



Building Robotics Terms of Use

Effective Date: May 25, 2018

Welcome, and thank you for your interest in Comfy, a product of Building Robotics, Inc. (“Building Robotics”, “we,” or “us”). We provide a service through our website at www.comfyapp.com (the “Site”), and through related websites, networks, embeddable widgets, downloadable software, mobile applications, tablet applications, web applications, and other online and offline services provided by us (collectively, together with the Site, our “Service”). These Terms of Use are a legally binding contract between you and Building Robotics regarding your use of the Service. PLEASE READ THE FOLLOWING TERMS OF USE CAREFULLY. BY USING THE SERVICE AND AGREEING TO THESE TERMS, YOU ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTOOD, AND AGREE TO BE BOUND BY THE FOLLOWING TERMS AND CONDITIONS, INCLUDING THE BUILDING ROBOTICS PRIVACY POLICY (COLLECTIVELY, THESE “TERMS”). If you are not eligible, or do not agree to these Terms, then please do not use the Service. These Terms of Use provide that all disputes between you and Building Robotics will be resolved by BINDING ARBITRATION. YOU AGREE TO GIVE UP YOUR RIGHT TO GO TO COURT to assert or defend your rights under this contract (except for matters that may be taken to small claims court). Your rights will be determined by a NEUTRAL ARBITRATOR and NOT A JUDGE OR JURY and your claims cannot be brought as a class action. Please review the Arbitration Agreement below for the details regarding your agreement to arbitrate any disputes with Building Robotics.

Building Robotics Service Overview. Building Robotics provides a software-based service named “Comfy” that provides commercial building occupants with personalized, adaptive control over their thermal environment.

Eligibility. You must be at least eighteen (18) years of age to use the Service. By agreeing to these Terms, you represent and warrant to us: (i) that you are at least eighteen (18) years of age; (ii) that you have not previously been suspended or removed from the Service; and (iii) that your registration and your use of the Service is in compliance with any and all applicable laws and regulations. If you are using the Service on behalf of an entity, organization, or company, you represent and warrant that you have the authority to bind such organization to these Terms and you agree to be bound by these Terms on behalf of such organization.

Accounts and Registration. To access most features of the Service, you must register for an account. When you register for an account, you may be required to provide us with some information about yourself as explained in our Privacy Policy. You agree that the information you provide to us is accurate and that you will keep it accurate and up-to-date at all times. When you register, you will be asked to provide a password. You are solely responsible for maintaining the confidentiality of your account and password. You agree to accept responsibility for all activities that occur under your account. If you have reason to believe that your account is no longer secure, then you must immediately notify us at info@comfyapp.com.



Prohibited Conduct. BY USING THE SERVICE YOU AGREE NOT TO:

1. Use the Service for any illegal purpose, or in violation of any local, state, national, or international law;
2. Violate, or encourage others to violate, the rights of third parties, including by infringing or misappropriating third party intellectual property rights;
3. Interfere with security-related features of the Service, including without limitation by (i) disabling or circumventing features that prevent or limit use or copying of any content, or (ii) reverse engineering or otherwise attempting to discover the source code of the Service or any part thereof except to the extent that such activity is expressly permitted by applicable law;
4. Interfere with the operation of the Service or any user's enjoyment of the Service, including without limitation by (i) uploading or otherwise disseminating viruses, adware, spyware, worms, or other malicious code, (ii) making unsolicited offers or advertisements to other users of the Service, (iii) attempting to collect, personal information about users or third parties without their consent; or (iv) interfering with or disrupting any networks, equipment, or servers connected to or used to provide the Service, or violating the regulations, policies, or procedures of such networks, equipment, or servers;
5. Perform any fraudulent activity including impersonating any person or entity, claiming false affiliations, accessing the Service accounts of others without permission, or falsifying your age or date of birth;
6. Sell or otherwise transfer the access granted herein or any Materials (as defined in Section 9 below) or any right or ability to view, access, or use any Materials; or
7. Attempt to do any of the foregoing in this Section 4, or assist or permit any persons in engaging in any of the activities described in this Section 4.

Third-Party Services and Linked Websites. Building Robotics may provide tools through the Service that enable you to export information to third party services, including through features that allow you to link your account on Building Robotics with an account on the third party service, such as Google. By using these tools, you agree that we may transfer such information to the applicable third-party service. Such third party services are not under our control, and we are not responsible for their use of your exported information, except to the minimum extent required by applicable law, including the EU General Data Protection Regulation (the "GDPR"). The Service may also contain links to third-party websites. Such linked websites are not under our control, and we are not responsible for their content.

Termination of Use; Discontinuation and Modification of the Service. If you violate any provision of these Terms, your permission to use the Service will terminate automatically. Additionally, Building Robotics, in its sole discretion may terminate your user account on the Service or sus-



pend or terminate your access to the Service at any time, with or without notice. We also reserve the right to modify or discontinue the Service at any time (including, without limitation, by limiting or discontinuing certain features of the Service) without notice to you. We will have no liability whatsoever on account of any change to the Service or any suspension or termination of your access to or use of the Service. You may terminate your account at any time by contacting customer service at info@comfyapp.com. If you terminate your account, you will remain obligated to pay all outstanding fees, if any, relating to your use of the Service incurred prior to termination.

Privacy Policy; Additional Terms

Privacy Policy. Please read the Building Robotics Privacy Policy carefully for information relating to our collection, use, storage and disclosure of your personal data. The Building Robotics Privacy Policy is hereby incorporated by reference into, and made a part of, these Terms.

Additional Terms. Your use of the Service is subject to any and all additional terms, policies, rules, or guidelines applicable to the Service or certain features of the Service that we may post on or link to on the Service (the “Additional Terms”), such as the End User License Agreement for our mobile application or rules applicable to particular features or content on the Service, subject to Section 8 below. All such Additional Terms are hereby incorporated by reference into, and made a part of, these Terms.

Changes to the Terms. We reserve the right, at our discretion, to change these Terms on a going-forward basis at any time. Please check these Terms periodically for changes. In the event that a change to these Terms materially modifies your rights or obligations, we will make reasonable efforts to notify you of such change. We may provide notice through a pop-up or banner within the Service, by sending an email to any address you may have used to register for an account, or through other similar mechanisms. Additionally, if the changed Terms materially modify your rights or obligations, we may require you to provide consent by accepting the changed Terms. If we require your acceptance of the changed Terms, changes are effective only after your acceptance. If you do not accept the changed Terms, we may terminate your access to and use of the Service. All other changes are effective upon publication of the changed Terms. Disputes arising under these Terms will be resolved in accordance with the Terms in effect at the time the dispute arose.

Ownership; Proprietary Rights. The Service is owned and operated by Building Robotics. The visual interfaces, graphics, design, compilation, information, data, computer code (including source code or object code), products, software, services, and all other elements of the Service (the “Materials”) provided by Building Robotics are protected by all relevant intellectual property and proprietary rights and applicable laws. All Materials contained in the Service are the property of Building Robotics or our third-party licensors. Except as expressly authorized by Building Robotics, you may not make use of the Materials. Building Robotics reserves all rights to the Materials not granted expressly in these Terms.



Indemnity. You agree that you will be responsible for your use of the Service, and you agree to defend, indemnify, and hold harmless Building Robotics and its officers, directors, employees, consultants, affiliates, subsidiaries and agents (collectively, the “Building Robotics Entities”) from and against any and all claims, liabilities, damages, losses, and expenses, including reasonable attorneys’ fees and costs, arising out of or in any way connected with (i) your access to, use of, or alleged use of the Service; (ii) your violation of these Terms or any representation, warranty, or agreements referenced herein, or any applicable law or regulation; (iii) your violation of any third-party right, including without limitation any intellectual property right, publicity, confidentiality, property or privacy right; or (iv) any disputes or issues between you and any third party. We reserve the right, at our own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you (and without limiting your indemnification obligations with respect to such matter), and in such case, you agree to cooperate with our defense of such claim.

Disclaimers; No Warranties

THE SERVICE AND ALL MATERIALS AND CONTENT AVAILABLE THROUGH THE SERVICE ARE PROVIDED “AS IS” AND ON AN “AS AVAILABLE” BASIS, WITHOUT WARRANTY OR CONDITION OF ANY KIND, EITHER EXPRESS OR IMPLIED. THE BUILDING ROBOTICS ENTITIES SPECIFICALLY (BUT WITHOUT LIMITATION) DISCLAIM ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, RELATING TO THE SERVICE AND ALL MATERIALS AND CONTENT AVAILABLE THROUGH THE SERVICE, INCLUDING BUT NOT LIMITED TO (i) ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, QUIET ENJOYMENT, OR NON-INFRINGEMENT; AND (ii) ANY WARRANTIES ARISING OUT OF COURSE OF DEALING, USAGE, OR TRADE. THE BUILDING ROBOTICS ENTITIES DO NOT WARRANT THAT THE SERVICE OR ANY PART THEREOF, OR ANY MATERIALS OR CONTENT OFFERED THROUGH THE SERVICE, WILL BE UNINTERRUPTED, SECURE, OR FREE OF ERRORS, VIRUSES, OR OTHER HARMFUL COMPONENTS, AND DO NOT WARRANT THAT ANY OF THE FOREGOING WILL BE CORRECTED.

NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM THE SERVICE OR ANY MATERIALS OR CONTENT AVAILABLE ON OR THROUGH THE SERVICE WILL CREATE ANY WARRANTY REGARDING ANY OF THE Building Robotics ENTITIES OR THE SERVICE THAT IS NOT EXPRESSLY STATED IN THESE TERMS. YOU ASSUME ALL RISK FOR ALL DAMAGES THAT MAY RESULT FROM YOUR USE OF OR ACCESS TO THE SERVICE, YOUR DEALINGS WITH OTHER SERVICE USERS, AND ANY MATERIALS OR CONTENT AVAILABLE THROUGH THE SERVICE. YOU UNDERSTAND AND AGREE THAT YOU USE THE SERVICE AND USE, ACCESS, DOWNLOAD, OR OTHERWISE OBTAIN MATERIALS OR CONTENT THROUGH THE SERVICE AND ANY ASSOCIATED SITES OR SERVICES AT YOUR OWN DISCRETION AND RISK, AND YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR PROPERTY (INCLUDING YOUR COMPUTER SYSTEM USED IN CONNECTION WITH THE SERVICE) OR LOSS OF DATA THAT RESULTS FROM THE USE OF THE SERVICE OR THE DOWNLOAD OR USE OF SUCH MATERIALS OR CONTENT.

SOME JURISDICTIONS MAY PROHIBIT A DISCLAIMER OF WARRANTIES AND YOU MAY HAVE OTHER RIGHTS THAT VARY FROM JURISDICTION TO JURISDICTION.



Limitation of Liability

IN NO EVENT WILL THE BUILDING ROBOTICS ENTITIES BE LIABLE TO YOU FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA, OR OTHER INTANGIBLE LOSSES) ARISING OUT OF OR RELATING TO YOUR ACCESS TO OR USE OF, OR YOUR INABILITY TO ACCESS OR USE, THE SERVICE OR ANY MATERIALS OR CONTENT ON THE SERVICE, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), STATUTE OR ANY OTHER LEGAL THEORY, WHETHER OR NOT THE BUILDING ROBOTICS ENTITIES HAVE BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGE.

YOU AGREE THAT THE AGGREGATE LIABILITY OF THE BUILDING ROBOTICS ENTITIES TO YOU FOR ANY AND ALL CLAIMS ARISING OUT OF RELATING TO THE USE OF OR ANY INABILITY TO USE THE SERVICE (INCLUDING ANY MATERIALS OR CONTENT AVAILABLE THROUGH THE SERVICE) OR OTHERWISE UNDER THESE TERMS, WHETHER IN CONTRACT, TORT, OR OTHERWISE, IS LIMITED TO THE GREATER OF (i) THE AMOUNTS YOU HAVE PAID TO BUILDING ROBOTICS FOR ACCESS TO AND USE OF THE SERVICE IN THE 12 MONTHS PRIOR TO THE CLAIM OR (ii) \$100.

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES. ACCORDINGLY, THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

EACH PROVISION OF THESE TERMS THAT PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES, OR EXCLUSION OF DAMAGES IS TO ALLOCATE THE RISKS UNDER THESE TERMS BETWEEN THE PARTIES. THIS ALLOCATION IS AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES. EACH OF THESE PROVISIONS IS SEVERABLE AND INDEPENDENT OF ALL OTHER PROVISIONS OF THESE TERMS. THE LIMITATIONS IN THIS SECTION 12 WILL APPLY EVEN IF ANY LIMITED REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

Governing Law. These Terms shall be governed by the laws of the State of California without regard to conflict of law principles. To the extent that any lawsuit or court proceeding is permitted hereunder, you and Building Robotics agree to submit to the personal and exclusive jurisdiction of the state courts and federal courts located within Alameda County, California for the purpose of litigating all such disputes. We operate the Service from our offices in California, and we make no representation that Materials included in the Service are appropriate or available for use in other locations.

General. These Terms, together with the Privacy Policy and any other agreements expressly incorporated by reference herein, constitute the entire and exclusive understanding and agreement between you and Building Robotics regarding your use of and access to the Service, and except as expressly permitted above may be amended only by a written agreement signed by authorized representatives of all parties to these Terms. You may not assign or transfer these Terms or your rights hereunder, in whole or in part, by operation of law or otherwise, without our prior written consent. We may assign these Terms at any time without notice. The failure to require performance of any provision will not affect our right to require performance at any time thereafter, nor shall a waiver of any breach or default of these Terms or any provision of these



Terms constitute a waiver of any subsequent breach or default or a waiver of the provision itself. Use of section headers in these Terms is for convenience only and shall not have any impact on the interpretation of particular provisions. In the event that any part of these Terms is held to be invalid or unenforceable, the unenforceable part shall be given effect to the greatest extent possible and the remaining parts will remain in full force and effect. Upon termination of these Terms, any provision that by its nature or express terms should survive will survive such termination or expiration, including, but not limited to, Sections 2 and 4 through 16.

Dispute Resolution and Arbitration

Generally. In the interest of resolving disputes between you and Building Robotics in the most expedient and cost effective manner, you and Building Robotics agree that any and all disputes arising in connection with these Terms shall be resolved by binding arbitration. Arbitration is more informal than a lawsuit in court. Arbitration uses a neutral arbitrator instead of a judge or jury, may allow for more limited discovery than in court, and can be subject to very limited review by courts. Arbitrators can award the same damages and relief that a court can award. Our agreement to arbitrate disputes includes, but is not limited to all claims arising out of or relating to any aspect of these Terms, whether based in contract, tort, statute, fraud, misrepresentation or any other legal theory, and regardless of whether the claims arise during or after the termination of these Terms. YOU UNDERSTAND AND AGREE THAT, BY ENTERING INTO THESE TERMS, YOU AND Building Robotics ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE IN A CLASS ACTION.

Exceptions. Notwithstanding Section 15.1, we both agree that nothing herein will be deemed to waive, preclude, or otherwise limit either of our right to (i) bring an individual action in small claims court, (ii) pursue enforcement actions through applicable federal, state, or local agencies where such actions are available, (iii) seek injunctive relief in a court of law, (iv) to file suit in a court of law to address intellectual property infringement claims, or (v) to seek remedies permitted by GDPR, the EU-US Privacy Shield Principles, and the Swiss-US Privacy Shield Principles.

Arbitrator. Any arbitration between you and Building Robotics will be governed by the Commercial Dispute Resolution Procedures and the Supplementary Procedures for Consumer Related Disputes (collectively, “AAA Rules”) of the American Arbitration Association (“AAA”), as modified by these Terms, and will be administered by the AAA. The AAA Rules and filing forms are available online at www.adr.org, by calling the AAA at 1-800-778-7879, or by contacting Building Robotics.

Notice; Process. A party who intends to seek arbitration must first send a written notice of the dispute to the other, by certified mail or Federal Express (signature required), or in the event that we do not have a physical address on file for you, by electronic mail (“Notice”). Building Robotics’s address for Notice is: Building Robotics, Inc., 360 17th Street #204, Oakland, CA 94612. The Notice must (i) describe the nature and basis of the claim or dispute; and (ii) set forth the specific relief sought (“Demand”). We agree to use good faith efforts to



resolve the claim directly, but if we do not reach an agreement to do so within 30 days after the Notice is received, you or Building Robotics may commence an arbitration proceeding. During the arbitration, the amount of any settlement offer made by you or Building Robotics shall not be disclosed to the arbitrator until after the arbitrator makes a final decision and award, if any. In the event our dispute is finally resolved through arbitration in your favor, Building Robotics shall pay you (i) the amount awarded by the arbitrator, if any, (ii) the last written settlement amount offered by Building Robotics in settlement of the dispute prior to the arbitrator's award; or (iii) \$1,000.00, whichever is greater.

Fees. In the event that you commence arbitration in accordance with these Terms, Building Robotics will reimburse you for your payment of the filing fee, unless your claim is for greater than \$10,000, in which case the payment of any fees shall be decided by the AAA Rules. Any arbitration hearings will take place at a location to be agreed upon in Alameda County, California, provided that if the claim is for \$10,000 or less, you may choose whether the arbitration will be conducted (i) solely on the basis of documents submitted to the arbitrator; (ii) through a non-appearance based telephonic hearing; or (iii) by an in-person hearing as established by the AAA Rules in the county (or parish) of your billing address. If the arbitrator finds that either the substance of your claim or the relief sought in the Demand is frivolous or brought for an improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)), then the payment of all fees will be governed by the AAA Rules. In such case, you agree to reimburse Building Robotics for all monies previously disbursed by it that are otherwise your obligation to pay under the AAA Rules. Regardless of the manner in which the arbitration is conducted, the arbitrator shall issue a reasoned written decision sufficient to explain the essential findings and conclusions on which the decision and award, if any, are based. The arbitrator may make rulings and resolve disputes as to the payment and reimbursement of fees or expenses at any time during the proceeding and upon request from either party made within 14 days of the arbitrator's ruling on the merits.

No Class Actions. YOU AND BUILDING ROBOTICS AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. Further, unless both you and Building Robotics agree otherwise, the arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of a representative or class proceeding.

Modifications. In the event that Building Robotics makes any future change to this arbitration provision (other than a change to Building Robotics's address for Notice), you may reject any such change by sending us written notice within 30 days of the change to Building Robotics's address for Notice, in which case your account with Building Robotics shall be immediately terminated and this arbitration provision, as in effect immediately prior to the amendments you reject shall survive.



Enforceability. If Section 15.6 is found to be unenforceable or if the entirety of this Section 15 is found to be unenforceable, then the entirety of this Section 15 shall be null and void and, in such case, the parties agree that the exclusive jurisdiction and venue described in Section 13 shall govern any action arising out of or related to these Terms.

Consent to Electronic Communications. By using the Service, you consent to receiving certain electronic communications from us as further described in our Privacy Policy. Please read our Privacy Policy to learn more about your choices regarding our electronic communications practices. You agree that any notices, agreements, disclosures, or other communications that we send to you electronically will satisfy any legal communication requirements, including that such communications be in writing.

Contact Information. The services hereunder are offered by Building Robotics, Inc., located at 1504 Franklin St., Suite 200, Oakland, CA 94612. You may contact us by sending correspondence to the foregoing address or by emailing us at info@comfyapp.com.

Notice to California Residents. If you are a California resident, you may have these Terms mailed to you electronically by sending a letter to the foregoing address with your electronic mail address and a request for these Terms. In addition, under California Civil Code Section 1789.3, you may contact the Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs in writing at 1625 N. Market Blvd., Suite S-202, Sacramento, California 95834, or by telephone at (800) 952-5210 in order to resolve a complaint regarding the service or to receive further information regarding use of the service.

Open Source Software. The Service may include open source software or third party software. Any such software is made available to you under the terms of the applicable licenses. Please review the information on this page for the applicable notices and license terms.