

Merkury Smart Terms of Service

Last updated: June 1, 2023

Thank you for using Merkury Smart products and services! SmartHome Ventures LLC (“Pepper”), located at 10955 Lowell Suite 700, Overland Park, Kansas, 66210, provides some Services on behalf of Merkury Innovations, LLC (“Merkury”). *Please read the following terms carefully before creating an account or using our Services.*

Our “Services” include the Merkury Smart app, related products, and services. Our “System” includes our proprietary software and technology, updates, enhancements, and modifications which allow you to monitor and control aspects of your home, business, or your “Premises.”

Our “Content” includes all content we provide through either the Site or mobile applications, or “Mobile Apps.”

Our “Equipment” includes our products and equipment, “Documentation” refers to instructions and help files.

“Mobile Devices” include any device or tablets that you download the Mobile Apps on.

The “Owner” of an account refers to the person that creates the account and “Authorized Users” includes anyone that shares, with permission, the Owner’s device(s).

By using or otherwise accessing the System or our Services, you are consenting to all terms of this Agreement. This is a legal agreement. This agreement is between you (sometimes referred to as “you,” “your,” or “user,”) and Pepper (sometimes referred to as “we,” “us,” “our,” or “Merkury Smart”). Each time you access our websites or use our Mobile Application, products, and services, you agree to be legally bound by this agreement. Please review this agreement periodically to stay updated on any changes we might make from time to time.

BY ACCESSING AND USING OUR PRODUCTS AND SERVICES, INCLUDING OUR SITES, YOU ARE ACCEPTING AND AGREEING TO THESE TERMS, INCLUDING OUR PRIVACY POLICY, ON BEHALF OF YOURSELF OR THOSE YOU REPRESENT. IF YOU DO NOT AGREE WITH ANY OF THESE TERMS, YOU SHOULD IMMEDIATELY DISCONNECT YOUR PRODUCTS FROM YOUR ACCOUNT AND CEASE USING OUR PRODUCTS AND SERVICES.

1. Our Agreement

Acceptance of Terms.

Merkury Smart provides this Site and related products and services through our proprietary software and technology, updates, enhancements, and modifications to allow you to monitor and/or control various aspects of your premises. Our Services also include all content provided

on our Site or Mobile Apps, Equipment, Documentation, and may include the availability of Mobile Apps for you to download and use on your Mobile Devices. Depending on what you decide to purchase, your Equipment may include cameras (standalone and integrated into other devices), and other Merkury or Merkury Smart devices. You must provide the Mobile Devices, other equipment, and wireless connections to access the Mobile Apps at your own expense. The terms of your network provider will still apply when using our Mobile Apps.

License.

Subject to the terms of this Agreement, and payment of fees, if applicable, Merkury Smart grants you a non-exclusive, non-transferable limited license to access and use the System. You may only use the System and Equipment for your personal, non-commercial needs. You may print Documentation only for your personal use. You may not do anything else with Content, such as republish, rent, or sell any Content. Merkury Smart marks and logos used on the Site or Services remain the exclusive property of Merkury. Use of the Site or Services does not grant you any intellectual property rights, including, but not limited to, copyrights, patents, trademarks, and trade secrets.

The Mobile App, Product software, and/or firmware are licensed to you. You, and your Authorized Users, have the non-exclusive right to use the Software and Documentation in accordance with this Agreement. You may not modify the Software or any Product that contains the Software or Documentation. You may not reverse-engineer, disassemble, decrypt, or decompile the Product or Software. You may only use the Product and Software for the purpose set forth in this agreement and never for any unlawful purpose or in breach of this Agreement.

Access and Use.

You must register for an account and provide certain information about yourself to use our Services. Account Owners must be 18 years of age. Owners may authorize users, who must be at least 13 years of age, to use the Services and Products under the supervision of a parent or legal guardian who agrees to be bound by these Terms on the Authorized User's behalf. Any use or access to the Services or Products by individuals under the age of 13, or equivalent minimum age where you reside, is expressly prohibited. *You represent and warrant that you have the right, authority, and capacity to agree to these terms and that you are of sufficient legal age to enter into this agreement and to use our services.* The Service is hosted in the United States and governed by United States law. The data protection and other laws of the United States and other countries might not be as comprehensive as those in your country. By using the service, you consent to your information being transferred to our facilities and to the facilities of those third parties with whom we share it as described in the Privacy Policy.

You are responsible for:

- Providing correct and current information that applies to you and agree to keep your personal information updated and notifying us of changes.
- Maintaining the privacy of your account information and agreeing not to give anyone else access to your username or password.

- Changing your password when you believe your security information is compromised.
- Informing Merkury Smart upon discovery of any unauthorized use, or suspected unauthorized use, of your account.
- Signing out of your account appropriately to prevent others from obtaining your information, especially if you use a public computer, or share a computer or Mobile Device with others.
- All mobile provider or mobile app provider fees associated with using network connection services while using Mobile Apps. YOU ACCEPT SOLE RESPONSIBILITY FOR ALL FEES ASSOCIATED WITH MOBILE PROVIDERS. If you choose to use text message notices from the System or Equipment as available, you are solely responsible for any text message and data charges.
- Using the Mobile App safely and in compliance with traffic safety laws.
- Buying, installing, maintaining the equipment and network services, and ensuring compatibility with such equipment, that you need to access, operate, and utilize the System and Equipment. You agree to maintain Equipment as instructed in the Documentation for proper operation, which requires Equipment to be connected to an “always on” internet source with sufficient bandwidth.
- Contacting your mobile provider upon discovering your mobile device is lost or stolen to prevent unauthorized use of the Mobile Apps. WE ARE NOT RESPONSIBLE FOR ANY DAMAGES THAT RESULT FROM UNAUTHORIZED ACCESS TO THE MOBILE APPS.
- Ensuring your device is compatible with your Mobile Provider plan, wireless service plan, any particular device, software, and equipment installed on your device or at your premises.
- Ensure notices generated by the System and Services are sent to you, and to determine the right response to all notices regarding events monitored by the Equipment.

Merkury Smart is permitted to:

- Obtain information from your Mobile Provider about the type of device you are using when you access Mobile Apps on your Mobile Device. This information may be used to notify you of features and products available on your device. Certain features of Mobile Apps may require our collection of the phone number connected to your Mobile Device, which can be linked to Mobile Device identification information.
- Use technology that tracks the physical location of Mobile Devices. We may use this information to enhance the Services, such as recommending additional products for purchase in your location based on how you use the Services and your current Equipment. You agree that we may use and store this information to provide location-based services, including location-targeted advertising. *You may choose to turn off Mobile Device location data collection in your device settings which can disable any features which use this data, including advertising and/or marketing.*

You agree that you will NOT:

- Make or distribute copies of the Mobile Apps;

- Try to, or successfully, copy, change, reverse engineer, disassemble, decompile, derive the source code of, decrypt, transfer, frame, exchange, or translate the Mobile Apps;
- Create derivative works of Mobile Apps;
- Install, use, or allow the Mobile Apps to exist on more than one device without separate downloads of the Mobile Apps, each of which is individually governed by this Agreement;
- Pretend to be someone else;
- Look at someone else's information; collect information about other people, including e-mail addresses;
- Interfere with the Services;
- Investigate or reverse engineer the software of the System;
- Use the information on the Services to create or sell similar services or information;
- Use the Services to send chain letters, junk mail, unauthorized emails or advertisements, or anything similar;
- Encourage illegal activities or use the Services to violate any law;
- Publish anything obscene, defamatory, threatening, harassing, abusive, slanderous, hateful, or embarrassing to anyone else or entity; or
- Remove any notices contained in the Content.

You understand that Mobile Apps are provided over the internet and mobile networks so the quality and availability of Mobile Apps may be impacted by factors outside our control. We cannot guarantee that the Mobile Apps will be compatible or operate with your Mobile Provider's service plans, or with any particular devices, or other pieces of hardware, software, equipment, or device you install or use with your devices. We are not responsible if Mobile Apps are unavailable, or for any difficulty or inability to download or access content, or for incompatibility and inoperability issues. We do not provide support or maintenance for the Mobile Apps on every device type and OS version. *Merkury Smart and its third-party service providers cannot guarantee that unauthorized third parties will never be able to defeat our security practices or access and use your personal information for improper purposes. **You understand and acknowledge that you provide your personal information at your own risk.***

YOU UNDERSTAND AND AGREE THAT IT IS YOUR DECISION HOW TO USE THE SYSTEM AND SERVICES (including Documentation, Equipment, Content, or other material and information we give to you). WE ARE NOT RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER, MOBILE DEVICE, OR FOR ANY DATA YOU LOSE, RESULTING FROM YOUR DOWNLOAD OF ANY CONTENT FROM THE SITE OR THE MOBILE APPS. WE DO NOT GUARANTEE THAT FILES OR MATERIALS FROM THE SITE OR MOBILE APPS WILL BE FREE OF INFECTIONS, VIRUSES, WORMS, TROJAN HORSES, OR OTHER CODE THAT MIGHT BE HARMFUL TO YOUR DEVICES.

THERE ARE IMPORTANT LIMITS TO OUR SERVICES, PARTICULARLY WITH LIFE SAFETY, EMERGENCY SERVICES, AND RELIABILITY CONTAINED IN THESE TERMS. PLEASE READ THESE DISCLOSURES CAREFULLY. YOU ARE ACKNOWLEDGING AND ACCEPTING THEM WHEN YOU USE OUR PRODUCTS AND SERVICES.

2. Account Management

Installation.

You are solely responsible for complying with all laws and regulations when installing and using the System and Services. FOLLOW ALL INSTRUCTIONS AND READ ALL WARNINGS IN DOCUMENTATION.

Notifications.

If text message notifications are available, Merkury Smart cannot guarantee text messages will be delivered and is not responsible for delays or undelivered messages. You can elect to stop text message notification at any time by changing your personal settings. We cannot guarantee that the System or Equipment will be compatible with your Mobile Provider Service plan. The Equipment may experience signal transmission failures or delays for any number of reasons. The System is designed to reduce the number of false notifications, including, but not limited to, the implementation of default settings and procedures to determine when and how to respond to certain events, if at all. YOU ARE RESPONSIBLE FOR ANY ACTION YOU TAKE OR DO NOT TAKE BASED ON NOTICES YOU RECEIVE FROM THE SYSTEM AND EQUIPMENT MONITORING YOUR PREMISES. YOU ARE ALSO RESPONSIBLE FOR ALL RELATED COSTS.

Fees.

Merkury Smart offers various premium services, including video hosting and storage (“Paid Service”) for a monthly recurring charge (“Fee”). We start charging Fees on the day you subscribe to a Paid Service plan. If a free trial service period is offered, you will be charged when the free trial period expires. If you downgrade or cancel during the free trial, your account will not be charged. Fees do not include any applicable taxes or duties, including, without limitation, state and local use, sales and property tax, and duties, all of which you are responsible to pay. If you do not pay Fees, we reserve the right to suspend your access to the System and Services or terminate this Agreement.

Account will be charged for renewal within 24-hours prior to the end of the current period at the rate of your selected plan. No refunds for the current subscriptions are granted. Cancellations of the current subscription take effect at the conclusion of the current subscription period. There are no cancellation fees.

Subscriptions automatically renew unless you turn off auto-renew, downgrade, or cancel your subscription at least 24-hours before the end of the current period.

Price Changes.

Merkury Smart reserves the right to change the pricing for the System, Services, or Equipment, at any time. Price changes will take effect in the billing period immediately following email notification to you or posting on our Site or Mobile Application. You understand that the amount billed each month may change for various reasons (e.g., promotional offers, changing service, new equipment). You authorize Merkury Smart to charge for the applicable amounts based on your selected subscription(s).

Billing.

YOU AUTHORIZE MERKURY SMART TO CHARGE YOU FOR FEES IN ADVANCE AND ON A MONTHLY BASIS TO YOUR CURRENT, VALID, ACCEPTED METHOD OF PAYMENT (“Payment Method”). You must be the authorized signatory of the payment method you provide and are solely responsible for your authorization to incur charges against that payment method. Some services or e-commerce payments may be charged after we provide product or Services to you. Fees will be billed on or before the date of activation of the Services and each month following until you notify us of termination. If your activation date begins on a day not contained in a given month, we will bill you on another day we solely determine to be appropriate. For example, if your activation date is January 31st, your bill will likely be sent on February 28th for the following month. *Merkury Smart reserves the right to change the timing of our billing—especially if your payment method is not successful.* You may change your Payment Method information for your account and should update it in a timely manner when you know your payment information has changed.

Insufficient Payments.

If Fees for any applicable monthly billing period are not successfully settled (due to expiration, insufficient funds, or otherwise), and you fail to change your Payment Method information, you are still responsible for any uncollected fees, charges, and other amounts. In this event, you authorize Merkury Smart to continue billing the Payment Method on your account in case it is updated. This may result in a change to your billing date. Additionally, certain Payment Methods may incur other charges or a foreign transaction fee, which you are fully responsible to pay.

Cancelations and Terminations.

This Agreement is effective when you use and access the System or Services or make any payment. It will continue a month-to-month basis until terminated. This agreement and your license to use and access the System and Services will terminate upon giving notice. This Agreement and your license to use and access the System and Services may be terminated immediately if you breach the terms of this Agreement, we cease providing the System, we suspect or discover your abuse or misuse of the System, Services, Equipment, or related products and services as solely determined by Merkury Smart, you violate the law or the rights of any third party, or otherwise provided by this Agreement. Upon termination of this Agreement, you must stop using the System and Services.

YOU WILL NOT HAVE ACCESS TO THE SITE, MOBILE APPS, ANY CONTENT, ACCOUNT INFORMATION, OR OTHER INFORMATION AFTER TERMINATION. WE HAVE THE RIGHT TO RETAIN OR DELETE ALL OF YOUR INFORMATION AT ANY TIME, WITHIN THE BOUNDARIES OF THE

LAW. YOU MUST DOWNLOAD ALL YOUR CONTENT FROM THE SYSTEM TO YOUR OWN DATA STORAGE PRIOR TO TERMINATING SERVICE BECAUSE YOU WILL NOT HAVE ACCESS TO CONTENT UPON TERMINATION.

No Refunds.

PAYMENTS ARE NOT REFUNDABLE AND THERE ARE NO REFUNDS OR CREDITS FOR PARTIALLY USED MONTHLY BILLING PERIODS. If you have specific questions about billing, contact us before the billing cycle. You will not be entitled to any credits. The decision to provide credits is in Merkury Smart's sole and absolute discretion.

Equipment Purchases.

At this time, Merkury uses third-party dealers to manage the sale of Equipment. If purchased from a dealer, they are responsible for any issue with Equipment including exchanges or refunds. Contact your dealer directly. Merkury is not responsible or liable for any claims related to Equipment purchased through third-party providers or dealers.

If Equipment is supplied through Merkury directly, it will be shipped in a reasonable time after we process your order. Shipping time may vary depending on the method and service you select. *Merkury does not guarantee delivery at any certain time and is not responsible for delays.* If Equipment is damaged when you receive it, Merkury may, at its discretion, provide replacement Equipment or refund the purchase price as described in the Return Policy found on the Site. You may be eligible for a refund or replacement if the Equipment does not meet our Warranty Policy posted on the Site. *If the Equipment you are returning was purchased as a part of a bundle, any refund will be for the price of the specific Equipment as if it was purchased individually, less the discount savings received at purchase.* A bundle is a collection of Equipment and/or services purchased together and priced at a discount. Once your request is approved, Merkury will provide a return authorization number and instructions to complete your return. We only accept returned items with an authorization number. You will be responsible for shipping the returned Equipment to the address provided in our Return Policy found on the Site.

We may use the services of third-party payment processors to process accepted Payment Methods. *Your purchase is subject to any terms and conditions imposed by third-party payment processors.* If you place an order and are directed to a third-party website to make a purchase, the purchase will be governed by the terms of the third-party website alone. YOU AGREE THAT MERKURY SMART HAS NO RESPONSIBILITY OR LIABILITY FOR ANY CLAIM RELATED TO PRODUCTS PURCHASED FROM THIRD-PARTY WEBSITES.

Smart Alerts.

Some Merkury Smart plans include Smart Alerts; a premium feature that identifies the subject of motion as either a person, animal, or vehicle. The Smart Alerts feature is designed to constantly improve. For example, we use real-world video clips from a diverse range of customers to train our computer vision algorithms using machine learning. This practice enables

Smart Alerts to accurately identify objects and activity in a video that accounts for variety of factors (e.g., lighting based on the time of day, speed of motion, shape, multiple objects at once, etc.). This training relies in part on supervised machine learning; an industry-standard practice where humans review an extremely small sample of images and correctly interpret a specific event captured in a video clip so that our system correctly identifies motion events in the future. You are helping improve the overall accuracy of Smart Alerts when you allow us to process your images and video recordings. Our supervised learning process includes multiple safeguards to protect customer privacy.

When you purchase a plan with the Smart Alerts feature included, you give us consent to collect and process your images, recorded videos, and other relevant data for the purpose of detecting the type of motion. As described here, we use the help of Third-Party Services to make this feature available. By default, you agree that we may use your recordings, in the aggregate, without association to your account or personal information, to improve the accuracy of Smart Alerts across our platform. We will not keep or sell your data, nor do we use them for any other purpose than described here. The nature of machine learning is predictive and may be inaccurate from time to time. You understand that you should review and evaluate your captured recordings independently.

If you want to opt out of participation, you may change your settings in the app or contact us directly with your request at support@merkurysmart.com. To opt out in the Merkury Smart app, go to the Account page, tap About, tap Privacy, tap Privacy settings, and tap the Improve Smart Alerts toggle to turn the setting off.

Send Help Feature.

Merkury Smart offers Send Help; a premium feature that allows you to monitor your account and request help from a dispatcher who can connect you with local emergency services. The Send Help feature is enabled by a Third-Party Service, Noonlight, Inc. (“Noonlight”).

By purchasing a premium subscription and enrolling in Send Help, you consent to services provided by Noonlight and agree to their [terms of use](https://www.noonlight.com/terms) (<https://www.noonlight.com/terms>). You understand that the Send Help feature will not be functional until you purchase a subscription that supports the feature and complete enrollment. Additionally, you understand that use of this feature requires you to provide a physical U.S. address, phone number and agree to certain location permissions on your phone. You expressly consent to the use of the personal information that you provide to us and our Third-Party Services. You understand and acknowledge that Send Help is designed to collect and share location and contact information for the purpose of sending emergency services at your request. We do not sell your personal information or use it for any other unrelated purpose.

If you use the Send Help feature to initiate help, Merkury Smart and Noonlight are expressly authorized to use reasonable judgment in providing relevant information that you share with us to authorities or designated persons to assist in an emergency if you cannot be reached. However, Merkury Smart and Noonlight are not compelled to act in such a circumstance. You

understand that you are exclusively responsible for false alarms and are liable for any cost associated with your misuse of the System or Services causing false alarms. Additionally, if necessary, you must independently obtain any necessary permissions, permits, and registrations, and recognize it is your sole responsibility to follow all applicable laws and regulations that apply where you reside related to emergency response services. MERKURY SMART AND THIRD-PARTY SERVICE PROVIDERS ARE NOT LIABLE FOR THE CONSEQUENCES OF FALSE ALARMS, YOUR FAILURE TO OBTAIN NECESSARY PERMITS, DAMAGE OR INJURY RESULTING FROM REFUSAL OF EMERGENCY RESPONDERS TO RESPOND. YOU RELEASE MERKURY SMART AND NOONLIGHT FROM ANY LIABILITY AND DAMAGES THAT MAY RESULT FROM A DELAY IN REQUESTING EMERGENCY RESPONDERS TO YOUR PROVIDED ADDRESS OR ANY OTHER HARM INCURRED IN USING THE SEND HELP FEATURE.

Deleting Your Account.

You can delete your Merkury Smart account from our system by making a request in the app or via email at support@merkurysmart.com. If you choose to delete your account, our system will permanently remove your personal information and make requests to third-party service providers to remove information linked to your account. ***You will not be able to access the app using your account information after making this request.*** You understand that we may keep a record of your request to delete an account for auditing purposes and to ensure your information is deleted from a back-up system should we need to restore our production system. Your information will not be deleted immediately from our archived or back-up systems because of the risk that creates to compromising all user account information saved to our back-up systems. Additionally, deleting single records from back-up systems is cost prohibitive and unduly burdensome. Any aggregated consumer information that was originally derived from your information will not be removed because it is not linked to your account when it is collected.

3. Privacy

Data.

Our System can allow you to monitor and store video footage using your Merkury Smart camera or other data storage using other Merkury Smart devices. If you wish, you can create “rules” to allow for the specific creation of videos and still images of your premises. You can also access your cameras in real time to watch a streaming video, to record a video, or to capture an image on demand. We store video and images captured by your camera in our System, which is covered by our Privacy Policy. Merkury Smart owns any videos, images, or information that you provide in your account, that is produced by the Equipment, or that is provided to you by our System and Equipment. Your access to and use of our Products, Services and System does not transfer to you, or any third party, any rights, title, or interest in intellectual property rights. Our Services are licensed and not sold to you, through your account, under these Terms of Service. Once you close your account, you will not be able to access any videos, images or information stored in our System. *Please make sure to print or download any information you wish to keep*

before canceling your account. Merkury Smart is not responsible for providing any copies of information after your use of the System or Services has terminated.

Tracking.

As described in our Privacy Policy, we may use “cookies” or other tracking technologies to track how you use our Services so that we can optimize your user experience. A cookie is a piece of software stored on your computer or device to uniquely identify your browser or to store information or settings on your computer or device. We may also send instructions to your computer or device using computer languages to gather the sorts of information described above and other details about your interactions with the Site. If applicable, our advertising partners may transmit cookies to your browser, application, or Mobile Device, when you click on ads that appear on the Services. If you click on a link to a third-party website or service, that third party may also transmit cookies to you. If you do not agree with our use of cookies, you may change your settings to prevent certain uses or do not use our Services.

Third Party Services.

Merkury Smart Services rely on, and operate with, third party products and services, which operate beyond the control of Merkury Smart. Services may be impacted by the reliability or availability of third-party services. Neither Merkury Smart nor third-party providers are responsible for anyone’s personal injury, property loss or damage, death, or any other harm or loss arising from their use of Products or Services.

You understand and acknowledge that:

- The use and availability of the Merkury Smart Services is dependent on third-party products and service providers;
- Third-party products and services may not always operate in a completely reliable manner and the operation of the Merkury Smart Services may be impacted by the reliability of third-party providers;
- Merkury Smart is not responsible for damages or loss due to the operation and reliability of these third-party products and services;
- Merkury Smart uses third-party service providers to enable some aspects of its System and Services.
- Merkury Smart does not control these products and services and, to the extent you connect them to the Services, these terms do not apply to the operation of third-party products and services.
- The availability of the Mobile Apps is dependent on the third-party app stores from which you download the Mobile Apps. *These terms are between you and Merkury Smart, and not the app store from which you downloaded the Mobile App.*
- Use of third-party sites is solely at your risk.

Merkury Smart is not responsible for your use of third-party products and services and makes no warranty about the operation, reliability or safety of any third-party products and services. Contact third-party providers directly with any questions about their products and service.

Each app store may have terms and conditions which you must agree to before downloading the Mobile App, and your license to use the Mobile App is conditioned upon your compliance with such terms and conditions. If there is a conflict between terms, the more restrictive terms and conditions shall apply. Merkury Smart provides website links operated by third-parties as a convenience and does not approve, review, warrant, endorse or make representations about third-party sites.

Shared Content.

You are entirely responsible for any Content you decide to post, upload, email, transmit or otherwise publicly distribute in connection with our Products and Services. You should not use, modify, reproduce, publish, or distribute any Content not owned by you without prior written consent from the owner. You must not violate the rights of any third-party by sharing Content. If you believe Content violates our Terms, please report it to us immediately. We reserve the right to remove Content from Services at any time with absolute discretion.

Updates.

Merkury Smart may periodically update our System or Services without notice. You understand that you may need to install updates to use our Products, System, and Services, and you agree to install the necessary updates promptly. Your continued use of the System and Products constitutes your consent to continued automatic updates. YOU ARE CONSENTING TO AUTOMATIC SOFTWARE UPDATES OF YOUR PRODUCTS AND SERVICES. IF YOU DO NOT AGREE, YOU MUST NOT USE THE SYSTEM, SERVICES, OR PRODUCTS.

4. Limits of Liability

No Guarantees; No Warranty.

THE SYSTEM, ITS CONTENT, AND ANY SERVICES OR ITEMS OBTAINED THROUGH THE MOBILE APP AND WEBSITE ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITHOUT ANY WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED. NEITHER THE COMPANY NOR ANY PERSON ASSOCIATED WITH THE COMPANY MAKES ANY WARRANTY OR REPRESENTATION WITH RESPECT TO THE COMPLETENESS, SECURITY, RELIABILITY, QUALITY, ACCURACY, OR AVAILABILITY OF THE WEBSITE. WITHOUT LIMITING THE FOREGOING, NEITHER THE COMPANY NOR ANYONE ASSOCIATED WITH THE COMPANY REPRESENTS OR WARRANTS THAT THE WEBSITE, ITS CONTENT, OR ANY SERVICES OR ITEMS OBTAINED THROUGH THE WEBSITE WILL BE ACCURATE, RELIABLE, ERROR-FREE, OR UNINTERRUPTED, THAT DEFECTS WILL BE CORRECTED, THAT OUR SITE OR THE SERVER THAT MAKES IT AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL

COMPONENTS, OR THAT THE WEBSITE OR ANY SERVICES OR ITEMS OBTAINED THROUGH THE WEBSITE WILL OTHERWISE MEET YOUR NEEDS OR EXPECTATIONS.

TO THE FULLEST EXTENT PROVIDED BY LAW, THE COMPANY HEREBY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR PARTICULAR PURPOSE. THIS DOES NOT AFFECT ANY WARRANTIES THAT CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW.

You acknowledge that the System and Services are not a home security system and Merkury Smart does not intend them to be a replacement for a home security system. Merkury Smart will not monitor signals received from the System or Services, including Equipment, at any time. Merkury Smart does not monitor for signals and will not dispatch emergency authorities or provide notification or other verification services commonly provided with security alarm systems in case of emergency. The System and Services must not be used for any "Life Safety Purpose or Expectation." WE MAKE NO GUARANTEES ABOUT WHETHER THE SERVICES OR THE SYSTEM WILL HELP YOU ACHIEVE THE RESULTS YOU WANT.

TO THE FULLEST EXTENT PROVIDED BY LAW, WE WILL NOT BE LIABLE FOR ANY LOSS OR DAMAGE CAUSED BY A DISTRIBUTED DENIAL-OF-SERVICE ATTACK, VIRUSES, OR OTHER TECHNOLOGICALLY HARMFUL MATERIAL THAT MAY INFECT YOUR COMPUTER EQUIPMENT, COMPUTER PROGRAMS, DATA, OR OTHER PROPRIETARY MATERIAL DUE TO YOUR USE OF THE WEBSITE OR ANY SERVICES OR ITEMS OBTAINED THROUGH THE WEBSITE OR TO YOUR DOWNLOADING OF ANY MATERIAL POSTED ON IT, OR ON ANY WEBSITE LINKED TO IT. **YOUR USE OF THE WEBSITE, ITS CONTENT, AND ANY SERVICES OR ITEMS OBTAINED THROUGH THE WEBSITE IS AT YOUR OWN RISK.**

Merkury Smart is NOT liable to you.

MERKURY SMART AND ITS THIRD-PARTY SERVICE PROVIDERS ARE NOT RESPONSIBLE FOR DAMAGES TO YOU OR ANY THIRD PARTY FOR ANY REASON. TO THE FULLEST EXTENT PROVIDED BY LAW, IN NO EVENT WILL THE COMPANY, ITS AFFILIATES, OR THEIR LICENSORS, SERVICE PROVIDERS, EMPLOYEES, AGENTS, OFFICERS, OR DIRECTORS BE LIABLE FOR DAMAGES OF ANY KIND, UNDER ANY LEGAL THEORY, ARISING OUT OF OR IN CONNECTION WITH YOUR USE, OR INABILITY TO USE, THE WEBSITE, ANY WEBSITES LINKED TO IT, ANY CONTENT ON THE WEBSITE OR SUCH OTHER WEBSITES, INCLUDING ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO, PERSONAL INJURY, PAIN AND SUFFERING, EMOTIONAL DISTRESS, LOSS OF REVENUE, LOSS OF PROFITS, LOSS OF BUSINESS OR ANTICIPATED SAVINGS, LOSS OF USE, LOSS OF GOODWILL, LOSS OF DATA, AND WHETHER CAUSED BY TORT (INCLUDING NEGLIGENCE), BREACH OF CONTRACT, OR OTHERWISE, EVEN IF FORESEEABLE. THESE EXCLUSIONS AND LIMITATIONS MAY NOT APPLY IN SOME JURISDICTIONS. **YOUR SOLE REMEDY FOR DISSATISFACTION WITH THE SYSTEM OR SERVICE IS TO STOP USING THEM.**

Resolving disputes.

You understand and agree that this agreement is governed by New York law, without regard to any conflicts of law provisions, and that you must bring any disputes related to this agreement exclusively in a court of competent jurisdiction in New York, New York. You irrevocably consent to such jurisdiction and, to the fullest extent permitted by law, waive any objection, now or hereafter, to New York, New York, as an inconvenient or improper forum.

Arbitration.

You understand and agree to arbitrate all disputes and claims arising out of, or relating to, these Terms, our System or Service in the state of New York, or another location mutually agreeable to both parties. If you do not agree with this arbitration clause, do not use our services. A court with proper jurisdiction may confirm an award of arbitration. The prevailing party in arbitration shall be entitled to recover all costs associated with arbitration from the other party. This agreement does not preclude either of us from bringing an individualized action in small claims or seeking a preliminary injunction, or temporary restraining order, pending arbitration in any court with proper jurisdiction. THIS ARBITRATION REQUIREMENT, AS A PART OF THIS AGREEMENT, IS MANDATORY AND WILL BE ENFORCED.

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, YOU AND MERKURY SMART 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 GROUP LITIGATION OR PRIVATE ATTORNEY GENERAL PROCEEDING.

Severability.

If any provision of this Agreement is found unlawful or unenforceable in any way, the parties agree the provision will be reformed so that it can be enforced. If it is not possible to reform such a provision to make it enforceable, that provision will be deleted. If one provision of this agreement is rendered unenforceable, only that provision will be deleted, and the remaining document will remain enforceable.

Indemnification.

You are responsible for costs associated with any dispute. You understand and agree to indemnify, reimburse, or hold harmless Merkury Smart, our suppliers, dealers, any of our parent or subsidiary companies, organizations, successors, assigns or licensees, together with any of their officers, directors, and employees, against any damages, losses, liabilities, judgments, costs or expenses, including reasonable attorneys' fees and costs, that arise out of third-party claims relating to your use of the System or Services, your violation of this Agreement, any law or regulation, or any policy posted on the Site or Mobile App, or your negligence or misconduct using the System or Services.

Waiver of Subrogation.

You should protect against any risk of loss by securing appropriate insurance coverage. You are fully responsible for obtaining insurance coverage. YOU AGREE, TO THE FULLEST EXTENT POSSIBLE BY LAW AND YOUR INSURANCE POLICY, TO RELEASE MERKURY SMART AND ITS AFFILIATES FROM ALL LIABILITY FOR ANY LOSS, OCCURANCE, EVENT, OR CONDITION COVERED BY YOUR INSURANCE.

5. Communication

Feedback that You Submit.

We want to continue to improve and welcome any feedback you have for us. If you give us comments on the System and Services (“Feedback”), your Feedback will be the property of Merkury Smart, irrevocably assigned to us with all right, title, and interest in, and all worldwide copyrights, moral rights, and other intellectual property rights, in the Feedback. Your feedback becomes our property once you submit it to us. Your Feedback submissions are voluntary, gratuitous, unsolicited and without restriction, and will not place Merkury Smart under any fiduciary or other obligation. If you provide Feedback, you must be the owner of the Feedback, which does not violate the rights of any third-party or contain personally identifiable information of third-parties and provide information that is true and accurate.

Communication in writing.

You can contact us using the Site or the Mobile App, or by sending us an e-mail. You agree to receive all communication from us by email or by notices in your account unless either you tell us otherwise or the law so requires. All communications we send you electronically will satisfy any legal requirement that communication is in writing. At your request, you can elect to receive legal notices by mail, in paper. If you request notices by mail, we will send them through postal mail or otherwise required by law. All other communications not required by law to be in paper form will be delivered to you electronically.

Legal Notices.

This Agreement comprises the entire agreement between us, relating to the System and Services, and no other verbal or written statements change the terms of this Agreement. *No additional statement outside the terms of this Agreement, including but not limited to, statements regarding capacity, suitability for use or performance, whether made by employees of Merkury Smart or otherwise, is a warranty or promise by Merkury Smart. We have no responsibility or liability for any such statements.*

Merkury Smart makes no representation that the System or Services or other material or information included in the System or Services is appropriate to or available in locations outside of the United States and Canada. You may not use the System or Services, or export Content, Documentation, or Equipment in violation of United States export laws, regulations, or restrictions. If you access the System or Services from outside of the United States, you are responsible for compliance with all applicable laws.

Changes to this Agreement.

Except as otherwise provided, Merkury Smart is free to revise these Terms or any other part of this Agreement at any time by publishing updated Terms. We may change this Agreement and our Privacy Policy at any time, without notice. Any changes to this Agreement, or our Privacy Policy, will apply immediately upon posting to the Site or Mobile App. If you have previously registered an account, Merkury Smart may, but is not obligated to, notify you about changes through the email address you provide for your Account. However, you understand that you are responsible for checking the published Terms periodically for the most current version, which can be found in the Merkury Smart app. YOUR CONTINUED USE OF THE SERVICES AFTER CHANGES ARE POSTED TO THIS SITE OR THE MOBILE APPS CONFIRM YOU HAVE AGREED TO ANY CHANGES.

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