unless expressly permitted in writing by LRI, make the Software Product available in any manner to any third party for use in the third party's business operations or to provide hosting, service bureau, time-sharing or similar services to a third party; (vii) unless expressly permitted in writing by LRI, use the Software Product for any commercial purpose, or (viii) disable or circumvent any access control or related device, process or procedure established with respect to the Software Product. Customer is responsible for all use of the Software Product and for compliance with this Agreement; any breach by Customer or any user acting on Customer's behalf or using Customer's on-premises deployment or Customer's Hosted WGMS subscription (whether or not authorized by Customer) shall be deemed to have been committed by Customer for purposes of this Agreement.

2.6. **Customer Obligations.** Customer agrees that it will not use the Software Product for any purpose that is illegal or in any way that might result in any loss of property or information. Customer agrees to use the Software Product strictly in accordance with the Documentation. Customer agrees that it shall have the sole responsibility for protecting its data used in connection with the Software Product. If LRI provides a fix, upgrade or update of the Software Product, Customer agrees to immediately install and/or use such fix, upgrade or update and discontinue use of the previous version of the Software Product. Customer acknowledges that various third-party hardware, software and services are required in order to use the Software Product or certain features thereof (for example, Customer must have access to Iridium network services in order to use the Software Product's Iridium network interface), and Customer will be solely responsible for obtaining the same, at its expense and in accordance with all applicable specifications in the Documentation, as needed.

2.7. **Additional Terms for Hosted WGMS.** Customer is responsible for maintaining the security of Hosted WGMS account and login credentials, if applicable. LRI cannot and will not be liable for any loss or damage from Customer's failure to comply with this security obligation. Customer is also responsible for, and will indemnify LRI against any liability arising from, all activity that occurs under Customer's account. Without limiting the foregoing, Customer agrees as follows.

- (a) Customer will use only LRI-furnished interfaces for accessing and using the Software Product.
- (b) Customer shall not modify, adapt, hack or attempt to gain unauthorized access to any portion of LRI's servers, networks, software or other resources that are used to provide the Software Product.
- (c) LRI may upon reasonable notice, but shall have no obligation to, remove or disable data (and/or accounts containing data) hosted on our servers if we determine in our sole discretion that such data is likely to be unlawful or in violation of any third party's intellectual property or other rights or the terms of this Agreement.
- (d) The Software Product's technical processing of data, and the transmission of data by, to, or in connection with the Software Product, may be unencrypted and involve transmissions over various networks and/or changes to conform and adapt to technical

requirements of connecting networks or devices.

- (e) Customer shall not knowingly upload to LRI servers any data or other information that contains any worms or viruses or any code of a destructive or malicious nature.
- (f) In severe/extreme cases of abnormal or abusive bandwidth use, we reserve the right to limit Customer's access to the Software Product until Customer reduces its bandwidth consumption to acceptable levels.
- (g) LRI may update the Software Product from time to time, including by modifying, adding and/or discontinuing particular features or components of the Software Product.

2.8. **Proprietary Notices.** Customer agrees not to remove from view any copyright, trademark, or other proprietary notice, mark, or legend appearing on any of the Software Product or on output generated by the Software Product and agrees to reproduce and include the same on each copy of the Software Product permitted by this Agreement.

2.9. **Ownership.** All right, title and interest in and to the Software Product, including without limitation all patents, copyrights, trade secrets, trademarks and other intellectual property right therein, are and shall remain with LRI and/or its suppliers, as applicable. Neither this Agreement nor delivery of any copy of the Software Product will be construed as transferring title or any ownership right or interest in the Software Product to Customer. The Software Product is licensed or for use (or made available as a subscription-based service), not sold. Customer acknowledges and agrees that the Software Product and its structure and organization contain, embody and are based on patented or patentable inventions, trade secrets, copyrights and/or other intellectual property rights owned by LRI and its licensors. Nothing contained in this Agreement shall be construed to confer any license or right with respect to any patent, trademark, trade name, brand name, or the corporate name of LRI, or of any of LRI's suppliers.

### 3. PAYMENTS.

3.1. **Fees.** In consideration of the rights provided by LRI hereunder, Customer hereby agrees to pay LRI the fees set forth in the Order. Unless otherwise expressly provided in such Order, the fees shall be due and payable on the date of such Order.

3.2. **Taxes and Withholdings.** The fees set forth in this Agreement are exclusive of, and Customer will pay, all taxes, duties and other charges or fees imposed by governmental authorities arising out of this Agreement or the use of the Software Product by Customer. In the event that LRI is required to pay any tax or duty (other than taxes based on LRI's net income), Customer will reimburse LRI for any and all such payments. In addition, if any of the Software Product will be provided to points outside of the United States, all export duties, import duties, tariffs, value added taxes, licenses and other similar taxes, duties and fees will be paid by Customer. If Customer pays any withholding or similar tax under the laws of a country outside of the U.S. based on any payments to LRI under this Agreement, Customer will increase the fees otherwise due as needed to offset any impact of the withholding or other tax on LRI.

### 4. TERM AND TERMINATION.

4.1. **Generally.** This Agreement and the license or other authorization granted herein are effective until terminated as set forth in this Agreement; provided, however, that with respect to Hosted WGMS subscriptions, this Agreement and the authorization granted herein shall automatically expire at the end

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of the initial subscription period included in the base price of Customer's covered Wave Glider vehicle(s) or any applicable subscription auto-renewal pursuant to LRI's Commercial Terms and Conditions, Article 19.2 – Hosted Software Services that Customer has purchased. Unless specified to the contrary in the Order or Documentation, the initial subscription period for new Wave Glider purchases is one (1) year from the date of shipment, and any subscription auto-renewals are for one (1) year each. The foregoing notwithstanding, this Agreement will terminate immediately if Customer fails to comply with any terms or conditions of this Agreement, unless LRI waives such termination in writing with respect to that breach. LRI may also suspend Customer's rights hereunder, with or without notice to Customer, as LRI reasonably deems appropriate to protect its interests in the event of any suspected or anticipated violation of this Agreement.

4.2. **Effect of Termination.** Upon termination or expiration of this Agreement for any reason, all licenses and other authorizations granted under this Agreement will terminate, Customer shall cease using the Software Product and, if applicable, return the Software Product, and Customer shall pay within thirty days all amounts remaining unpaid for the Software Product under this Agreement. Sections 2.5, 2.6, 2.9, 4.2, 5, 6, 7, and 8, and any other provisions of this Agreement that, by their terms, contemplate continuing effectiveness beyond the term of this Agreement, shall survive termination or expiration of this Agreement.

## 5. DISCLAIMERS.

5.1. **Software Product.** THE SOFTWARE PRODUCT IS PROVIDED "AS IS" AND "AS AVAILABLE," WITHOUT REPRESENTATIONS OR WARRANTIES OF ANY KIND. TO THE FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW, LRI AND ITS SUPPLIERS SPECIFICALLY DISCLAIM ALL WARRANTIES, CONDITIONS, AND REPRESENTATIONS, WHETHER EXPRESS, IMPLIED, STATUTORY OR ARISING FROM CUSTOM, USAGE, COURSE OF DEALING OR OTHERWISE, REGARDING THE SOFTWARE PRODUCT, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF FITNESS FOR ANY PARTICULAR PURPOSE, MERCHANTABILITY, TITLE, QUIET ENJOYMENT, OR NON-INFRINGEMENT. WITHOUT LIMITING THE FOREGOING, LRI DOES NOT WARRANT THE PERFORMANCE OR RESULTS CUSTOMER MAY OBTAIN BY USING THE SOFTWARE PRODUCT, THAT DEFECTS WILL BE CORRECTED, THAT THE SOFTWARE PRODUCT WILL OPERATE WITHOUT ERRORS, DEFECTS OR INTERRUPTIONS, OR THAT THE SOFTWARE PRODUCT WILL OPERATE OR BE COMPATIBLE WITH ANY THIRD PARTY SOFTWARE OR HARDWARE

5.2. **Hardware and Third-Party Items.** LRI FURTHER DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES WHATSOEVER WITH RESPECT TO: (a) ANY LRI HARDWARE (EXCEPT TO THE EXTENT, IF ANY, IT IS EXPRESSLY WARRANTED BY LRI IN A SEPARATE WRITTEN AGREEMENT BETWEEN LRI AND CUSTOMER FOR THE PURCHASE OR MAINTENANCE OF SUCH LRI HARDWARE); OR (b) ANY NON-LRI HARDWARE, SOFTWARE AND SERVICES ON WHICH OR WITH WHICH CUSTOMER USES THE SOFTWARE PRODUCT, WHETHER OR NOT RECOMMENDED OR SPECIFIED BY LRI.

5.3. **Customer Responsibility.** Customer represents that Customer has the requisite expertise to evaluate the suitability of the Software Product and associated hardware and that Customer has undertaken its own investigation of the suitability of the Software Product and associated hardware. Customer represents that Customer has relied upon its own skill and judgment in selecting the Software Product and associated hardware. Customer assumes full responsibility for the selection of the Software Product and hardware and for the use and results obtained from the Software Product and hardware.

## 6. LIMITATIONS OF LIABILITY.

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6.1. **Maximum Liability.** LRI'S TOTAL AGGREGATE LIABILITY AND THAT OF ITS SUPPLIERS ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND/OR THE SOFTWARE PRODUCT WILL BE LIMITED TO THE AMOUNT OF ACTUAL DIRECT DAMAGES UP TO THE AMOUNT PAID FOR THE APPLICABLE SOFTWARE PRODUCT BY CUSTOMER UNDER THIS AGREEMENT FOR THE LICENSE OR SUBSCRIPTION PERIOD IN WHICH THE LIABILITY ARISES. IN THE CASE OF HOSTED WGMS SUBSCRIPTIONS PROVIDED AS PART OF THE PURCHASE OF A WAVE GLIDER VEHICLE, THE FOREGOING CAP ON LIABILITY WILL BE EQUAL TO THE PORTION OF THE PURCHASE PRICE REASONABLY ALLOCABLE TO THE SUBSCRIPTION BUT NOT TO EXCEED TEN THOUSAND DOLLARS (\$10,000.00) PER VEHICLE.

6.2. **Exclusion of Damages.** IN NO EVENT WILL LRI OR ITS SUPPLIERS BE LIABLE TO CUSTOMER FOR ANY LOSS, DAMAGES, CLAIMS OR COSTS WHATSOEVER ARISING FROM LOST REVENUE, BUSINESS, PROFITS, SAVINGS, DATA, USE OF EQUIPMENT OR OPERATION OF EQUIPMENT, OR ARISING FROM DELAYS IN DELIVERY OR REPAIR OF EQUIPMENT OR DAMAGE TO ANY DATA OR OTHER PROPERTY BELONGING TO CUSTOMER, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES, OR FOR ANY CLAIM BY ANY THIRD PARTY, ALL REGARDLESS OF THE FORM OF ACTION WHETHER IN CONTRACT, TORT OR OTHERWISE, EVEN IF A LRI REPRESENTATIVE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS, DAMAGES, CLAIMS OR COSTS. THE FOREGOING LIMITATIONS AND EXCLUSIONS APPLY TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW IN CUSTOMER'S JURISDICTION.

6.3. **Basis of Bargain.** The foregoing limitations and exclusions are an essential part of the parties' agreement and will apply even if any remedy fails of its essential purpose.

## 7. CONFIDENTIALITY.

7.1. **Definition.** "Confidential Information" means: (a) all software code, documentation and other materials included in or furnished by LRI as part of the Software Product; and (b) any other non-public technical or business information of LRI (or its licensors), including without limitation any information relating to LRI's techniques, algorithms, software, hardware, firmware, know-how, current and future products, services, research, engineering, designs, financial information, procurement requirements, manufacturing, customer lists, business forecasts, marketing plans and information, the terms and conditions of this Agreement, and any other information of LRI (or its licensors) that is conspicuously identified as confidential or proprietary at the time of disclosure or that Customer should otherwise reasonably understand to be confidential or proprietary to LRI or its licensors due to the nature of the information or the circumstances of its disclosure.

7.2. **Obligation.** Customer will maintain the confidentiality of the Confidential Information using at least the same measures that Customer employs to protect Customer's own confidential information and in no event less than reasonable measures. Customer will limit the disclosure of Confidential Information to only Customer's employees with a bona fide need to access such Confidential Information in order to exercise Customer's rights and obligations under this Agreement, and then only provided that each such employee is bound by a written confidentiality agreement that contains restrictions at least as protective as those set forth herein. Customer agrees that LRI will suffer irreparable harm in the event that Customer breaches any obligations under this Section 7 and that monetary damages will be inadequate to compensate LRI for such breach. In the event of a breach or threatened breach of any of the provisions of this Section, LRI, in addition to and not in limitation of any other rights, remedies or damages available to it at law or in equity and without the necessity of posting bond or proving that it has no adequate remedy at law, shall be entitled to seek a temporary restraining order, preliminary injunction and/or permanent



injunction in order to prevent or to restrain any such breach.

7.3. **Other Agreements.** This Confidentiality provision will not be construed as diminishing either party's confidentiality obligations under any separate, applicable written agreement between Customer and LRI.

## 8. MISCELLANEOUS.

8.1. **Severability.** If any term or provision of this Agreement should be declared unlawful, void or unenforceable, the remaining terms and provisions of this Agreement shall be unimpaired and remain in full force and effect, and the unlawful, void or unenforceable term or provision shall be deemed to be restated so as to be enforceable to the maximum extent permissible under law.

8.2. **Entire Agreement.** This Agreement constitutes the entire agreement and understanding between LRI and Customer relating to the subject matter of this Agreement and supersedes any and all previous and contemporaneous communications, proposals, warranties, representations or agreements, whether written or oral, with respect to the subject matter of this Agreement. Any term or condition in any purchase quote, order, acknowledgment, or any other communications by or between the parties that is in addition to or inconsistent with the terms and conditions of this Agreement (but that purports to relate to the subject matter hereof) is hereby expressly rejected, and LRI's acceptance of any offer or order of Customer is expressly made in reliance on Customer's assent to all of the terms and conditions of this Agreement.

8.3. **No Assignment.** Customer shall not assign this Agreement, assign any interest in this Agreement, or assign any rights or delegate any obligations hereunder, in whole or in part, whether voluntarily or by operation of law, without LRI's prior express written approval, which approval shall not be unreasonably withheld. Any such purported assignment or delegation by Customer without LRI's prior written consent will be null and void and of no force or effect, unless otherwise expressly consented to by LRI at its sole and absolute discretion.

8.4. **Modification.** This Agreement may not be modified, amended, rescinded, canceled or waived, in whole or part, except by a written agreement signed by Customer and LRI.

8.5. **Governing Law.** This Agreement and the rights, duties and obligations of the parties hereto are to be governed by, construed and enforced according to the laws of the State of California and controlling U.S. federal law, without regard to any choice-of-law rules or principles. Any dispute arising out of or related to this Agreement shall be resolved only in the state or federal courts located in Santa Clara County, California, U.S.A., and Customer hereby submits to the exclusive jurisdiction of such courts. Customer irrevocably agrees to waive any objection to the venue of any such suit or proceeding in Santa Clara County, California, or to in personam jurisdiction, provided that service is effective. Customer expressly agrees with LRI that this Agreement shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods.

8.6. **Force Majeure.** LRI shall not be responsible for any delay or failure to perform obligations specified in this Agreement due to causes beyond LRI's reasonable control.

8.7. **Compliance with Law; Export Controls.** Customer will comply with all applicable laws, regulations, treaties or other types of government authority (including without limitation the laws and regulations governing export control, unfair competition, anti-discrimination, false advertising, privacy and data

protection, and publicity) in connection with the Software Product. Without limiting the foregoing, the Software Product and any related technical information or materials may be subject to export controls under U.S. or foreign export laws and/or regulations. Customer will not export, re-export, divert, ship or disclose, directly or indirectly, the Software Product or any related technical information or materials without complying with all requirements, including without limitation obtaining the prior approval of the U.S. Department of Commerce or other applicable authority as may be required. If the Software Product is identified as export controlled under U.S. or foreign export laws and/or regulations, Customer represents and warrants that Customer is not a citizen, or otherwise located within, an embargoed nation and that Customer is not otherwise prohibited under the U.S. or foreign export laws or regulations from receiving the Software Product.

8.8. **Waiver.** Waiver or failure by LRI to enforce any rights or remedies under this Agreement will not be construed as a waiver of such rights or remedies, and a waiver by LRI of a default hereunder in one or more instances will not be construed as constituting a continuing waiver or as a waiver of any other rights or remedies under this Agreement. LRI will not be deemed to have waived any rights or remedies under this Agreement unless such waiver is in writing and signed by a duly authorized representative of LRI.

8.9. **Limitation of Actions.** No action or proceeding against LRI in relation to the Software Product will be commenced by Customer more than one year after LRI has made the applicable version of the Software Product available to Customer, unless otherwise provided by local law without the possibility of contractual waiver or limitation. No action or proceeding may be brought unless LRI has first been given commercially reasonable notice, a full written explanation of all pertinent details (including copies of all materials), and a good faith opportunity to resolve the matter.

#### 8.10. **Intellectual Property Indemnification.**

8.10.1 **Infringement Indemnity.** LRI shall defend or settle any suit or action brought against Customer to the extent that it is based upon a claim that the Software Product, as furnished by LRI hereunder, infringes or misappropriates the copyright, trade secret or U.S. patent rights of any third party, and will pay any costs, damages and reasonable attorneys' fees attributable to such claim that are finally awarded against Customer. LRI's obligations under this Section 8.10.1 are contingent upon Customer: (a) providing LRI with prompt written notice of such claim; (b) providing LRI with reasonable information and assistance, at LRI's expense, in the defense and settlement of such claim; and (c) tendering to LRI sole authority and control over the defense and settlement of such claim. In the event that LRI's right to provide or Customer's right to use the Software Product is enjoined or in LRI's reasonable opinion is likely to be enjoined, LRI may obtain a license for continued provision or use of the Software Product, replace or modify the Software Product so that it becomes non-infringing, or, if such remedies are not reasonably available, terminate this Agreement without liability to Customer. THE FOREGOING STATES THE ENTIRE OBLIGATION OF LRI AND ITS LICENSORS WITH RESPECT TO ANY ALLEGED OR ACTUAL INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS BY THE SERVICE. LRI shall have no liability under this Section 8.10.1 to the extent that any third-party claims described herein are based on any combination of the Software Product with products, services, methods, or other elements not furnished by LRI, any modification of the Software Product other than modifications made by or for LRI, Customer's failure to use the most current release (including any maintenance



releases or patches) offered by LRI, or any use of the Software Product in a manner that violates this Agreement or the instructions given to Customer by LRI.

8.10.2 **Mitigation Measures.** In the event of any claim or potential claim covered by Section 8.10.1, LRI may, in its discretion, seek to mitigate the impact of such claim by modifying, providing a work-around for, or replacing the Software Product to make it non-infringing, and/or by suspending or terminating Customer's use of the Software Product upon reasonable notice to Customer (provided, in the case of such suspension or termination, that LRI will refund to Customer a portion of fees prepaid by Customer for the then-current subscription period, prorated to the portion of that subscription period that is affected by the suspension or termination, or in the case of a perpetual license, a prorated portion of the license fee as amortized on a straight-line basis over five years from commencement of the license).

8.11. **Customer Indemnity.** Customer acknowledges that LRI has no knowledge of, or control over, the actual uses of the Software Product made by Customer. Customer agrees to defend, indemnify and hold LRI harmless from and against any and all losses, liabilities, damages, costs and expenses (including but not limited to reasonable attorneys' fees) arising out of or related to any suit, claim or proceeding relating to Customer's use of the Software Product, including without limitation any loss related to Customer's failure to conform to the requirements of Section 8.7. If Customer is the U.S. Federal Government, this Section 8.11 shall not apply to the extent such application would violate the United States Anti-Deficiency Act.

8.12. **U.S. Government Rights.** The Software Product and Documentation are "commercial items" as that term is defined at FAR 2.101. If acquired by or on behalf of a civilian agency, the U.S. Government acquires the Software Product and Documentation (including, without limitation, commercial computer software and/or commercial computer software documentation and other technical data such as the content accessible through the Software Product) subject to the terms of this Agreement as specified in 48 C.F.R. 12.212 ("Computer Software") and 12.211 ("Technical Data") of the Federal Acquisition Regulation ("FAR") and its successors. If acquired by or on behalf of any agency within the Department of Defense ("DOD"), the U.S. Government acquires the Application and Documentation (including, without limitation commercial computer software and/or commercial computer software documentation and other technical data such as the content accessible through the Application) subject to the terms of this Agreement as specified in 48 C.F.R. 227.7202-3 of the DOD FAR Supplement ("DFARS") and its successors. This U.S. Government Rights clause is in lieu of, and supersedes, any other FAR, DFARS, or other clause or provision that addresses Government rights in computer software or technical data under this Agreement, unless expressly agreed to in writing by LRI..

8.13. **Verification of Compliance.** Upon ten days' written notice, LRI may audit Customer's use of the Software Product. Customer agrees to cooperate with LRI's audit and provide reasonable assistance and access to information. Customer agrees to pay within thirty days of written notification any underpaid fees. If Customer does not pay, LRI can terminate this Agreement and Customer's use of the Software Product.

8.14. **Notices.** All notices, requests, consents, and other communications hereunder shall be in writing addressed to the recipient party at its address specified in the Order (or such other address as it may specify by notice in accordance with this Section) and shall be deemed effectively given and received upon delivery in person, or one business day after delivery to a nationally recognized overnight courier service

if sent by overnight or priority delivery, or by facsimile or email transmission with acknowledgment of transmission receipt if sent during the normal business hours of the receiving party, or five business days after deposit via certified or registered U.S. mail, return receipt requested.

8.15. **Privacy Policy.** In this Section, “Data Protection Legislation” means: (i) the General Data Protection Regulation ((EU) 2016/679) (“GDPR”) or (ii) another applicable data protection law. To the extent LRI is a processor or sub-processor of personal data in connection with the Software Product, LRI makes to all customers, effective May 25, 2018, commitments in the processing of personal data that both parties will comply with all applicable Data Protection Legislations.

The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Data Controller and LRI is the Data Processor (where “Data Controller”, “Data Processor”, “Data Subject”, “Process” and “Personal Data” have the meanings as defined in the Data Protection Legislation. Without prejudice to the generality of the above:

- (a) the Customer has (and shall maintain throughout the Term of this Agreement and thereafter) all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to LRI throughout the Term of this Agreement and thereafter for or in relation to the purposes of this Agreement.
- b) LRI shall, in relation to any Personal Data Processed in connection with the performance by LRI of its obligations under this Agreement: (i) Process that Personal Data only on the Customer’s written instructions unless LRI is required by the laws of any member of the European Union or by the laws of the European Union applicable to LRI to Process Personal Data (“Applicable Laws”); (ii) ensure that it has in place appropriate technical and organizational measures to protect against unauthorized or unlawful Processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorized or unlawful Processing or accidental loss, destruction or damage and the nature of the Personal Data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, anonymizing or pseudonymizing and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organizational measures adopted by it; (iii) ensure that all personnel who have access to and/or Process Personal Data are obliged to keep the Personal Data confidential; (iv) not transfer any Personal Data outside of the European Economic Area unless the Customer’s prior written consent (such consent not to be unreasonably withheld or delayed) has been obtained and the following conditions are fulfilled: (A) the Customer or LRI has provided appropriate safeguards in relation to the transfer; (B) the Data Subject has enforceable rights and effective legal remedies; (C) LRI complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and (D) LRI complies with reasonable instructions notified to it in advance by the Customer with respect to the Processing of the Personal Data; (v) assist the Customer, at the Customer’s cost, in responding to any request from a Data Subject and in ensuring compliance with the Customer’s obligations under the Data Protection Legislation including (but not limited to) with respect to security, breach notifications,

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impact assessments and consultations with supervisory authorities or regulators; (vi) notify the Customer without undue delay on becoming aware of a Personal Data breach; (vii) at the Customer's written direction, delete or return Personal Data and copies thereof to the Customer on expiry or termination of this Agreement unless required by Applicable Law to store the Personal Data.

The Customer consents to LRI appointing any third-party Processor of Personal Data under this Agreement. LRI confirms that it has entered or (as the case may be) will enter with the third-party Processor into a written agreement. As between the Customer and LRI, LRI shall remain fully liable for all acts or omissions of any third-party Processor appointed by it pursuant to this Section.

# LIQUID ROBOTICS PROPRIETARY

## EXHIBIT A

### Additional Terms

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