

Robin

Service Agreement

This Service Agreement (“Agreement”) is made as of ____ day of _____, 2014 (the “Effective Date”), by and between Robin Powered, Inc., a Delaware corporation with a principal place of business at 87 Summer Street, 2nd Floor, Boston, Massachusetts 02110 (“Robin”), and [CUSTOMER], located in [CITY, STATE, COUNTRY] (“Customer”).

WHEREAS, Robin is the owner and developer of a proprietary web-based software solution designed to facilitate the creation of connected spaces by receiving data streamed via the Internet from physical objects equipped with sensors and enabling such objects to communicate with other physical objects and with people (the “Robin Platform”);

WHEREAS, the Robin Platform includes (i) software applications that operate on mobile devices using current versions of the mobile iOS and Android operating systems (the “Client Apps”), (ii) software and databases stored and operated on one or more servers owned or controlled by Robin or its contractors (the “SaaS Software”) and accessed by clients of Robin via the Internet as a software as a service, and (iii) embedded software applications and interfaces installed by Customer on Required Equipment supplied by Customer (“Embedded Software”), and collectively with the SaaS Software and the Client Apps, the “Robin Software”);

WHEREAS, the Robin Platform requires the use of certain equipment for purposes of accessing and uploading data into the SaaS Software (the “Required Equipment”), which Customer may purchase directly from the third party manufacturer; and

WHEREAS, Customer desires to access and use the Robin Platform.

NOW, THEREFORE, in exchange for good and adequate consideration that the parties hereby acknowledge as having been received, the parties agree as follows:

1. SaaS Services.

1.1. SaaS Services. Robin hereby grants Customer a non-exclusive, non-transferable, right to use and access via the Internet an operating instance of the SaaS Software commencing on the Effective Date during the Term (as defined below), subject to the terms of this Agreement (the “SaaS Services”). Customer’s use and access to the SaaS Services shall be subject to any restrictions set forth herein (as defined below), including but not limited to any restrictions on the designated space for such services in the Customer’s facility or facilities (each, a “Licensed Site”), number of monitored zones (each, a “Zone”), and the number of Customer-designated users (“Customer Users”) of the SaaS Services who may access or be registered with the Robin Software at any point in time. Customer shall access the SaaS Services via the robinpowered.com portal or as otherwise specified. All rights not expressly granted to Customer are reserved by Robin and its licensors and providers. Robin shall provide Customer with the user documentation related to the SaaS Services, the Robin Software and the Required Equipment (the “Robin Documentation”).

1.2. Licensed Site, Zones, and Customer Users

Customer is licensing SaaS Services for [NUMBER OF SITES], [NUMBER OF ZONES], and unlimited Customer Users.

1.3. SaaS Service Connection.

(a) Robin endeavors to make the SaaS Services accessible twenty-four (24) hours, seven (7) days a week, provided, however, that from time to time, Robin and its service providers may perform scheduled or unscheduled maintenance as may be necessary to maintain the proper operation of the Robin Software, and access to the SaaS Services may be impaired or interrupted while such maintenance is being performed.

(b) Customer shall be solely responsible for (i) Customer's Internet connection (the speed of which may have a significant impact on the responsiveness of the SaaS Services), including all Internet service provider connection charges, and (ii) the connection of the Required Equipment to the Internet via Customer's Internet gateways.

(c) Customer acknowledges that the Robin Software's utility is based on having the Required Equipment installed and functioning properly. To the extent that Customer does not comply with the requirements in Section 3.6 with respect to the Required Equipment, the Robin Software may not be able to function or to accurately convey the intended information to Customer and in such case Robin shall not be responsible for such failure or for any costs associated with restoring systems and services.

1.4. Use of SaaS Services. Customer will not use the SaaS Services to transmit, store or publish any content that is obscene, libelous, threatening or unlawful or that infringes or violates any rights. Subject to the terms and conditions of this Agreement and any applicable Order, Robin may impose limits on Customer's bandwidth use and file hosting storage used by Customer with the Robin Platform or impose additional fees or throttle Customer's file hosting with the Robin Platform if Customer exceeds such limits. Robin further reserves the right to immediately disable Customer's access to the Robin Platform in the event of Customer's, or a Customer User's, unauthorized use, disruption or abuse of Robin's resources (as reasonably determined by Robin). Customer will comply with Robin's user policy as may be in effect from time to time. If Robin's user policy requires Customer to implement specific safeguards, Customer agrees to implement those safeguards and Customer will require all Customer Users to comply as well.

2. **Licensed Software.**

2.1. License Grant. Subject to the terms and conditions of this Agreement, Robin hereby grants Customer a non-exclusive license to install the Client Apps on mobile devices using current versions of the mobile iOS and Android operating systems during the Term and to allow Customer Users to use such Client Apps to access the SaaS Services. For Client Apps that Customer has made available on an App Store, the Customer shall be able to download an executable version of such Client Apps from the applicable App Store. For Client Apps not available on an App Store, Robin will provide Customer a copy (in executable form) which Customer may install on its compatible mobile devices. The number of such mobile devices on which Customer has installed the Client Apps may not exceed, at any point in time, that number of users set forth in the applicable Order. Customer acknowledges that Customer shall be responsible for (a) installing the Client Apps on mobile devices that meet the hardware, software, Internet and cellular service requirements specified in the applicable Robin Documentation and (b) obtaining Internet access for such mobile devices to enable the Client Apps to communicate with the Robin Software via the Internet. "App Store" means a publicly available marketplace for software applications where end users may download software applications for mobile devices and/or phones, such as Google Play, Apple App Store, and Microsoft Windows Store.

2.2. License Restrictions. Customer shall not, and shall not permit any third party, to: (a) modify or create any derivative work of any part of the Client Apps; (b) rent, lease, loan, sell, license, sublicense, distribute, assign or otherwise transfer to a third party the Client Apps, any copy thereof, or any rights thereto, in whole or in part; (c) disassemble, decompile or reverse engineer the Client Apps or otherwise attempt to gain access to the source code of the Client Apps; or (d) copy the Client Apps except for installing the Client Apps on the mobile devices of Customer Users and to make a reasonable number of copies solely for backup purposes.

3. **Required Equipment.**

Use of the Robin Platform may require Customer to deploy and use certain Required Equipment. Customer shall be responsible for obtaining such Required Equipment, including purchasing it from a third party manufacturer or reseller. Customer shall be responsible for purchasing the Required Equipment necessary to use the Robin Platform, and Robin shall have no obligations or liability with respect to such Required Equipment.

4. **Payment.**

4.1. Fees; Payment Terms. Subject to the terms and conditions of this Agreement, Customer agrees to pay to Robin, in consideration for the SaaS Services, the monthly fee [MONTHLY SERVICE FEE] (the “Monthly SaaS Fee”). Customer shall pay each Monthly SaaS Fee in advance for the SaaS Services. The Monthly SaaS Fee shall be due upon the Effective Date, and thereafter on the same day of the month (or last day of the month, if 31st). Robin may modify the Monthly SaaS Fee for any Renewal Term (as defined below) upon notice to Customer within thirty (30) days of the expiration of the Initial Term or the then-current Renewal Term.

4.2. Trial Term. If Customer desires to access and use the SaaS Software on a trial basis for no charge in order to evaluate the Robin Platform during one time 15-day Initial Term of trial subscription (the “Trial Term”), no Monthly SaaS Fee is due for SaaS Services level selected. Trial terminates after the Trial Term.

4.3. Late Payments. Robin may discontinue performance under this Agreement or any Order if Customer fails to pay any sum due and fails to make such payment within five (5) days of receiving written notice from Robin. Robin reserves the right to charge and collect a service fee on any unpaid, past-due Fees and expenses equal to the lesser of one and one-half percent (1.5%) per month or the maximum amount permitted by law.

4.4. Taxes. All payments due hereunder shall be net of any applicable sales, use and other taxes, and Customer agrees to pay (or reimburse Robin or its authorized representative, as the case may be) any taxes due in connection with this Agreement, excluding taxes on Robin’s or its authorized representative’s income.

5. **Term; Termination.**

5.1. Term. This Agreement shall commence on the Effective Date and shall continue for one (1) month from the SaaS Start Date (the “Initial Term”) and thereafter shall renew automatically for successive one (1) month renewal terms (each a “Renewal Term”) unless either party provides written notice to the other party of non-renewal at least five (5) days prior to such a renewal date, unless earlier terminated as provided below (the Initial Term and each Renewal Term, collectively, the “Term”).

5.2. Termination for Cause. In addition to any right of termination set forth elsewhere in this Agreement:

(a) Either party may terminate this Agreement or any Order if the other party is in default of any material obligation under this Agreement or such Order, which default is incapable of cure or which, being capable of cure, has not been cured within 5 (5) days after receipt of written notice of such default (or such additional cure period as the non-defaulting party may authorize in writing). Notwithstanding the foregoing, Robin may suspend performance of this Agreement immediately in the event that Customer does not make any one or more payments owed to Robin hereunder within the period due until payment is made in full.

(b) Either party may terminate this Agreement by written notice to the other, if the other party makes a general assignment for the benefit of creditors, files a voluntary petition of bankruptcy, suffers or permits the appointment of a receiver for its business or assets, or becomes subject to any proceedings under any bankruptcy or insolvency law, whether domestic or foreign, or has wound up or liquidated, voluntarily or otherwise.

5.3. Termination without Cause. Either party may terminate this Agreement during Trial Term without cause and without prior notice.

5.4. Effect of Termination.

(a) SaaS Services. In the event this Agreement is terminated or not renewed for any reason, then any and all rights granted to Customer hereunder to the SaaS Services and the Robin Software shall terminate and Customer and all Customer Users shall cease to use and access the SaaS Services and the Robin Software. Robin will retain all Data (as defined below) for a period of three (3) months following termination or expiration of this Agreement, and, upon Customer's request during such three (3) month period, Robin will transfer a copy of such Data to Customer. Robin will have no obligation to retain any Data following such three (3) month period (though it may retain a copy of such Data solely for purposes of exercising its limited license in Section 6.2).

(b) Refunds. Robin is not obligated to provide Customer a Monthly SaaS Fee refund at any time. If Customer chooses to cancel during the Term, Customer will not be refunded in whole or in part. If Customer chooses to downgrade SaaS Services level during the Term, Customer may be entitled to a pay a lower, pro-rated amount at renewal, but Customer is not entitled to a cash refund at any time.

(c) Survival. In addition, the terms and conditions contained in Sections 4 (Payment), 5.3 (Effect of Termination), 6 (Intellectual Property), 7 (Data Security and Confidentiality), 8 (Representations, Warranties and Disclaimer), 9 (Indemnification), 10 (Limitation of Liability) and 11 (Miscellaneous) shall survive any termination or expiration of this Agreement.

6. **Intellectual Property.**

6.1. Robin Software. Robin and its licensors are the sole owners of the Robin Software and the SaaS Services and of all copyright, trade secret, patent, trademark and other intellectual property rights in and to the Robin Software and the SaaS Services (including any modifications or improvements made to the Robin Software or Robin Platform in the course of providing any services hereunder), and this Agreement does not provide Customer with title to or ownership of the Robin Software, the SaaS Services, or any copies or modifications thereof, but only a right of limited, remote use under the terms and conditions of this Agreement. In addition to the restrictions set forth in Section 2.2, Customer shall not access, attempt to access, copy, modify, reverse engineer, nor interfere with the Robin Software, the SaaS Services or Robin's computer systems except as permitted by the functionality of the Robin Software accessed via the Internet.

6.2. Data. As between the parties, Customer is the sole owner of all Data (as defined below) provided hereunder, and this Agreement does not provide Robin with title or ownership of the Data. Notwithstanding the foregoing, Robin shall be permitted to use and disclose the Data: (i) to provide the SaaS Services; (ii) in aggregated form for statistical analysis, including to improve the Robin Platform, during and after the Term, provided, however that such use of the aggregated data in no way identifies Customer; (iii) to monitor Customer's use of the SaaS Services for security purposes; and (iv) to enforce the terms of this Agreement.

7. Data Security and Confidentiality.

7.1. Data Security. Robin shall implement customary security measures and maintain such other safeguards (including virus protection safeguards) which are reasonably intended to protect Customer's account from unauthorized access and to preserve the confidentiality obligations it owes Customer which are consistent with the requirements of applicable law. Customer will not attempt to disable, modify or circumvent any security safeguard adopted by Robin. Customer acknowledges and agrees that Robin may monitor, record and audit Customer's, and Customer Users', use of the SaaS Services in order to protect the security of Customer's Data and the security of Robin's information systems. Customer agrees that Robin may suspend one or more Customer account if necessary to protect the security of Robin's information systems. The parties expressly recognize that, although Robin shall take such reasonable steps, or cause such reasonable steps to be taken, to prevent security breaches, it is impossible to maintain flawless security.

7.2. Confidentiality. Each party shall retain in confidence all non-public information and know-how disclosed pursuant to this Agreement, whether oral or in writing, that is either designated as proprietary and/or confidential or, by the nature of the circumstances surrounding disclosure, should in good faith be treated as proprietary and/or confidential, including, but not limited to, the terms of this Agreement ("Confidential Information"), using at least the same standard of care used by it to protect its own confidential information (but in no event less than a reasonable standard of care), provided that each party may disclose the terms and conditions of this Agreement to legal and financial consultants who agree to be bound by the terms of this confidentiality section in the ordinary course of its business. For the avoidance of doubt, Customer Confidential Information shall include the content of any information or data being communicated to or collected by the Robin Software under the terms of this Agreement (the "Data") subject to the license granted pursuant to Section 6.2.

7.3. Exclusions. The parties' obligations of non-disclosure under this Agreement shall not apply to Confidential Information which the receiving party can demonstrate: (i) is or becomes a matter of public knowledge through no fault of the receiving party; (ii) was rightfully in the receiving party's possession prior to disclosure by the disclosing party; (iii) subsequent to disclosure, is rightfully obtained by the receiving party from a in lawful possession of such Confidential Information; (iv) is independently developed by the receiving party without reference to Confidential Information; or (v) is required to be disclosed by law (but only to the extent of such required disclosure).

8. Representations, Warranties and Disclaimer.

8.1. Mutual Representations and Warranties. Each party represents and warrants that (i) it has full corporate authority to enter into this Agreement and to perform its obligations hereunder and (ii) when executed and delivered by such party, this Agreement will constitute the legal, valid and binding obligation of such party, enforceable against such party in accordance with its terms.

8.2. Service Representations and Warranties. Robin represents warrants and covenants that

the SaaS Services and all other services performed by Robin hereunder will be performed in material compliance with all federal, state and local laws, statutes, regulations and ordinances applicable to, affecting or relating to its performance under this Agreement.

8.3. **Limited Robin Software Warranty.** Robin warrants that the Robin Software will (a) function in material conformance with the applicable Robin Documentation and (b) interoperate with the Required Equipment as contemplated by the Robin Documentation so long as such Required Equipment operates in accordance with its specifications and is used in compliance with Robin Documentation. **As Robin's sole obligation, and Customer's sole remedy, for any breach of this limited warranty, Robin shall either repair or replace the nonconforming Robin Software so that it is in compliance with the warranty in this Section 8.3, or, at Robin's sole discretion, refund the Monthly SaaS Fees paid for such affected Robin Software during the period of its material nonconformance. DURING THE TRIAL TERM, ROBIN SOFTWARE IS PROVIDED ON AS-IS BASIS WITHOUT ANY WARRANTIES.**

8.4. **Disclaimer.** Except as expressly stated in this Agreement, Robin disclaims any and all representations and warranties, express or implied, by operation of law or otherwise, regarding or relating to the Robin Software, the SaaS Services, the Required Equipment or any other products or services delivered under this Agreement. Robin specifically disclaims all implied warranties, including without limitation, any warranties of merchantability or fitness for a particular purpose (irrespective of any previous course of dealing between the parties or custom or usage of trade), non-infringement, or that the Robin Software or SaaS Services will be uninterrupted or error free.

9. **Indemnification.**

Robin will indemnify, defend and hold harmless Customer, Customer's officers, directors, employees and agents from all liabilities, damages, losses, costs and expenses (collectively "Damages") arising from any claim, demand, suit or action (each a "Claim") alleging that Customer's use of the Robin Software or the SaaS Services infringes the intellectual property rights of a third party (except to the extent due to any specific materials that Customer or any Customer User use or upload into the Robin Software). If Customer intends to claim indemnification hereunder with respect to Damages arising from such a Claim (for itself or for another indemnitee), then Customer shall promptly notify Robin of such Claim after either Customer or the indemnitee becomes aware thereof, and Robin shall assume the defense of such Claim. Robin shall have no obligation to indemnify Customer for any amounts paid in settlement of any claim, loss, damage or expense if such settlement is effected without the consent of Robin. Customer's failure to deliver prompt notice to Robin after Robin or the indemnitee becomes aware of such matter shall relieve Robin of any liability to Customer or an indemnitee under this Section 9. Customer and all indemnitees shall cooperate fully with Robin and its legal representatives in the investigation of any matter covered by this indemnification.

10. **Limitation of Liability.**

10.1. **To the maximum extent permitted by applicable law, Robin will not be liable for any loss of revenue, profits or goodwill or for any special, incidental, indirect, consequential or punitive damages or losses resulting from Robin's performance or failure to perform pursuant to the terms of this Agreement, from the furnishing, performance or loss of use of the Robin Software, the SaaS Services, the Required Equipment and any other products or services delivered under this Agreement, including, without limitation, from any interruption of business or loss of data, whether resulting from breach of contract or other legal liability whatsoever, even if Robin has been advised of the possibility of such damages.**

10.2. **Except with respect to Customer's obligations to pay any outstanding amounts owed hereunder, the maximum aggregate liability of either party arising out or relating to**

this Agreement shall not exceed an amount equal to the sum of the total Monthly SaaS Fees paid by Customer to Robin hereunder during the twelve (12) months previous to the events giving rise to such claim

11. **Miscellaneous.**

11.1. **Assignment.** Neither party shall assign, delegate, sublicense, or transfer any of its obligations, responsibilities, rights or interests under this Agreement without the written consent of the other party, except to a successor in a merger or a sale of all or substantially all of such party's capital stock, assets or business. Any assignment, delegation, sublicensing, or transfer by either party in violation of this subsection shall be void and without force or effect.

11.2. **Force Majeure.** In the event that either party is unable to perform any of its obligations under this Agreement because of causes beyond its reasonable control or because of any act of God, accident to equipment or machinery; any fire, flood, hurricane, tornado, storm or other weather condition; any war, act of war, act of public enemy, terrorist act, sabotage, riot, civil disorder, act or decree of any governmental body; any failure of communications lines, transportation, light, electricity or power; any earthquake, civil disturbance, commotion, lockout, strike or other labor or industrial disturbance; or any illness, epidemic, quarantine, death or any other natural or artificial disaster the party who has been so affected shall immediately give notice to the other party and shall do everything reasonably possible to resume performance. Upon receipt of such notice, all obligations under this Agreement shall be immediately suspended and performance times shall be considered extended for a period of time equivalent to the time lost because of any such delay. Nothing provided herein shall excuse the delay of any payment that is validly due by Customer to Robin under this Agreement.

11.3. **Notices.** Unless expressly stated otherwise herein, any notice, demand, request or delivery required or permitted to be given by a party pursuant to the terms of this Agreement shall be in writing and shall be deemed given (i) when delivered personally, (ii) on the next business day after timely delivery to an overnight courier, (iii) on the third business day after deposit in the U.S. mail (certified or registered mail return receipt requested, postage prepaid), (iv) when delivered via email to the notified party's email provider for delivery to such notified party, and (v) upon confirmation of receipt by facsimile transmission; in each case addressed to the party at such party's address as set forth below or as subsequently modified by the receiving party pursuant to written notice:

If to Robin:

Robin Powered, Inc.
87 Summer Street, 2nd Floor
Boston, Massachusetts 02110
Attention: Chief Operations Officer
Telephone: (617) 910-0454
Email: contracts@robinpowered.com

If to Customer:

[NAME- REQUIRED]

[ADDRESS IF ANY]

[EMAIL ADDRESS – REQUIRED]

11.4. Governing Law. All questions concerning the validity, operation, interpretation, and construction of the Agreement will be governed by and determined in accordance with the substantive laws of the Commonwealth of Massachusetts without regard to its conflicts of law provisions. Other than as necessary to enforce any final judgment, award or determination, any action brought pursuant to or in connection with this Agreement shall be brought only in the state or federal courts within the Commonwealth of Massachusetts without regard to its conflict of laws provisions. In any such action, both parties submit to the personal jurisdiction of the courts of the Commonwealth of Massachusetts and waive any objections to venue of such courts.

11.5. Waiver of Compliance. Neither party shall by mere lapse of time, without giving notice or taking other action hereunder, be deemed to have waived any breach by the other party of any of the provisions of this Agreement. Further, the waiver by either party of a particular breach of this Agreement by the other shall not be construed as or constitute a continuing waiver of such breach or of other breaches of the same or other provisions of this Agreement.

11.6. Remedies. Except as expressly stated otherwise herein, each party's rights and remedies provided for in this Agreement shall be cumulative, exercisable concurrently or separately, and in addition to and not in lieu of any other remedies available to either party at law, in equity, or otherwise.

11.7. Headings. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

11.8. Entire Agreement. The parties acknowledge that this Agreement, including any Schedules attached hereto and any Order executed hereunder, constitutes the complete and exclusive agreement respecting the subject matter hereto and supersedes and renders null and void any and all agreements and proposals (oral or written), understandings, representations, conditions and other communications between the parties relating hereto. This Agreement may be amended only by a subsequent writing that specifically refers to this Agreement and is signed by Customer and Robin.

11.9. Counterparts. This Agreement may be executed in one or more counterparts each of which shall be deemed to be an original instrument and all of which together shall constitute a single agreement.

11.10. Electronic Signatures/Acceptance. This Agreement may be accepted in electronic form (e.g., by an electronic or digital signature or other means of demonstrating assent) and your acceptance will be deemed binding between the Parties. Customer agrees that it will not contest the validity or enforceability of this Agreement because it was accepted in electronic form.

[Remainder of page intentionally left blank; signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers, as of the Effective Date.

ROBIN POWERED, INC.

By: _____
Name:
Title:

CUSTOMER

[_____]

By: _____
Name: