



NIGHTEYE SYSTEM
LICENSE AGREEMENT AND TERMS OF USE

(Effective as of August 1st, 2016)

The following Liberty Pumps License Agreement and Terms of Use (collectively, these “**Terms**”) form a binding legal agreement between the person or company accepting these Terms (“**you**”) and Liberty Pumps, Inc., a New York corporation (“**Liberty Pumps**”, “**we**”, “**us**” or “**our**”), and will govern your access to and use of Liberty Pumps’ proprietary NightEye System (the “**System**”). The System includes the firmware and software contained in our wireless enabled pumps, alarms, and sensors (“**Devices**”) and any related applications (including applications on mobile phones and devices) made available by us or our affiliates to communicate with the Devices (“**Mobile Apps**”), as well as their respective internet- based services, features, content, and functionality.

Before you may use or access the System, or any portion thereof, you must read and accept all of the terms and conditions in, and linked to, these Terms, including Liberty Pumps’ Privacy Notice which is hereby incorporated by reference and available [here](#).

Please read these Terms carefully. **BY CHECKING THE BOX STATING “I AGREE TO THE LICENSE AGREEMENT AND TERMS OF USE” DURING OUR REGISTRATION PROCESS FOR THE SYSTEM, OR BY OTHERWISE ACCESSING OR USING THE SYSTEM, IN WHOLE OR IN PART, YOU ARE AGREEING TO BE BOUND BY THESE TERMS AND YOU REPRESENT AND WARRANT THAT (I) YOU ARE 18 YEARS OF AGE OR OLDER, AUTHORIZED TO ENTER INTO THESE TERMS, AND AUTHORIZED TO ACCESS OR OPERATE THE SYSTEM, AND (II) YOU, WITHOUT LIMITATION OR QUALIFICATION, ACCEPT AND AGREE TO BE BOUND BY THESE TERMS.**

IF YOU DO NOT ACCEPT THESE TERMS, WE ARE UNWILLING TO PERMIT YOU ACCESS TO THE SYSTEM OR GRANT YOU A LICENSE TO THE SYSTEM, IN WHICH CASE YOU ARE NOT PERMITTED TO INSTALL, COPY, DOWNLOAD OR OTHERWISE USE THE SYSTEM (OR ANY PORTION THEREOF). AS SUCH YOU MUST IMMEDIATELY CEASE ALL ACCESS TO AND USE OF THE SYSTEM, AND DELETE ALL MOBILE APPS, DEVICE CODE AND OTHER SOFTWARE OR MATERIALS MADE AVAILABLE TO YOU BY LIBERTY PUMPS OR ITS AFFILIATES.

1. LICENSE GRANTED

Subject to your acceptance of and compliance with these Terms, Liberty Pumps shall grant you a non-exclusive, personal, non-transferable, non-sublicensable, limited license to access and use the System on a device that you own or control solely in connection with your use of the Devices (the “**License**”). These Terms are a license to access and use certain intellectual property of Liberty Pumps and its licensors and do not constitute a contract for the sale of goods or services.

2. IP OWNERSHIP

The System is designed for you to access certain information from the Product through one or more Mobile Apps. You hereby acknowledge and agree that Liberty Pumps (or, if applicable, its licensors) has and will retain all right, title, interest and ownership in and to the System and all other information, text, documentation, materials, graphics, software, sound, data and other content provided by us relating to, or in connection with, the System (collectively, “**Materials**”), including any and all modifications and derivative works of such Materials, including any trademarks, copyrights, patents and trade secrets and other intellectual property and proprietary rights with respect thereto or contained therein. Liberty Pumps and its licensors reserve all rights and licenses not expressly granted to you herein. Except for the License, no license is granted to you under these Terms, whether by implication, waiver or estoppel.

3. LICENSE FEES.

We do not currently charge fees for your access to or use of the System, however, we reserve the right to do so in the future. If we elect to charge such fees in the future then as a condition to your continued access and use, you must (i) first enter into a subscription agreement on terms and conditions specified by Liberty Pumps (a “**Subscription Agreement**”), (ii) make payment arrangements with Liberty Pumps or its designee for the license fees as specified in such Subscription Agreement (the “**Subscription Fees**”), and (iii) you must pay the Subscription Fees. If you do not enter into such Subscription Agreement or do not pay the Fees for any reason then the License and your ability to access the System will automatically terminate at a time determined by us in our sole discretion. If your License has expired or terminated and you desire to reactivate the License and your access to the System, you may request that we reactivate the License and such access, provided that you first pay to Liberty Pumps the then-current Subscription Fees for reinstatement of a license. In all instances, you will pay and be responsible for paying any and all sales, use, excise, personal property or other taxes of similar nature levied upon Subscription Fees or your access to or use of the System (collectively, “**Taxes**”). If full payment of any Fees is not received by Liberty Pumps when due or if you do not strictly comply with any of the terms and conditions contained in these Terms, we may suspend or terminate the License and your access to and use of the System without any cure period or any notice to you.

4. MODIFICATION OF THE TERMS AND SYSTEM.

We reserve the right to change the terms, conditions, and notices under which we offer the System, in whole or part, at any time, for any reason, and without notice, and such modifications shall be deemed effective immediately upon posting of the modified terms. You are responsible for regularly reviewing these Terms, because your continued use of the System following the posting of changes to these Terms will mean you accept those changes. If, at any time, you do not wish to accept the Terms, you should immediately discontinue any use of the System. Any terms and conditions proposed by you which are in addition to or which conflict with these Terms are expressly rejected by us and shall be of no force or effect.

In agreeing to these Terms, you agree that we may at any time, in our sole and absolute discretion, with or without prior notice to you, modify, cancel, update, reconfigure, supplement, limit, terminate, or otherwise alter the System, or any part thereof, including as between different users of the same System, whether temporarily or permanently.

5. USE OF SYSTEM; DISCLAIMERS.

The System is designed to allow users to remotely monitor the Devices for ground water and waste water removal in residential and commercial applications, and to obtain information on the status and usage of such items (e.g., battery Devices activated; information on pump cycles; loss of electrical power, loss of internet connectivity and condition of Devices’ battery). You acknowledge and agree as follows:

- You are solely responsible for monitoring the System (including your Devices), as the System is susceptible to errors for reasons beyond our control and is not designed to provide central station or similar uninterrupted monitoring of the System or any items connected to the System.
- You are solely responsible for ensuring that all equipment connected to the System is correctly and safely installed and maintained in proper working order. Liberty Pumps will have no responsibility or liability whatsoever for any failure or malfunction of any Devices or device connected to or activated by the System, including without limitation, your mobile device.
- You are solely responsible for the installation of the System and for providing internet connectivity and electric power needed to operate the System. Liberty Pumps will have no responsibility or liability for interruptions of electric power or internet connectivity, whether localized to you or us or applicable to the System as a whole.
- The System may automatically download and install in or on the System certain updates for the Mobile Apps, Devices or other parts of the System, and you hereby consent to such downloading and installation without any separate notice thereof from us, and you also agree to receive and install such downloads. If the License is terminated by you or us or if you allow the License to expire or be subject to Suspension, your data (including any of your data stored on or in connection with the System) may not be preserved.
- You understand that any applications connected to the Internet are subject to inherent risks common to the Internet, including, without limitation, hackers and viruses. We will have no responsibility or liability for wrongful acts or conduct of any third party committed through use of the Internet that may affect you or the System. You agree that no data transmitted over our networks, the Internet, or through wireless means is or can be guaranteed to be secure. We do not guarantee that data submitted or transmitted to us will be free from unauthorized disclosure, access, misappropriation or intrusion.
- Because the Apps communicate with Liberty Pumps and its service providers by transmitting information through wireless means and over the Internet, the availability of the System cannot be guaranteed and is also subject to other limitations as may be specified by us from time to time.

6. LIMITED WARRANTY; DISCLAIMER.

The sole warranty provided by Liberty Pumps with respect to the System and Materials is a limited warranty, only during the period when the License remains in effect and has not been suspended or terminated, to use commercially reasonable efforts to correct or bypass a material defect in the System or Materials, as determined solely by us based on our then-current published specifications for the System, at all times subject to these Terms (the “**Limited Warranty**”). The Limited Warranty does not extend to you unless you have accepted these Terms and remain bound by these Terms. The Limited Warranty is for the benefit of the owner of the Pump and the licensee of its corresponding Mobile App only and may not be enforced by any other person or entity. The Limited Warranty will not apply to, and we will have no liability or obligation with respect to, problems or damage resulting from, but not limited to, any of the following: (i) accident, modification, neglect, abuse, careless or incorrect handling, misuse or improper installation, operation, disassembly, misapplication or use in unusual physical environments or under operating conditions not approved by us in writing; (ii) problems relating to or residing in hardware, software or other items with which the System are used that we did not furnish; (iii) use in an environment, in a manner or for a purpose for which the System was not designed or not in accordance with our published documentation; and (iv) installation, modification, alteration or repair by anyone other than us or our authorized representatives.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT FOR THE LIMITED WARRANTY WITH RESPECT TO THE SYSTEM AND THE MATERIALS, ALL OF THE SYSTEM AND MATERIALS THAT ARE OR MAY BE PROVIDED BY LIBERTY PUMPS OR ITS AFFILIATES ARE PROVIDED "AS IS", WITH ALL FAULTS AND IN LIEU OF, AND WE HEREBY DISCLAIM, ALL REPRESENTATIONS, WARRANTIES AND GUARANTEES OF ANY KIND, EXPRESSED OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY, QUALITY (INCLUDING WARRANTY AGAINST LATENT DEFECTS) OR FITNESS FOR A PARTICULAR OR GENERAL PURPOSE, TITLE, OWNERSHIP, NON- INFRINGEMENT, ERROR-FREE OPERATION, ACCURACY, SYSTEM INTEGRATION, OR QUIET ENJOYMENT, AND ANY WARRANTIES THAT MAY ARISE FROM A COURSE OF CONDUCT, TRADE USAGE OR TRADE PRACTICE OR OTHERWISE. WE DO NOT REPRESENT, WARRANT OR GUARANTEE THAT (I) THE OPERATION OF THE SYSTEM, OR ANY PUMP, MOBILE APP, MATERIALS, DEVICE CODE OR OTHER PORTION OF THE SYSTEM, IS OR WILL BE UNINTERRUPTED OR ERROR-FREE OR COMPATIBLE WITH ANY OTHER HARDWARE OR OTHER ITEMS USED BY YOU OR (II) ANY DEFECT CAN OR WILL BE CORRECTED OR THAT THE SYSTEM WILL BE AVAILABLE OR USABLE, OR (III) THE FUNCTIONS CONTAINED IN OR TO BE PROVIDED BY THE SYSTEM WILL MEET YOUR REQUIREMENTS OR THE REQUIREMENTS OF ANY STATE, PROVINCIAL, OR FEDERAL LAW OR BUILDING CODE, INSURANCE REQUIREMENTS, OR SIMILAR REGULATIONS. EXCEPT FOR THE LIMITED WARRANTY, THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY, AND EFFORT OF THE SYSTEM, AND THE MATERIALS SHALL BE WITH YOU. Some states or other jurisdictions do not allow the exclusion of an implied or statutory warranty, so the above disclaimers may not apply to you, and you may have other legal rights that vary by jurisdiction. Where applicable, all implied warranties will be limited to the period during which the License remains in effect and has not been terminated or subject to Suspension.

We are not responsible for any loss of your data, or for any loss related to downtime associated with the use of the System, whether through power outage, failure of Internet or wireless connectivity, network disruptions, or otherwise.

7. RESTRICTIONS ON USE.

You agree not use the System (i) with any equipment for which it is not properly designed or installed (as determined in our sole discretion) and in good operating condition, (ii) to violate or infringe upon the rights of others in any way, including without limitation rights of privacy, publicity and intellectual property, (iii) to violate or facilitate the violation of any law, regulation or ordinance or to encourage others to violate any of the same, (iv) to falsify your identity or impersonate another person; or (v) to engage in conduct that limits the use and enjoyment of the System, or any part thereof, by other users in any way, in each case as determined by us in our sole and absolute discretion.

In addition, you agree not to (1) reverse engineer, disassemble, alter, decompile, duplicate, create derivative works from, make copies of, extract information from, distribute, license, lease, sell, resell, transfer, publicly display, publicly perform, transmit, stream, broadcast or otherwise exploit the System, in whole or in part, except as expressly permitted by us; (2) upload to the system any software, links or content that directly or indirectly contains viruses, corrupted files or any other similar mechanism that may adversely affect the operation of the System; (3) connect, use, attempt to connect or use in any way the System, for purposes other than your private, personal use as explicitly offered on the System; (4) link to, mirror or frame any portion of the System except as expressly permitted by us; (5) incorporate, integrate or otherwise include any portion of the System that is comprised of software into any software, program or Devices that communicates, accesses, or otherwise connects with the System; (6) attempt to gain unauthorized access to or impair any aspect of the System or its related components or networks; (7) remove any copyright, trademark or other proprietary notices from any portion of the System (8) use the System in any manner that could harm us, or our service providers or affiliates, or any other person; and

(9) fail to strictly comply with these Terms and any other requirements or restrictions requested or imposed by us from time to time. Finally, you may not authorize or assist any third party to do any of the things described in this section.

8. INFORMATION FROM PLATFORM AND SERVICES

We do not warrant or guarantee the accuracy, completeness or timeliness of any information available via the System or other Materials. We do not authorize the use of information available via the System or the Materials for any purpose other than your personal use. You may not resell, redistribute or use such information for commercial purposes.

9. AVAILABILITY

Our goal is to provide a service with outstanding uptime and reliability. Planned downtime, intellectual property claims and matters outside of our reasonable control are some of the circumstances that may lead to the System being unavailable. Although we strive to operate without interruption, we do not guarantee that the System will always be made available.

10. INFORMATION SECURITY

We have used commercially reasonable efforts to implement a variety of administrative, managerial, and technical security measures designed to protect your personal information from unauthorized use and disclosure. We cannot, however, guarantee security of the information contained in your registration account or otherwise collected by us and we cannot promise that such measures will prevent third party "hackers" from illegally accessing the System or its contents. We are not responsible or liable for any third party access to or use of the information contained in your registration account or otherwise collected by us.

11. ACCOUNT REGISTRATION AND YOUR SECURITY OBLIGATIONS

In order to take advantage of certain features of the System, you will be required to create an account (an "Account"). You represent and warrant that all registration information provided by you in connection with accessing and/or using the System is true, accurate, current and complete at the time of registration and you undertake to update all such registration information if at any time during your use of the System such information becomes untrue or inaccurate. You agree and acknowledge you will be the only individual for your Account. Our use of any personal information that you provide to us during the account creation process is governed by our Privacy Notice.

When you create an Account, you agree to take full responsibility for maintaining the confidentiality of your Account user name and password, and for all activity that is generated by your Account. Accordingly, you understand and agree that you will be liable for any activity performed by anyone using your Account, including any acts and omissions of a third party using your Account, whether or not authorized by you. You agree to immediately notify us in writing of any unauthorized use of your Account or any other breach of security.

You agree that we may, in our sole discretion, treat as you (or as an authorized user on your Account) any person who presents your user identification and password or any other credentials that we deem sufficient for account access, and we will be entitled to disclose to such person your account information and permit such person to make changes in the System.

12. MOBILE DEVICE USE

By using the System you consent to our use of your smart phone or mobile device number for texts to provide, perform and improve the System. While we do not currently assess any charge for use of your device, standard charges of your wireless carrier may apply (e.g., messaging). You acknowledge that if you block receipt of our text messages your use and enjoyment of the System may be impacted.

In order to use a Mobile App, you may also need to purchase an appropriate data plan from your wireless carrier and we are not responsible for overages or for actions that your wireless carrier may take against you for using data in violation of your wireless carrier's service terms.

13. THIRD PARTY SOFTWARE TERMS

Notwithstanding anything to the contrary in these Terms, certain components of the System are licensed subject to the third party rights and terms of the licenses and permission notices reproduced on Exhibit A. You may not use these components except in compliance with the applicable licenses and permission notices. In addition, you may have additional rights with respect to such components under such licenses and permission notices.

14. MOBILE APPS

We may from time to time make available Mobile Apps that permit the System to be accessed and operated through smart phones or other mobile devices. The Mobile Apps are licensed, not sold, to you for use only under these Terms. This license does not allow you to use the Mobile Apps on any mobile device that you do not own or control, and you may not distribute or make the Mobile Apps available over a network, or where it could be used by multiple devices at the same time. These Terms will govern any upgrades provided by us that replace and/or supplement the original Mobile App, unless such upgrade is accompanied by a separate license designated by us, in which case the terms of that separate license will govern. We do not guarantee that the Mobile Apps will be available for, or function in connection with, all smart phones or other mobile devices.

For Mobile Apps that you download from the iTunes[®] Store for use with your Apple Inc. (“**Apple**”) mobile device (“**Apple Mobile Apps**”):

1. You acknowledge that these Terms are concluded between you and Company only, and not with Apple, and that Company, not Apple, is solely responsible for the Apple Mobile Apps and the content thereof;
2. You agree to the iTunes Store Terms of Service and you will only use the Apple Mobile Apps solely as permitted by the Usage Rules set forth in the Apple App Store Terms of Service (the “**Usage Rules**”), which you acknowledge you have had the opportunity to review; provided, however, that if these Terms include more restrictive terms than the Usage Rules, then such more restrictive terms will supersede the conflicting terms in the Usage Rules;
3. You acknowledge that Apple has no obligation whatsoever to furnish any maintenance and support services with respect to the Apple Mobile App;
4. In the event of any failure of any Apple Mobile App to conform to any applicable warranty, you may notify Apple, and Apple will refund to you the purchase price (if any) for the Apple Mobile App and that, to the maximum extent permitted by applicable law, Apple will have no other warranty obligation whatsoever with respect to the Apple Mobile App, and any other claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to any warranty will be Company's sole responsibility (subject to the qualifications, disclaimers and limitations set forth in these Terms);

5. You acknowledge that (i) in the event of any third party claim that the Apple Mobile App or your possession and use of the Apple Mobile App infringes that third party's intellectual property rights, Company, not Apple, will be solely responsible for the investigation, defense, settlement and discharge of any such intellectual property infringement claim, and (ii) Company, not Apple, is responsible for addressing any of your claims or those of any third party relating to the Apple Mobile App or your possession and use of the Apple Mobile App, including (A) product liability claims, (B) any claim that the Apple Mobile App fails to conform to any applicable legal or regulatory requirement, and (C) claims arising under consumer protection or similar legislation, in each instance, subject to the qualifications, disclaimers and limitations set forth in these Terms (which will not be construed in a manner that would limit Company's liability beyond the extent permitted by applicable law); and
6. You acknowledge and agree that Apple, and Apple's subsidiaries, are third party beneficiaries of these Terms, and that, upon your acceptance of these Terms, Apple will have the right, and will be deemed to have accepted the right, to enforce these Terms against you as a third party beneficiary thereof.

Apple® and iTunes® are registered trademarks of Apple Inc.

15. TERMINATION.

You may terminate this Agreement at any time by ceasing your use of the System. We may terminate this Agreement, or terminate or suspend your access to the System at any time, with or without cause, and with or without notice, including if you fail to pay License Fees or you fail to strictly comply with these Terms. Upon such termination or suspension, your right to use the System will immediately cease.

If you violate these Terms in any way, we shall have the right, in our sole discretion, to terminate or suspend your Account, remove or modify any Account-related content or access, or take any other action that we believe is appropriate. We may investigate violations of these Terms and may involve and cooperate with law enforcement authorities in taking legal action against Users who are involved in such violations, including without limitation pursuing civil, criminal and injunctive redress. You hereby waive and hold us harmless from any claims resulting from any action we take during or as a result of our investigation and from any actions taken as a consequence of such investigations by use or law enforcement authorities.

You agree not to register under a different username or identity after your Account has been suspended or terminated, including in the name of a third party even if you are acting on behalf of such third party. These Terms shall remain enforceable against you even after the termination or suspension of your Account. Termination will not relieve you of any obligation to pay License Fees or other obligations accrued prior to the effective date of termination.

All sections of these Terms which by their nature should survive the expiration or termination of this Agreement shall continue in full force and effect subsequent to and notwithstanding the expiration or termination of this Agreement, including, without limitation, Section 15.

16. INDEMNITY AND RELEASE; LIMITATION OF LIABILITY.

You will, at your sole cost, indemnify, defend and hold Liberty Pumps, its affiliates, and its and their respective distributors, dealers, resellers, providers, suppliers, licensors, officers, directors, employees, agents, independent contractors and representatives (collectively, the "**Liberty Pumps Indemnified Parties**") harmless from and against any and all losses, liabilities, claims (including claims without legal merit or brought in bad faith), demands, damages, costs or expenses, causes of action, suits, proceedings, judgments, awards, executions and liens, including reasonable attorneys' fees and costs (whether brought by third parties or

otherwise) (collectively, “**Claims**”) arising or resulting in any manner from your breach of or other failure to strictly comply with these Terms or from your access to or use of (or the inability to access or use) the System or any portion thereof. YOU HEREBY RELEASE AND WILL RELEASE LIBERTY PUMPS AND THE OTHER LIBERTY PUMPS INDEMNIFIED PARTIES FROM ANY AND ALL CLAIMS, LIABILITIES AND LOSSES IN CONNECTION WITH THE SYSTEM, INCLUDING CLAIMS FOR PERSONAL INJURY OR PROPERTY DAMAGE ARISING FROM THE TOTAL OR PARTIAL FAILURE OF PERFORMANCE OF THE SYSTEM, EVEN IF CAUSED BY THE FAULT OR NEGLIGENCE OF LIBERTY PUMPS OR ANY OTHER LIBERTY PUMPS INDEMNIFIED PARTY, OR THE MALFUNCTION OF THE SYSTEM.

We reserve the right, at our own expense, to assume the exclusive defense and control of any matter subject to indemnification by you, which will not excuse your indemnity obligations under this Section.

We are not assuming responsibility or liability for any losses or damages (including any direct, indirect, special, reliance, incidental or exemplary damages and consequential damages or loss of anticipated profits, attorneys fees or economic loss), irrespective of the cause, that may occur even if due to Liberty Pumps’ negligent performance or failure to perform any obligation under these Terms or any other basis. In the event of any breach of these Terms by Liberty Pumps, your sole and exclusive remedy, and our sole and exclusive obligation, will be, at our option, for Liberty Pumps to use commercially reasonable efforts to refund of the applicable License Fee (if any) paid by you for the portion of the System that is the subject of such breach by us.

In the event that, notwithstanding these Terms, Liberty Pumps is held to be liable to you, or any invitees, agents, employees or other person or entity, regardless of the legal theory asserted, whether arising out of contract, extra-contractually or in tort (including actions based on negligence, gross negligence, strict liability, and willful and/or intentional conduct), warranty, indemnity, or other theory of liability and whether related to the design, performance, use, defect or failure of Devices or service, then to the maximum extent permitted by applicable law, the limitation of Liberty Pumps’ liability for any and all harm, damages, injury or loss will not exceed, in the aggregate, the greater of \$100 or the amount of License Fees (if any) actually paid by you to Liberty Pumps during the twelve (12) month period preceding the last event giving rise to such liability. YOU HEREBY RELEASE AND WILL RELEASE LIBERTY PUMPS AND THE OTHER LIBERTY PUMPS INDEMNIFIED PARTIES FROM, AND WAIVE ALL CLAIMS FOR DAMAGES EXCEEDING THE LIMITS SET FORTH HEREIN FOR ALL HARM, DAMAGES, INJURY OR LOSS INCURRED, INCLUDING ACTUAL, DIRECT, INDIRECT, CONSEQUENTIAL, INCIDENTAL, COLLATERAL, EXEMPLARY, PUNITIVE, RELIANCE OR SPECIAL DAMAGES (INCLUDING BUSINESS INTERRUPTION OR LOSS OF DATA (DIRECT OR INDIRECT), GOODWILL, PROPERTY DAMAGE, PERSONAL INJURY, DEATH, ATTORNEYS FEES, REPUTATION, REVENUE, OR PROFITS), EVEN IF FORESEEABLE OR THEY WERE ADVISED OR MADE AWARE OF THE POSSIBILITY OF ANY SUCH LOSSES OR DAMAGES AND REGARDLESS OF WHETHER THE CLAIM IS BASED ON CONTRACT, EXTRA-CONTRACTUAL LIABILITY, TORT (INCLUDING NEGLIGENCE, GROSS NEGLIGENCE, STRICT LIABILITY, AND WILLFUL AND/OR INTENTIONAL CONDUCT), WARRANTY, INDEMNITY, OR OTHER THEORY OF LIABILITY. This limitation is a material inducement for us to furnish the System to you. **Some states or other jurisdictions do not allow limitations of liability, so the above limitations may not apply to you, and you may have other legal rights that vary by jurisdiction.**

TO THE MAXIMUM EXTENT PERMITTED BY LAW, YOU AGREE THAT NO LAWSUIT OR ANY OTHER LEGAL PROCEEDING CONNECTED WITH THESE TERMS, OR THE SYSTEM WILL BE BROUGHT OR FILED BY YOU MORE THAN ONE (1) YEAR AFTER THE INCIDENT GIVING RISE TO THE CLAIM OCCURRED.

You understand and agree that these Terms, and particularly Sections 6 and 15, will (i) apply to and protect the employees, officers, shareholders, parent companies, directors, agents, licensors, representatives,

subcontractors, affiliates and assignees of Liberty Pumps and other Liberty Pumps Indemnified Parties, and (ii) be binding on your heirs, administrators, custodians, trustees, agents and successors.

17. FEEDBACK

We appreciate your interest in improving and expanding the System. If you choose to send us content, information, ideas, suggestions or other materials relating to the System, Materials or our business ("**Feedback**"), you hereby assign such Feedback to us, and you agree that we are free to use any Feedback, for any purposes whatsoever, including, without limitation, developing and marketing products and services, without any liability or payment of any kind to you.

18. ASSIGNMENT

We may assign these Terms, in whole or in part, at any time with or without notice to you.

19. TRADEMARKS

Liberty Pumps® and NightEye™ are trademarks of Liberty Pumps, Inc., a New York corporation. Apple® and iTunes® are registered trademarks of Apple Inc. All other trademarks are the property of their respective owners.

20. INTERNATIONAL MATTERS

We are headquartered in the State of New York in the United States of America. Please be aware that the information you provide to us or that we collect through your use of the System may be processed by and/or transferred to countries outside of the United States. BY accessing or using the System or by providing us with your information, you consent to the collection, transfer, storage and processing of information to and within these countries. You agree to comply with all local rules regarding online conduct, including all laws, rules, codes and regulations of the country in which you reside and the country from which you access the System. In addition, you agree to comply with all applicable laws, rules, codes and regulations regarding the transmission of technical data exported from the United States.

You represent and warrant that you are not (i) located in a country that is subject to a United States government embargo, or that has been designated by the United States government as a "terrorist supporting" country; and (ii) listed on any United States Government list of prohibited or restricted parties.

21. NOTICES; ELECTRONIC COMMUNICATIONS

You will address any written notice to Liberty Pumps to info@libertynighteye.com, or another address designated in writing by Liberty Pumps to you. Liberty Pumps will address any written notice to you to your e-mail address provided when activating the System.

The very nature of the System provides communications between you and us by electronic means (e.g., via the System, email, text message). For purposes of forming a legally binding agreement, you hereby consent to receive communications from us in an electronic form and agree that all terms and conditions, agreement, notices, disclosures and other communications that we provide to you electronically satisfy any applicable legal requirements, including that these be made in writing. A printed version of these Terms and any notice given in electronic form shall be admissible in judicial or administrative proceedings based upon or relating to these Terms to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form. Further, you hereby consent to receive such communications at the e-mail address provided in your Account and further agree that you are solely responsible for monitoring such e-mail address and updating the e-mail address if necessary.

You acknowledge that there is inherent risk in use of the Internet and that information transmitted through the Internet in general is not confidential. We cannot and do not guarantee the privacy or protection of any electronic communications through the Internet.

22. INDEPENDENT CONTRACTORS

You acknowledge and agree that you and us are, and at all times during the term hereof shall remain, independent contractors in relation to each other, and that neither you or us (or our respective employee or other representatives) are authorized to make any representations or any commitment on the other's behalf unless previously authorized in writing. Each party's obligations to the other hereunder are exclusively contractual in nature. These Terms shall not be deemed to create any partnership, joint venture, agency, fiduciary or employment relationship or any other legal relationship between you and us.

23. WAIVER AND SEVERABILITY

Our failure to exercise or enforce any right or provision of the Terms shall not constitute a waiver of such right or provision. If any provision of the Terms is held by a court or other tribunal of competent jurisdiction to be invalid, illegal or unenforceable for any reason, such provision shall be eliminated or limited to the minimum extent such that the remaining provisions of the Terms will continue in full force and effect. The parties intend that all disclaimers of warranties, limitations of liability, and exclusions of damages in these Terms will be upheld and applied to the maximum extent permitted by law.

24. CHOICE OF LAW AND LOCATION FOR RESOLVING DISPUTES

These Terms will be governed by the internal laws of the State of New York, without regard to choice of law principles, notwithstanding the choice of law provisions of the venue, where any action is brought, where the violation occurred, where you may be located or any other jurisdiction. You agree that if any Dispute (as defined below) arises hereunder, either you or Liberty Pumps may demand in writing that the Dispute be arbitrated, in which case you and Liberty Pumps agree that each party will immediately stay any court proceedings and the plaintiff will submit the Dispute to binding arbitration by a single arbitrator under the "Supplementary Procedures for Consumer-Related Disputes" of the American Arbitration Association then in effect, in Rochester, New York (more information about the AAA can be found [here](#)). If for any reason the AAA cannot hear the Dispute, you agree to proceed before any mutually-agreed arbitrator or, if unable to agree, before an arbitrator appointed by the U.S. District Court located in Monroe County, New York. Each party will be entitled to one substitution of arbitrator, without cause, as a matter of right. For any Dispute (or part of a Dispute) that is not subject to arbitration, YOU AGREE THAT ANY CLAIM WILL BE BROUGHT ONLY IN YOUR INDIVIDUAL CAPACITY AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING, THEREBY WAIVING THE RIGHT TO PARTICIPATE AS A CLASS REPRESENTATIVE OR CLASS MEMBER IN A CLASS ACTION RELATING IN ANY WAY TO A DISPUTE, WAIVE ANY RIGHT YOU MAY HAVE TO A TRIAL BY JURY AND AGREE TO HAVE

SUCH MATTER TRIED BY A COURT WITHOUT A JURY. Each party will continue to have the following rights: 1) right to file for bankruptcy in court; 2) right to take legal action to enforce the arbitrator's decision; and 3) right to request that a court of law review whether the arbitrator exceeded its authority. A "**Dispute**" is any controversy or claim that relates in any way to the System, Materials or otherwise relates to these Terms, and/or any question regarding whether a matter is subject to arbitration under these provisions. The arbitrator's award will be final and binding on all parties to the arbitration. Either party may enter judgment on the award in any court. If Liberty Pumps is required to enforce these Terms in court, Liberty Pumps will be entitled to its attorneys' fees and costs incurred in doing so.

Nothing in these Terms will give the arbitrator any authority, power, or right to alter, change, amend, modify, add to, or subtract from the provisions of these Terms. The parties agree that this provision will be governed by

the Federal Arbitration Act, 9 USC §1 et seq. With respect to any judicial action taken, the parties hereby irrevocably submit to the exclusive personal jurisdiction of state and federal courts situated in Monroe County, New York, and waive any defense of lack of personal jurisdiction or improper venue or forum non conveniens to a claim brought in such courts.

25. CONTACT US

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