

**GROWBOTS, INC.**  
**TERMS OF SERVICE**

The Terms of Service set forth below (the “**Terms of Service**” or “**Terms**”) govern Your acquisition and use of Growbots, Inc.’s Services (defined below). By clicking or otherwise indicating your acceptance of these Terms, are agreeing to be bound by and are becoming a party to the Agreement (defined below). If you are accepting these Terms on behalf of a company or other legal entity, you represent that you have the authority to bind such entity and its affiliates to these Terms, in which case the terms “You”, “Your” and “Customer” shall refer to such entity and its affiliates. If you do not have such authority, or if you do not agree to all of the Terms set forth below, you must not accept the Agreement and may not use the Services. You further acknowledge and agree that Your access to and use of the Services is subject to the Documentation (defined below) and the policies of the Website (defined below), as such Documentation and policies may change from time to time, with or without notice to you. You agree to comply in all respects with all of the terms and conditions of the Agreement and the Documentation, and with any policies set forth on the Website. The Agreement is effective between You and Us as of the date You indicate your acceptance of these Terms of Service.

These Terms was last updated on 21 December, 2015.

**1. Definitions**

“**Agreement**” means, collectively, the Order Form and the Terms of Service.

“**Beta Services**” means Our services that are not generally available to customers.

“**Documentation**” means the Service descriptions, pricing information and user guides available on the Website.

“**Lead**” “means a potential consumer or purchaser of Customer’s products or services, as identified by the Service using Your Data.

“**Lead Data**” means contact and other information related a Lead, including without limitation personal contact and other information related to the employees of Leads.

“**Malicious Code**” means code, files, scripts, agents or programs intended to do harm, including, for example, viruses, worms, time bombs and Trojan horses.

“**Order Form**” means the physical or electronic order form specifying the Services to be provided hereunder that is entered into between You and Us, including any addenda and supplements thereto. An Order Form may be a signed agreement or a click-through form acknowledged by You. By accepting or signing an Order Form, You agree to be bound by the Terms of Service.

“**Services**” means remotely hosted software Services that You subscribe to under an Order Form, and are made available to you pursuant to the Terms Service. The Services are more particularly described in the Documentation.

“**Third Party Applications**” means applications or services other than those provided by Us.

“**User**” means an individual who is authorized by You to use a Service, for whom You have ordered the Service, and to whom You (or We at Your request) have supplied a user identification and password. Users may include, for example, Your employees, consultants, contractors and agents, and third parties with which You transact business.

“**We**”, “**Us**” or “**Our**” means Growbots, Inc.

“**Website**” means [www.growbots.com](http://www.growbots.com) and its subdomains, through which Customer can (i) access the Services and Documentation

“**You**” or “**Your**” means the company or other legal entity that orders the Services and accepts the Agreement.

“**Your Data**” means electronic data and information submitted by or for You to the Services or collected and processed by or for You using the Services (including electronic data and information the Services may obtain other Third Party Applications).

## 2. Our responsibilities

### 2.1. Provision of Services. We will

- make the Services available to You pursuant to the Agreement and the Documentation,
- provide Our standard support for the Services to You at no additional charge, and
- use commercially reasonable efforts to make the online Services available 24 hours a day, 7 days a week, except for any unavailability caused by circumstances beyond Our reasonable control, including, for example, an act of God, act of government, flood, fire, earthquake, civil unrest, act of terror, strike or other labor problem (other than one involving Our employees), Internet service provider failure or delay or denial of service attack.

2.2. Protection of Your Data. We will maintain administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Your Data, although you acknowledge that no safeguards are 100% effective and we cannot guarantee that Your Data will not be subject to unauthorized access or use. The safeguards We use will include, but will not be limited to, measures for preventing access, use, modification or disclosure of Your Data by Our personnel except

- to provide the Services and prevent or address service or technical problems,
- as compelled by law in accordance with Section 7.3 (Compelled Disclosure) below,
- as You expressly permit in writing,
- to develop, improve and test the Services and to analyze Your use of the Services; or
- transfer of Your Data to an acquirer of Our business relating to the Services or to a successor to Our company (including by way of merger or change of control).

2.3. Our Personnel. We will be responsible for the performance of Our personnel (including Our employees and contractors) and their compliance with Our obligations under the Agreement, except as otherwise specified herein.

2.4. **Beta Services.** From time to time, We may invite You to try Beta Services at no charge. You may accept or decline any such trial in Your sole discretion. Beta Services will be clearly designated as beta, pilot, limited release, developer preview, non-production, evaluation or by a description of similar import. Beta Services are for evaluation purposes and not for production use, are not considered “Services” under the Agreement, are not supported, and may be subject to additional terms. Unless otherwise stated, any Beta Services trial period will expire upon the earlier of one year from the trial start date, or the date that a version of the Beta Services becomes generally available or the date that We elect (in Our sole discretion) to discontinue the Beta Services. We may discontinue Beta Services at any time in Our sole discretion and may never make them generally available. We will have no liability for any harm or damage arising out of or in connection with a Beta Service.

### **3. Use of Services**

3.1. **Subscriptions.** Unless otherwise provided in the applicable Order Form,

- Services are purchased as subscriptions,
- additional subscriptions may be added during a subscription term at the same pricing as the underlying subscription pricing, prorated for the portion of the subscription term remaining at the time the additional subscriptions are added, and
- all additional subscriptions will terminate on the same date as the underlying subscriptions.

3.2. **Usage Limits.** Services are subject to usage limits as set forth in the Documentation and the Agreement, including, for example, the quantities specified in Order Forms. Unless otherwise specified,

- a User’s password may not be shared with any other individual.
- a User identification may be reassigned to a new individual replacing one who no longer requires ongoing use of the Service. If You exceed a contractual usage limit, We may work with You to seek to reduce Your usage so that it conforms to that limit. If, notwithstanding Our efforts, You are unable or unwilling to abide by a contractual usage limit, we may require that you order additional quantities of the applicable Services and/or pay any invoice for excess usage in accordance with Section 5.2 (Invoicing and Payment).
- unlimited access to Leads database means that Users may submit unlimited queries to the Leads database, each of which generates up to 200 Leads, with the possibility of repeated queries.

3.3. **Your Responsibilities.** You will

- be responsible for Users’ compliance with the Agreement,
- be responsible for the accuracy, quality and legality of Your Data, the means by which You acquired Your Data and the uses you make of Your Data (including uses in relation to the Services),
- use commercially reasonable efforts to prevent unauthorized access to or use of Services, and notify Us promptly of any such unauthorized access or use,

- use Services only in accordance with applicable laws and government regulations, including without limitation laws relating to the transmission of unsolicited commercial e-mail, and
- use Services in connection with Third Party Applications only in compliance with the terms of service for those Third Party Applications.

#### 3.4. Usage Restrictions. You will not

- make any Service available to, or use any Service for the benefit of, anyone other than You or Users,
- sell, resell, license, sublicense, distribute, rent or lease any Service, or include any Service in a service bureau or outsourcing offering,
- use a Service to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights,
- use a Service to store or transmit Malicious Code,
- interfere with or disrupt the integrity or performance of any Service or third-party data contained therein,
- attempt to gain unauthorized access to any Service or its related systems or networks,
- permit direct or indirect access to or use of any Service in a way that circumvents a contractual usage limit,
- copy a Service or any part, feature, function or user interface thereof,
- frame or mirror any part of any Service, other than framing on Your own intranets or otherwise for Your own internal business purposes,
- access any Service in order to build a competitive product or service, or
- reverse engineer any Service (to the extent such restriction is permitted by law).

### **4. Other providers**

4.1. Acquisition of Third Party Applications. The Services may be compatible or useful in connection with Third Party Applications or services, including, for example, other applications and implementation and other consulting services. Any acquisition by You of such other Third Party Applications or services, and any exchange of data between You and any other provider, is solely between You and the applicable other provider. We do not warrant or support Third Party Applications or other services, whether or not they are designated by Us as “certified” or otherwise.

4.2. Integration with Third Party Applications. The Services may contain features designed to interoperate with Third Party Applications (such as Google oAuth and salesforce.com). To use such features, You may be required to obtain access to Third Party Applications from their providers, and may be required to grant Us access to Your account(s) on the other applications. If the provider of other application ceases to make the Third Party Applications available for interoperation with the corresponding Service features on reasonable terms, We may cease providing those Service features without entitling You to any refund, credit, or other compensation.

## 5. Fees and payment for Services

5.1. Fees. You will pay all fees specified in Order Forms. Except as otherwise specified herein or in an Order Form,

- fees are based on Services purchased and not actual usage,
- payment obligations are non-cancelable and fees paid are non-refundable
- quantities purchased cannot be decreased during the relevant subscription term.

5.2. Invoicing and Payment. You will provide Us with valid and updated credit card information, or with a valid purchase order or alternative document reasonably acceptable to Us. If You provide credit card information to Us, You authorize Us to charge such credit card for all Services listed in the Order Form for the initial subscription term and any renewal subscription term(s) as set forth in Section 11.2 (Term of Purchased Subscriptions). Such charges shall be made in advance, either annually or in accordance with any different billing frequency stated in the applicable Order Form. If the Order Form specifies that payment will be by a method other than a credit card, We will invoice You in advance and otherwise in accordance with the relevant Order Form. You are responsible for providing complete and accurate billing and contact information to Us and notifying Us of any changes to such information.

5.3. Suspension of Service and Acceleration. If any amount owing by You under this or any other agreement for Our services is 20 or more days overdue (or 10 or more days overdue in the case of amounts You have authorized Us to charge to Your credit card), We may, without limiting Our other rights and remedies, accelerate Your unpaid fee obligations under such agreements so that all such obligations become immediately due and payable, and suspend Our services to You until such amounts are paid in full. We will give You at least 10 days' prior notice that Your account is overdue, in accordance with Section 12.2 (Manner of Giving Notice), before suspending services to You.

5.4. Payment Disputes. We will not exercise Our rights under 5.3 (Suspension of Service and Acceleration) above if You are disputing the applicable charges reasonably and in good faith and are cooperating diligently to resolve the dispute.

5.5. Taxes. Our fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction whatsoever (collectively, "Taxes"). You are responsible for paying all Taxes associated with Your purchases hereunder. If We have the legal obligation to pay or collect Taxes for which You are responsible under this Section 5.5, We will invoice You and You will pay that amount unless You provide Us with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, We are solely responsible for taxes assessable against Us based on Our income, property and employees.

5.6. Future Functionality. You agree that Your purchases are not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by Us regarding future functionality or features.

## **6. Proprietary rights and licenses**

6.1. **Reservation of Rights.** Subject to the limited rights expressly granted hereunder, We and Our licensors reserve all of Our/their right, title and interest in and to the Services, including all of Our/their related intellectual property rights. No rights are granted to You hereunder other than as expressly set forth herein.

6.2. **License by You to Host Your Data and Applications.** You grant Us and Our Affiliates a worldwide, limited-term license to host, copy, transmit and display Your Data as necessary for Us to provide the Services in accordance with the Agreement. Subject to the limited licenses granted herein, We acquire no right, title or interest from You or Your licensors under the Agreement in or to Your Data.

6.3. **License by You to Use Feedback.** You grant to Us and Our Affiliates a worldwide, perpetual, irrevocable, royalty-free license to make, have made, use, distribute, modify, make derivative works of, incorporate into the Services and otherwise exploit in any manner any suggestion, enhancement request, recommendation, correction or other feedback provided by You or Users relating to the operation of the Services or any of Our products or services.

6.4. **Federal Government End Use Provisions.** We provide the Services, including related software and technology, for ultimate federal government end use solely in accordance with the following: Government technical data and software rights related to the Services include only those rights customarily provided to the public as defined in the Agreement. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data – Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If a government agency has a need for rights not granted under these terms, it must negotiate with Us to determine if there are acceptable terms for granting those rights, and a mutually acceptable written addendum specifically granting those rights must be included in any applicable agreement.

## **7. Confidentiality**

7.1. **Definition of Confidential Information.** “Confidential Information” means all information disclosed by a party (“Disclosing Party”) to the other party (“Receiving Party”), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Your Confidential Information includes Your Data; Our Confidential Information includes the Services; and Confidential Information of each party includes the terms and conditions of the Agreement (including pricing), as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information does not include any information that

- is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party,
- was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party,
- is received from a third party without breach of any obligation owed to the Disclosing Party, or
- was independently developed by the Receiving Party.

7.2. Protection of Confidential Information. The Receiving Party will use the same degree of care to protect the Confidential Information of the Disclosing Party that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care). The Receiving Party agrees not to use any Confidential Information of the Disclosing Party for any purpose outside the scope of the Agreement, and except as otherwise authorized by the Disclosing Party in writing, to limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates' employees and contractors who need that access for purposes consistent with the Agreement and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein. Neither party will disclose the terms of the Agreement to any third party other than its Affiliates, legal counsel and accountants without the other party's prior written consent, provided that a party that makes any such disclosure to its Affiliate, legal counsel or accountants will remain responsible for such Affiliate's, legal counsel's or accountant's compliance with this Section 7.2.

7.3. Compelled Disclosure. The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure.

## **8. Representations, warranties, exclusive remedies and disclaimers**

8.1. Representations. Each party represents that it has validly entered into the Agreement and has the legal power to do so.

8.2. Our Warranties. We warrant that

- the Services will perform materially as described in the Documentation when used in accordance with our instructions,
- subject to Section 4.2 (Integration with Third Party Applications), We will not materially decrease the functionality of the Services during a subscription term, and
- the Services will not knowingly introduce Malicious Code into Your systems. For any breach of an above warranty, Your exclusive remedies are those described in Sections 11.3 (Termination) and 11.4 (Refund or Payment upon Termination).

8.3. Disclaimers. Except as expressly provided herein, neither party makes any warranty of any kind, whether express, implied, statutory or otherwise, and each party specifically disclaims all implied warranties, including any implied warranty of merchantability, fitness for a particular purpose or non-infringement, to the maximum extent permitted by applicable law. Each party disclaims all liability and indemnification obligations for any harm or damages caused by any third-party hosting providers. We do not warrant the accuracy, adequacy, completeness or timeliness of Leads or the Lead Data, nor do we make any warranties with respect to your use or disclosure of Leads or the Lead Data. Beta Services are provided "as-is", without any warranty whatsoever.

## 9. Mutual indemnification

9.1. Indemnification by Us. We will defend You against any claim, demand, suit or proceeding made or brought against You by a third party alleging that Our technology underlying a Service infringes or misappropriates such third party's intellectual property rights (a "Claim Against You"), other than a claim, demand, suit or proceeding related to Your Data and the Leads and Lead Data generated by the Services using Your Data, and will indemnify You from any damages, attorney fees and costs finally awarded against You as a result of, or for amounts paid by You under a court-approved settlement of, a Claim Against You, provided You

- promptly give Us written notice of the Claim Against You,
- give Us sole control of the defense and settlement of the Claim Against You (except that We may not settle any Claim Against You unless it unconditionally releases You of all liability), and
- give Us all reasonable assistance, at Our expense.

If We receive information about an infringement or misappropriation claim related to a Service, We may in Our discretion and at no cost to You

- modify the Service so that it no longer infringes or misappropriates, without breaching Our warranties under Section 8.2 (Our Warranties),
- obtain a license for Your continued use of the Service in accordance with the Agreement, or
- terminate Your subscriptions for that Service upon 30 days' written notice and refund You any prepaid fees covering the remainder of the term of the terminated subscriptions. The above defense and indemnification obligations do not apply to the extent a Claim Against You arises from your use of the Service in combination with any other product or service or Your breach of the Agreement.

9.2. Indemnification by You. You will defend Us against any claim, demand, suit or proceeding made or brought against Us by a third party alleging that Your Data, Your use or disclosure of Leads or Lead Data, or Your use of any Service infringes or misappropriates such third party's intellectual property rights (other than a claim, demand, suit or proceeding for which We are obligated to indemnify You under Section 9.1), violates any agreement by which You are bound, or violates applicable law (a "Claim Against Us"), and will indemnify Us from any damages, attorney fees and costs finally awarded against Us as a result of, or for any amounts paid by Us under a court-approved settlement of, a Claim Against Us, provided We

- promptly give You written notice of the Claim Against Us,
- give You sole control of the defense and settlement of the Claim Against Us (except that You may not settle any Claim Against Us unless it unconditionally releases Us of all liability), and
- give You all reasonable assistance, at Your expense.



9.3. Exclusive Remedy. This Section 9 states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any type of claim described in this Section 9.

## **10. Limitation of liability**

10.1. Limitation of Liability. Neither party's liability with respect to any single incident arising out of or related to the Agreement will exceed the amount paid by Customer hereunder in the 12 months preceding the incident, provided that in no event will either party's aggregate liability arising out of or related to the Agreement exceed the total amount paid by customer hereunder. The above limitations will apply whether an action is in contract or tort and regardless of the theory of liability. However, the above limitations will not limit Customer's payment obligations under section 5 (Fees and payment for Services).

10.2. Exclusion of Consequential and Related Damages. In no event will either party have any liability to the other party for any lost profits, revenues or indirect, special, incidental, consequential, cover or punitive damages, whether an action is in contract or tort and regardless of the theory of liability, even if a party has been advised of the possibility of such damages. The foregoing disclaimer will not apply to the extent prohibited by law.

## **11. Term and termination**

11.1. Term of Agreement. The Agreement commences on the date You first accept it and continues until all subscriptions hereunder have expired or have been terminated.

11.2. Term of Purchased Subscriptions. The term of each subscription shall be as specified in the applicable Order Form. Except as otherwise specified in an Order Form, subscriptions will automatically renew for additional periods equal to the expiring subscription term or one year (whichever is shorter) unless either party gives the other notice of non-renewal at least 30 days before the end of the relevant subscription term. The per-unit pricing during any renewal term will be as published on the Website at the time that the subscription renews. All Services (including emails sent to Leads on behalf of the Customer) will terminate upon termination of a subscription.

11.3. Termination. A party may terminate the Agreement for cause

- upon 30 days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or
- if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

11.4. Refund or Payment upon Termination. If the Agreement is terminated by You in accordance with Section 11.3 (Termination), We will refund You any prepaid fees covering the remainder of the term of all Order Forms after the effective date of termination. If the Agreement is terminated by Us in accordance with Section 11.3, You will pay any unpaid fees covering the remainder of the term of all Order Forms. In no event will termination relieve You of Your obligation to pay any fees payable to Us for the period prior to the effective date of termination.

11.5. Your Data Portability and Deletion. Upon request by You made within 30 days after the effective date of termination or expiration of the Agreement, We will make the Your Data available to You for export or download. After that 30-day period, We will have no obligation to maintain or provide Your Data (unless we are legally required to do so).

11.6. Surviving Provisions. The Sections titled “Fees and Payment for Purchase Services,” “Proprietary Rights and Licenses,” “Confidentiality,” “Disclaimers,” “Mutual Indemnification,” “Limitation of Liability,” “Refund or Payment upon Termination,” “Your Data Portability and Deletion,” “Who You Are Contracting With, Notices, Governing Law and Jurisdiction,” and “General Provisions” will survive any termination or expiration if the Agreement.

## **12. Who you are contracting with, notices, governing law and jurisdiction**

12.1. General. You are contracting with Growbots, Inc. You should direct notices under the Agreement to Growbots, Inc., 814 Mission Street San Francisco, CA 94103 USA; Attn: Grzegorz Pietruszyński, Chief Executive Officer.

12.2. Manner of Giving Notice. Except as otherwise specified in the Agreement, all notices, permissions and approvals hereunder shall be in writing and shall be deemed to have been given upon:

- personal delivery,
- the second business day after mailing, or
- the first business day after sending by email (provided email shall not be sufficient for notices of termination or an indemnifiable claim).

Billing-related notices to You shall be addressed to the relevant billing contact designated by You. All other notices to You shall be addressed to the relevant Services system administrator designated by You.

12.3. Agreement to Governing Law and Jurisdiction. Each party agrees to the governing law of the State of California without regard to choice or conflicts of law rules, and to the exclusive jurisdiction of federal and state courts sitting in San Francisco, California.

## **13. General provisions**

13.1. Export Compliance. The Services may be subject to export laws and regulations of the United States and other jurisdictions. Each party represents that it is not named on any U.S. government denied-party list. You shall not permit Users to access or use any Service in a U.S.-embargoed country (currently Cuba, Iran, North Korea, Sudan or Syria) or in violation of any U.S. export law or regulation.

13.2. Anti-Corruption. You have not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from any of Our employees or agents in connection with the Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction. If You learn of any violation of the above restriction, You will use reasonable efforts to promptly notify Us.

13.3. Entire Agreement and Order of Precedence. The Agreement is the entire agreement between You and Us regarding Your use of Services and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of the Agreement will be effective unless in writing and signed by the party against whom the modification, amendment or waiver is to be asserted. The parties agree that any term or condition stated in any purchase order or in any other ordering documentation that You may provide (excluding Order Forms) is void. In the event of any conflict or inconsistency between the Order Form and these Terms of Service, the Order Form shall control and govern.

13.4. Assignment. Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the other party's prior written consent (not to be unreasonably withheld); provided, however, either party may assign the Agreement in its entirety (including all Order Forms), without the other party's consent to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. Subject to the foregoing, the Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns.

13.5. Relationship of the Parties. The parties are independent contractors. The Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.

13.6. No Third-Party Beneficiaries. There are no third-party beneficiaries under the Agreement.

13.7. Waiver. No failure or delay by either party in exercising any right under the Agreement will constitute a waiver of that right.

13.8. Severability. If any provision of the Agreement is held by a court of competent jurisdiction to be contrary to law, the provision will be deemed null and void, and the remaining provisions of the Agreement will remain in effect.