



Purchase and Subscription Agreement

This Purchase and Subscription Agreement ("Agreement") sets forth the terms and conditions under which Mist Systems, Inc. ("Mist") is willing to sell the Mist Access Points and grant access to the Mist Dashboard to customers ("Customer") and Customer is willing to purchase such Products. Mist and Customer may be individually referred to as "Party" or collectively as "Parties". In consideration of the covenants and conditions set forth herein, Mist and Customer agree as follows:

BY USING THE MIST ACCESS POINTS AND MIST DASHBOARD, CUSTOMER ACKNOWLEDGES THAT (1) IT HAS READ THIS AGREEMENT AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS, AND (2) THE PERSON ACCEPTING THIS AGREEMENT HAS THE AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF THE CUSTOMER, AND TO BIND THE CUSTOMER TO THIS AGREEMENT. IF CUSTOMER DOES NOT AGREE TO THESE TERMS AND CONDITIONS, CUSTOMER MAY NOT USE THE MIST ACCESS POINTS OR MIST DASHBOARD. Provided, however, if Mist and Customer have entered into a written agreement governing the purchase of Mist Products ("Existing Agreement"), the terms of such Existing Agreement shall prevail to the extent this Agreement conflicts with such Existing Agreement. If Customer has purchased Products through a Mist reseller, then the terms of Customer's agreement with the reseller will prevail over the terms set forth in Section 2 and 7.

1. DEFINITIONS

"**Documentation**" means the installation and operating instructions, user manuals, help files, 'README' files, training materials, and all specifications and technical information and materials provided by Mist to Customer.

"**End Users**" means Customer's employees, contractors, guests, invitees, or anyone else to whom Customer authorizes access to the Mist Access Points and Dashboard.

"**Firmware**" means the software embedded in the Mist Access Points.

"**Mist Dashboard**" means the Mist cloudbased management console provided by Mist to Customer, pursuant to one (1) or more Purchase Orders.

"**Mist Dashboard Services**" means the optional, additional features or services that Mist makes available for additional fees and are provided through the Mist Dashboard.

"**Mist Access Point**" or "**Mist AP**" means the Mist manufactured wireless network access point purchased by Customer that is used to establish a wireless connection to a device (e.g. cell phone, laptop or other WiFi or BLE enabled device), and which is registered at a location designated by Customer, and enables Mist to provide the Mist Dashboard services.

"**Products**" means Mist APs (including the Firmware), the Mist Dashboard, and the Documentation, as may be ordered by Customer and provided by Mist pursuant to one (1) or more Purchase Orders.

"**Purchase Order**" means an Customer issued purchase order that sets forth the quantity of Mist APs ordered, the applicable subscription term to the Mist Dashboard, the schedule of payments, and any unique additional terms.

"**Service Term**" means the term of the subscription granted by Mist to Customer with respect to the Mist Dashboard, as set forth on a Purchase Order, or Mist order acknowledgement. Service Terms are either one, three or five years. Service Terms must conform to the period of time prescribed by Mist.

2. MIST ACCESS POINT PURCHASE & DELIVERY

2.1. Purchasing. Customer may initiate purchases of Mist Products by submitting a Purchase Order to Mist. If Mist has issued a quotation to Customer for the Products, Customer should include the quotation number on the Purchase Order. Any delivery dates stated in a Purchase Order are considered a request only and subject to confirmation by Mist. If the quantity of Mist APs in the Purchase Order exceeds the quantity quoted, Mist reserves the right to confirm such additional quantity is available and adjust the dates of shipment as necessary to meet the higher quantity. Mist shall send a written confirmation (via email) of receipt of Purchase Orders within five (5) days from receipt and verify the shipping dates and other modifications, if any to Customer's Purchase Order.

2.2. Shipping Terms. Mist will ship to Customer the quantity of Mist APs ordered by Customer Ex- Works (Incoterms 2010) from the Mist factory or distribution center. The price of all Products, unless otherwise specifically stated in Mist's quotation or order acknowledgement excludes the fees for shipment of the Mist APs to Customer's location. If requested by Customer, Mist will arrange for selection of a shipping company and shipment on Customer's behalf. Mist will include the shipping fees on the invoice to Customer. In the absence of shipping instructions from Customer, Mist reserves the right to select the means of



transportation and routing. Unless otherwise advised, Mist will insure Mist APs to their full value or declare full value thereof to the transportation company and all shipping and insurance costs shall be for Customer's account. Destruction of, or damage to, Mist APs shall not release, reduce, or in any way affect Customer's obligation to pay for same. Mist will assist Customer will seeking recovery for any loss or damage to the Mist APs while in transit.

2.3. Risk of Loss and Title Transfer. Unless otherwise agreed to in writing by Mist, title and risk of loss or damage shall pass to Customer upon delivery of the Mist APs to the transportation company at Mist's facility.

2.4. Cancellation. Once accepted, Purchase Orders may not be cancelled without written approval from Mist. Except as set forth in this Agreement, there is no right of return for the Mist APs or right to cancel subscriptions to the Mist Dashboard.

3. INSPECTION OF HARDWARE

3.1. Inspection Rights. Customer shall have the right to inspect the Mist APs upon delivery. Customer's exclusive remedy with respect to any defective or non-conforming Mist APs shall be to have Mist replace such defective or nonconforming Mist AP or credit Customer's account, whichever Mist may elect in its sole discretion. If Customer reports to Mist a defective Mist AP within 30 days of delivery, then Mist will ship to Customer an advance replacement at Mist's cost in exchange for the defective Mist AP delivered to Customer. To avoid additional charges, Customer must return the defective AP within 15 days of receipt of the replacement AP. If Mist finds that any Mist AP has been returned which is not defective or non-conforming, Mist will return the Mist AP at Customer's expense. In addition, a charge for testing and examination may, in Mist's sole discretion, be made on any Mist AP so returned.

4. LICENSES

4.1. Firmware License. The Mist APs contain the Firmware that is pre-installed or embedded in object code and is necessary for the proper functioning of the Mist APs. The Firmware is licensed to Customer, not sold. All Firmware is protected by U.S. copyright law and international treaties. Except where Customer is paying for a managed service from a managed service provider of Mist Products, Mist grants to Customer a non-exclusive, perpetual license to use the Firmware, in executable form, solely as embedded in the Products. Where Customer is paying for a managed service that allows only for the lease of the Mist AP, then Mist grants to Customer a non-exclusive, limited, term license to use the Firmware as installed in the Mist AP. Customer acknowledges that the Firmware contains proprietary rights of Mist, and, in order to protect such proprietary rights, Customer agrees not to disassemble, decompile or reverse engineer the Firmware nor permit any third party to do so, except to the extent such restrictions are prohibited by law. Mist reserves all rights and licenses in and to the Firmware not expressly granted to Customer.

4.1.1. All Firmware updates to the Mist APs will be automatically deployed, unless Customer elects (through the Mist Dashboard) not to receive automatic updates. Mist will make available release notes for every Firmware update and changes to the Mist Dashboard. Mist will provide advance notice of any Firmware updates that introduce significant new or different functionality.

4.2. Third-Party Software Licenses. The Products may contain or be provided with components which are licensed from third parties ("Third Party Code"), including components subject to the terms and conditions of "open source" software licenses ("Open Source Software"). To the extent required by the license that accompanies the Open Source Software, the terms of such license will apply in lieu of the terms of this Agreement with respect to such Open Source Software, including, without limitation, any provisions governing access to source code, modification, or reverse engineering.

5. SUBSCRIPTION SERVICES

5.1. Mist Dashboard. During the Service Term, subject to Customer's compliance with the terms and conditions of this Agreement, including the payment of any applicable subscription fees, as set forth on one or more Purchase Orders, Mist will provide Customer access to the Mist Dashboard. Customer must purchase a subscription to the Mist Dashboard for every Mist AP purchased by Customer.



- 5.2. Activation Codes.** Upon delivery of the Mist APs, the Customer will be required to activate its subscription to the Mist Dashboard. Each Mist AP requires an activation code in order to manage the Mist AP from the Mist Dashboard. Mist will email to Customer's designated contact the Mist Dashboard activation codes.
- 5.3. User Credentials.** Access to the Mist Dashboard is limited to individual employees, consultants or contractors of Customer who are provided a registered account by Customer, having an individual user identification name and password. Account names and passwords may not be shared. Customer is responsible for all access to the Mist Dashboard by its employees, consultants and contractors. Customer shall immediately notify Mist in the event that Customer becomes aware of any violation of the terms of this Agreement. In the event Customer becomes aware that the security of any user's login information has been breached, Customer shall immediately notify Mist of such breach and Customer shall immediately de-activate such account or change the account's login information.
- 5.4. Restrictions on Use.** Customer will not, and will not permit any third party to (a) modify, copy, or otherwise reproduce the Products in whole or in part; (b) reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code form or structure of the code used in any Products and Services; (c) provide, lease or lend the Products to any third party except as expressly authorized by Mist; (d) remove any proprietary notices or labels displayed on the Products; (e) modify or create a derivative work of any part of the Products; (f) use the Products for any unlawful purpose; (g) interfere with or disrupt the integrity or performance of the Products or third-party data contained therein; (h) attempt to gain unauthorized access to or breach the security mechanisms of the Products; (i) permit direct or indirect access to or use of any Products in a way that circumvents the authorized scope of use, as set forth in this Agreement; (j) access any Products in order to build a competitive product or service; or (k) interfere with, disrupt, alter, translate or modify the Products.

6. DATA AND SERVICES

- 6.1. Device Data.** The Mist APs enable Customer to transfer to the Mist Dashboard information about devices that connect to the Mist APs. This information may include, but is not limited to, device name, device type, operating system, MAC address, IP address, username, and signal strength of Mist APs ("Device Data"). In addition, if a customer has purchased location enabled services, Mist will process a device's geolocation information. Mist processes and stores this information in order to:
- 6.1.1. provide the Mist Dashboard services so that Customer can monitor the use and performance of the Mist APs, and exercise control over the traffic on, a Customer's network;
 - 6.1.2. perform product testing and product development;
 - 6.1.3. prepare industry reporting and analysis of usage for informational and educational purposes;
 - 6.1.4. protect Mist's rights or enforce the terms of this Agreement, to the extent necessary, in any dispute with Customer;
- 6.2. Anonymity.** Mist will ensure that any Device Data used for purposes of Section 6.1.2-6.1.3 will be used in the aggregate so that it is not possible to personally identify any individual End User or identify Customer. Mist will not use any personal data in connection with Section 6.1.3. Mist shall use, process and disclose any Device Data only as set forth in this Agreement. Mist notify Customer of any lawful request for access to Device Data with sufficient notice to allow Customer to seek a protective order or otherwise prevent disclosure of the Device Data. Mist uses a third party cloud hosting provider to provide the Mist Dashboard Services. Mist does not permit the third party hosting provide to access, or use and Device Data other than to process and store the Device Data solely to the extent necessary to provide the Products to Customer.
- 6.3. Consent.** Customer is required to consent to Mist's processing and storage of Device Data in order for Mist to provide the Mist Dashboard services. It is the Customer's sole responsibility to provide notice to, and obtain all necessary consents from, End Users regarding the collection, processing, and storage of Device Data in accordance with this Agreement. If Customer intends to install the Mist AP in a location within the European Union, Customer will enter into Mist's standard Data Processing Addendum to this Agreement.
- 6.4. Non-Mist Connections.** Mist has no responsibility for whether and how Customer configures the APIs to transfer Device Data to non-Mist servers or what happens to this data following such a transfer.



6.5. Data Security. Mist shall maintain reasonable security to: (1) ensure that all Device Data are protected from unauthorized use, alteration, or disclosure, and to protect and ensure the confidentiality, integrity and availability of Device Data; (2) prevent unauthorized access and unauthorized use of, and ensure the availability of the Mist Dashboard; and (3) prevent any virus, malware or malicious code from interfering with the Mist Dashboard and Firmware.

6.5.1. Mist shall implement reasonable restrictions regarding physical and electronic access to Device Data and the Mist Dashboard, including but not limited to physical access controls, secure user authentication protocols, secure access control methods, firewall protection, malware protection, and use of encryption for Device Data being transmitted across the public Internet;

6.5.2. Mist shall develop and maintain a reasonable and appropriate written data security policies that includes technological, physical, administrative and procedural controls to protect the confidentiality, integrity and availability of Device Data, and access to the Mist Dashboard;

6.5.3. Mist shall use a cloud hosting provider that is SSAE 16, ISO 2001 and Type2 SOC2 certified;

6.5.4. Mist shall employ assessment, monitoring and auditing procedures to ensure internal compliance with these safeguards;

6.5.5. Mist shall conduct a complete assessment of these safeguards at least annually and, upon written request, provide a report on the results of this assessment, including but not limited to any required remedial action.

7. FEES

7.1. Fees and Taxes. Customer will pay the price for the Mist APs and subscription fees for the Mist Dashboard as set forth in the quotation issued by Mist (or Mist authorized reseller) (together, the "Fees"). The Fees do not include Federal, State, Provincial or local sales, excise, use or other taxes applicable to the Products (excluding only taxes based on Mist's income). Applicable taxes will be added to the sales price if Mist has the legal obligation to collect the same and will be invoiced to and paid by Customer, unless Customer provides Mist with a proper tax exemption certificate. In the event Mist is required to pay any such tax, Customer shall promptly reimburse Mist.

7.2. Payment Terms. Unless otherwise stated in Mist's Quotation and Order Acknowledgement Form, Customer must pay for all Products at time of order. Upon reviewing Customer's credit status, Mist may offer payment terms of net 30 days from date of invoice. Mist reserves the right to require alternative payment terms based upon Customer's credit application. All amounts payable shall be invoiced and paid in United States Dollars and all payments shall be made to Mist at its office in Cupertino, California, or to such other location as Mist may designate in writing. Interest accrues on the unpaid balance of overdue invoices at the lesser of one percent (1.0%) per month from the original due date of the invoice. Payment shall not be withheld for Customer's delay in installation of the Mist APs. In the event any Fees remain outstanding for a period of thirty (30) days or more, Mist shall have the right upon ten days advance written notice to suspend access to the Mist Dashboard, delay shipment of any additional Mist APs and/or terminate this Agreement.

8. WARRANTY

8.1. Hardware Warranty. Mist warrants the Mist APs to be free from defects in material and workmanship under normal use and to perform in accordance with the Product Documentation as published by Mist for a period of two (2) years from the date of delivery except in the case of the AP61 Mist AP which is one (1) year from the date of delivery. Thereafter, and for as long as the Mist AP is subject to a Mist Dashboard subscription, Customer will receive the remedies set forth in Section 8.2.2 for any Mist AP that fails to conform to this warranty (except for the AP61). For a discontinued Mist AP models, the remedies are available for up to five (5) years from the announcement by Mist of the discontinuation of that AP model, and provided Customer maintains an active and continuous subscription to the Mist Dashboard for such Mist AP.

8.2. Warranty Remedies.



- 8.2.1. In addition to the right to return for replacement any defective AP, Customer has the right during the applicable Warranty Period to return the defective AP and receive a refund of the price paid for the Mist AP and for the subscription fees to the Mist Dashboard for such AP.
- 8.2.2. In the event the Mist AP fails to conform to the warranties set forth above, Customer will have the right to return any defective or non-conforming Mist AP. Upon receipt of notification from Customer of a defective or non-conforming Mist AP, Mist will confirm by remote diagnostics that such Mist AP requires replacement. If Mist determines that the Mist AP requires replacement, Mist will issue a Return Materials Authorization (RMA) form to Customer with instructions on how to return the AP to Mist. Mist will promptly replace the AP with the equivalent or substantially similar make and model. Mist will ship replacement Mist APs at Mist's costs, to Customer. After the applicable warranty period, replacement units may be new or refurbished in Mist's sole discretion.
- 8.2.3. Customer must ship the Mist AP for which an RMA has been issued to Mist within thirty (30) days of the date of the RMA. Products must be returned to an authorized Mist service facility in the original packaging or packaging adequate for shipping, the Mist RMA number and the serial number of the Mist AP. Customer will pay the shipping and transportation charges for the return of the defective Mist APs to Mist except with respect to a Mist AP that is delivered inoperable, damaged, and non-functioning and reported to Mist within 30 days of delivery, in which case, Mist will send an advance replacement (at Mist's costs) and pay for return shipment of the defective or damaged Mist AP.
- 8.2.4. Any Mist APs returned to Mist pursuant to a valid RMA shall be subject to review and inspection by Mist upon receipt of such returned Products. If Mist determines that the defect is not covered by the warranty, Mist will invoice Customer for the costs of shipping the replacement unit.
- 8.2.5. This Section 8.2 sets forth Customer's sole right and remedy, and Mist's entire liability, for breach of the foregoing warranty.

8.3. Warranty Conditions. This warranty is conditioned upon proper use of the Mist APs and does not cover plastic surfaces and other externally exposed components that are scratched or damaged due to normal use. The Mist warranty does not cover, and will become null and void in the event of: (a) defects or damage resulting from accident, misuse, abuse, neglect, unusual physical, electrical or electromechanical stress, modification of the Mist APs or any part thereof, or cosmetic damage; (b) removal, alteration or defacing of the serial number or other identifying marks on the Mist AP; (c) malfunctions resulting from the use of the Mist APs in conjunction with accessories, products or (ancillary) or peripheral equipment not provided or authorized by Mist; or (d) defects or damage from unauthorized or improper testing, operation, maintenance, installation, of the Mist APs or exposure to moisture or excessive heat. Opening the Mist AP enclosure or modification to the Mist AP will void the warranty.

8.4. Post Warranty Support. Upon expiration of the warranty period, Customer will continue to receive the support and remedies set forth in Section 8.2.2 for as long as Customer maintains a continuous subscription to the Mist Dashboard service for the Mist AP (except for the AP61). In the event the Customer allows its subscription to lapse for more than thirty days, Customer will be required to renew and pay for its Mist Dashboard subscription from the date of expiration in order to link the Mist AP to the Mist Dashboard and for the warranty remedies to apply.

8.4.1. Customer may submit technical support requests through the Mist Dashboard or by email to Mist at support@mistsys.com. Customer may select the severity level of the technical problem being reported. Mist support hours are 8:00 am to 5:00 pm Pacific Time, but for severity 1 issues, Mist provides a response 24X7. Mist will respond to Customer support requests based upon the severity level of the problem.

Severity	Definition	Response Time
Severity Level 1	Product is inoperable or its performance is so severely reduced that Product cannot be utilized. No workaround is available.	Mist responds in less than 1 hour and immediate escalation to Engineering if not resolved in 6 hours.
Severity Level 2	There is significant Product performance degradation, but a workaround is available	Mist responds in less than 4 business hours and escalation to Engineering if not resolved within 8 hours.
Severity Level 3	There is an issue or defect causing	Mist responds in less than 8 business



	minimal business impact	hours and escalation to Engineering if not resolved within 5 days
Severity Level 4	Request for information; administrative requests	Mist responds in 24 hours or less.

8.5. Disclaimer. EXCEPT TO THE EXTENT EXPRESSLY PROVIDED ABOVE IN SECTION 8.1, MIST EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS, IMPLIED, AND STATUTORY, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF TITLE, NONINFRINGEMENT, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, AND QUIET ENJOYMENT. MIST DOES NOT WARRANT THAT THE PRODUCTS AND SERVICES WILL BE ERROR-FREE OR THAT USE OF THE PRODUCTS OR SERVICES WILL BE UNINTERRUPTED.

9. INDEMNIFICATION

9.1. Claims of Infringement. Mist will defend at its expense and indemnify Customer for the costs, fines, penalties, and damages finally awarded against Customer in any action by a third party against Customer that Customer's use of the Products, in accordance with the terms of this Agreement infringes any United States or Canadian copyright, patent or trademark, provided that: Customer provides prompt written notice to Mist (including notice of any prior related claims); Mist has sole control of the defense and all related settlement negotiations; and Customer, and those for whom Customer is in law responsible, provides Mist at Mist's expense, with the assistance, information, and authority necessary to perform Mist's defense obligations under this Section. Mist shall have no liability if the action results from modification of the Products by anyone other than Mist or combination of the Products with other products that is not authorized by Mist or reasonably anticipated from the normal use of the Mist Products.

10. LIMITATION OF LIABILITY

10.1. Indirect or Consequential Damages. MIST AND CUSTOMER SHALL NOT BE LIABLE TO THE OTHER FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, INDIRECT OR SIMILAR DAMAGES, LOSS OF USE, DATA OR PROFITS, DAMAGES TO PROPERTY, OR INJURY ARISING OUT OF THE USE, MISUSE OR INABILITY TO USE ANY PRODUCT, WHETHER OR NOT SUCH DAMAGE ARISES OUT OF CONTRACT OR TORT (INCLUDING WITHOUT LIMITATION, NEGLIGENCE) OR CLAIMS BY A THIRD PARTY, EVEN IF MIST HAS BEEN ADVISED OF SUCH DAMAGES OR THEY ARE FORESEEABLE.

10.2. Direct Damages. IN NO EVENT WILL MIST'S AGGREGATE CUMULATIVE LIABILITY FOR ANY CLAIMS ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE SUM OF ALL FEES PAID TO MIST BY CUSTOMER DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO LIABILITY.

10.3. Applicability. THESE LIMITATIONS OF LIABILITY WILL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY SET FORTH HEREIN. THE WARRANTY DISCLAIMER AND LIMITATIONS OF LIABILITY ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN CUSTOMER AND MIST. MIST WOULD NOT PROVIDE THE PRODUCTS AND SERVICES TO CUSTOMER ABSENT SUCH LIMITATIONS.

11. TERM AND TERMINATION

11.1. Term. This Agreement shall commence upon the date Mist accepts Customer's purchase order in writing. The Service Term will begin upon the last to occur of either a) the invoice date, or b) shipment of Mist APs and delivery by email of the activation codes to the Mist Dashboard (which in most cases will be simultaneous). This Agreement will terminate on the expiration of all Service Terms for all Mist APs.

11.2. Termination. Either Party may terminate this agreement for cause upon thirty (30) days' written notice to the other Party of a material breach of this Agreement if such breach remains uncured at the expiration of such period. Mist may suspend Customer's use of the Mist Dashboard at any time if Mist reasonably believes that Customer has breached the terms of Section 7.2; and if such breach remains



uncured for 10 days following receipt of notice from Mist, then Mist may terminate this Agreement immediately. If Customer terminates this Agreement for cause, Customer will receive a refund of any prepaid Fees equal to the prorated Mist Dashboard Fees for the remainder of the Service Term.

- 11.3. Survival. Upon any termination of this Agreement, Sections 6.1, 6.2, 6.5, 10 and 12.1 will survive any termination of this Agreement.

12. OTHER

- 12.1. Confidentiality. Mist and Customer agree to retain in confidence all non-public information and know-how disclosed pursuant to this Agreement which is either designated as proprietary and/or confidential, or by the nature of the circumstances surrounding disclosure, should reasonably be understood to be confidential ("Confidential Information"). Each Party agrees to: (a) preserve and protect the confidentiality of the other Party's Confidential Information; (b) refrain from using the other Party's Confidential Information except as contemplated herein; and (c) not disclose such Confidential Information to any third party except to employees, consultants, or third party service providers (only with respect to Mist) as is reasonably required under this Agreement (and only subject to binding use and disclosure restrictions at least as protective as those set forth herein executed in writing by such employees, consultants or third party service providers). Notwithstanding the foregoing, either Party may disclose Confidential Information of the other Party which is: (i) already publicly known; (ii) discovered or created by the receiving Party without reference to the Confidential Information of the disclosing Party, as shown in records of receiving Party; (iii) otherwise known to the receiving Party through no wrongful conduct of the receiving Party; or (iv) required to be disclosed by law or court order. Moreover, either Party hereto may disclose any Confidential Information hereunder to such Party's agents, attorneys, and other representatives, or any court of competent jurisdiction, or any other Party empowered hereunder as reasonably required to resolve any dispute between the Parties hereto.
- 12.2. Mist Ownership and Trademarks. Customer acknowledges and agrees that Mist retains all of its right, title, and interest in and to the worldwide intellectual property rights in the Products. All rights not expressly granted to Customer in this Agreement are expressly reserved by Mist. Neither Party will use the other Party's name or trademarks without written consent.
- 12.3. Disposition of APs. Customer may (directly or indirectly) sell, transfer, or otherwise convey title to the Products only with the prior written consent of Mist and in connection with a merger, acquisition of all or substantially all of Customer's business, corporate reorganization, or change in control. Otherwise, any resale, transfer or assignment of the Mist APs will void the access rights to the Mist Dashboard.
- 12.4. Entire Agreement. This Agreement, Mist's order acknowledgement, and the Mist documents referenced herein, constitute the entire agreement between the Parties concerning the subject matter and supersedes all prior statements, representations, discussions, negotiations, and agreements, both oral and written. Except as otherwise set forth in the Mist quotation for the Products, this Agreement shall prevail over any additional, inconsistent, or conflicting terms of any Customer purchase order or other document issued by Customer pertaining to the Products.
- 12.5. Governing Law. This Agreement and any disputes arising from the Customer's use of Mist APs and the Mist Dashboard shall be governed by and construed in accordance with the laws of the state of California. The Parties consent to personal jurisdiction and the exclusive venue of the federal and state courts in San Jose, California. Failure to exercise any right under this Agreement will not constitute a waiver.
- 12.6. Other. Any notice or other communication to the Parties shall be in writing and, except where communications are approved by email in this Agreement, must be sent by registered mail or overnight courier and shall be deemed to have been given when such notice should have reached the addressee in the ordinary course, provided there is no other circumstances delaying mail delivery, in which case notice shall be delivered. If any provision of this Agreement is declared by a court of competent jurisdiction to be invalid, illegal, or unenforceable, such a provision shall be severed from the Agreement, the provision in question shall be deemed to be replaced with a valid and enforceable provision most closely reflecting the intent and purpose of the original provision and the other provisions shall remain in full force and effect.