



## TERMS AND CONDITIONS

These Terms and Conditions supplement that Order Form executed by and between the customer listed on such Order Form (the “**Customer**”) and Ecobot, Inc., a Delaware corporation (the “**Company**”), and constitute a legally binding agreement concerning Customer’s and Customer’s employees’ access to and use of the Company services detailed in the Order Form (the “**Services**”). These Terms and Conditions and the Order Form are collectively referred to as the “**Agreement**.” The Agreement is supplemental and subject to the Ecobot Privacy Policy, the terms of which are incorporated herein by reference, available at [ecobot.com/privacy-policy](http://ecobot.com/privacy-policy).

### 1. SAAS SERVICES AND SUPPORT

1.1 Subject to the terms of this Agreement, Company will use commercially reasonable efforts to provide Customer the Services in accordance with the Support Level Terms outlined in Exhibit A. As part of the registration process, Customer will identify an administrative username and password for Customer’s Company account. Company reserves the right to refuse registration of or cancel passwords it deems inappropriate. Customer is responsible and liable for all uses of Services and Software (as defined below) resulting from access to the Services and Software through Customer’s username and password, directly or indirectly, whether such access or use is permitted by or in violation of this Agreement. Customer shall make all of its users aware of this Agreement and shall cause such users to comply with all terms and provisions hereof.

1.2 Subject to the terms hereof, Company will provide Customer with the technical support services set forth in Exhibit B.

### 2. RESTRICTIONS AND RESPONSIBILITIES

2.1 Customer will not, directly or indirectly: reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas, know-how or algorithms relevant to the Services or any software, documentation or data related to the Services (“**Software**”); copy, modify, translate, or create derivative works based on the Services or any Software (except to the extent expressly permitted by Company or authorized within the Services); use the Services or any Software for timesharing or service bureau purposes or otherwise for the benefit of a third party; remove any proprietary notices or labels; rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available the Services or Software other than pursuant to this Agreement; combine or integrate the Software with any software, technology, services, or materials not in accordance with the terms of this Agreement; (g) disable, override, or otherwise interfere with Software or Services; (h) use the Services or Software to attempt to replicate or replace the Software or Services; or (i) attempt to cloak or conceal Customer’s identity when utilizing the Software or Services. With respect to any Software that is distributed or provided to Customer for use on Customer premises or devices, Company hereby grants Customer a non-exclusive, non-transferable, non-sublicensable license to use such Software during the Term only in connection with the Services.

2.2 Further, Customer may not remove or export from the United States or allow the export or re-export of the Services, Software or anything related thereto, or any direct product thereof in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign agency or authority. As defined in FAR section 2.101, the Software and documentation are “commercial items” and according to DFAR section 252.227-7014(a)(1) and (5) are deemed to be “commercial computer software” and “commercial computer software documentation.” Consistent with DFAR section 227.7202 and FAR section 12.212, any use modification, reproduction, release, performance, display, or disclosure of such commercial software or commercial software documentation by the U.S. Government will be governed solely by the terms of this Agreement and will be prohibited except to the extent expressly permitted by the terms of this Agreement.

2.3 Customer represents, covenants, and warrants that Customer will use the Services only in compliance with Company’s standard published policies then in effect (the “**Policy**”) and all applicable laws and regulations. Customer hereby agrees to indemnify and hold harmless Company against any damages, losses, liabilities, settlements and expenses (including without limitation costs and attorneys’ fees) in connection with any claim or action that arises from an alleged violation of the foregoing or otherwise from Customer’s use of Services. Although Company has no obligation to monitor Customer’s use of the Services, Company may do so and may prohibit any use of the Services it believes may be (or alleged to be) in violation of the foregoing.

2.4 Customer shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Services, including, without limitation, hardware, servers, software, operating systems, networking, and the like (collectively, “**Equipment**”). Customer shall also be responsible for maintaining the security of the Equipment, Customer account, passwords (including but not limited to administrative and user passwords) and files, and for all uses of Customer account or the Equipment with or without Customer’s knowledge or consent.

2.5 Customer will use commercially reasonable efforts to safeguard the Software from infringement, misappropriation, theft, misuse, or unauthorized access. Customer will promptly notify Company if Customer becomes aware of any infringement or potential infringement of Company’s intellectual property



rights and will fully cooperate with Company in any legal action taken by Company to enforce such rights.

### 3. CONFIDENTIALITY; PROPRIETARY RIGHTS

3.1 Each party (the “**Receiving Party**”) understands that the other party (the “**Disclosing Party**”) has disclosed or may disclose business, technical or financial information relating to the Disclosing Party’s business (hereinafter referred to as “**Proprietary Information**” of the Disclosing Party). Proprietary Information of Company includes non-public information regarding features, functionality and performance of the Service. Proprietary Information of Customer includes non-public data provided by Customer to Company to enable the provision of the Services (“**Customer Data**”). The Receiving Party agrees: (i) to take reasonable precautions to protect such Proprietary Information, and (ii) not to use (except in performance of the Services or as otherwise permitted herein) or divulge to any third person any such Proprietary Information. The Disclosing Party agrees that the foregoing shall not apply with respect to any information after two (2) years following the disclosure thereof or any information that the Receiving Party can document (a) is or becomes generally available to the public, or (b) was in its possession or known by it prior to receipt from the Disclosing Party, or (c) was rightfully disclosed to it without restriction by a third party, or (d) was independently developed without use of any Proprietary Information of the Disclosing Party or (e) is required to be disclosed by law.

3.2 Customer shall own all right, title and interest in and to the Customer Data. Company owns, and shall continue to own and retain, all right, title and interest in and to (a) the Services and Software and all improvements, enhancements or modifications thereto, (b) any software, applications, inventions or other technology developed in connection with Services or support, (c) all intellectual property rights related to any of the foregoing, and (d) as well as any data that is based on or derived from the Customer Data and provided by the Customer as part of the usage of the Services, including any feedback, suggestions, or insights provided by Customer to Company regarding the Services.

3.3 Notwithstanding anything to the contrary, Company shall have the right to collect and analyze data and other information relating to the provision, use and performance of various aspects of the Services and related systems and technologies (including, without limitation, information concerning Customer Data and data derived therefrom), and Company will be free (during and after the term hereof) to (i) use such information and data to improve and enhance the Services and for other development, diagnostic and corrective purposes in connection with the Services and other Company offerings, and (ii) disclose such data solely in aggregate or other de-identified form in connection with its business. No rights or licenses are granted except as expressly set forth herein.

3.4 Company reserves all rights not expressly granted to Customer in this Agreement. Except for the limited rights and

licenses expressly granted hereunder, nothing in this Agreement grants to Customer or any third party any right, title, or interest in or to the Services, Software, any component thereof, or to any other Company intellectual property, software, or services.

### 4. PAYMENT OF FEES

4.1 Customer will pay Company the then applicable fees described in the Order Form for the Services in accordance with the terms therein (the “**Fees**”). If Customer’s use of the Services exceeds the Service Capacity set forth on the Order Form or otherwise requires the payment of additional fees (per the terms of this Agreement), Customer shall be billed for such usage and Customer agrees to pay the fees in the manner provided herein. Company reserves the right to change the Fees or applicable charges and to institute new charges and Fees at the end of the Initial Service Term or then-current renewal term, upon thirty (30) days prior notice to Customer (which may be sent by email). If Customer believes that Company has billed Customer incorrectly, Customer must contact Company no later than 60 days after the closing date on the first billing statement in which the error or problem appeared, in order to receive an adjustment or credit. Inquiries should be directed to Company’s customer support department.

4.2 Company may choose to bill through an invoice, in which case, full payment for invoices issued in any given month must be received by Company thirty (30) days after the mailing date of the invoice. Unpaid amounts are subject to a finance charge of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is greater, plus all expenses of collection and may result in immediate termination or suspension, in the Company’s sole discretion, of the Services. Customer shall be responsible for all taxes associated with Services other than U.S. taxes based on Company’s net income. Company shall be entitled to recoup from Customer any fees or expenses incurred by Company in connection with collecting on any overdue amounts under this Agreement.

### 5. TERM, TERMINATION, AND SUSPENSION

5.1 Subject to earlier termination as provided below, this Agreement is for the Initial Service Term as specified in the Order Form and shall be automatically renewed for additional periods of the same duration as the Initial Service Term (each a “**Term**”), unless either party elects not to renew the then-current Term at least thirty (30) days prior to the end of such Term.

5.2 In addition to any other remedies it may have, either party may also terminate this Agreement upon thirty (30) days’ notice (or without notice in the case of nonpayment), if the other party materially breaches any of the terms or conditions of this Agreement. Customer will pay for Services at the full, non-discounted retail rate as shown in the Services Order Form, as calculated up to and including the last day on which the Services are provided.



5.3 All sections of this Agreement which by their nature should survive termination will survive termination, including, without limitation, accrued rights to payment, confidentiality obligations, warranty disclaimers, and limitations of liability.

5.4 Without limiting the foregoing, if Company determines that Customer or any party using Customer's account to access the Services has violated this Agreement or acted in way that is detrimental to the Services or Company, Company may immediately terminate or suspend this Agreement, any rights granted to Customer herein, and Customer's licenses under the Agreement by providing notice to Customer or revoking Customer's access to the Services, each in Company's sole discretion.

## 6. PROMOTIONAL RIGHTS

6.1. The Company reserves the right to use any publicly available information in promotional pieces, and on the Company Web site. To effectuate the foregoing, the Customer hereby grants to the Company a license to use its logo, Web site URL, and publicly available Customer information in its marketing materials and case studies.

6.2. Customer agrees to reasonably cooperate with Company to serve as a reference account upon request.

## 7. WARRANTY DISCLAIMER.

THE SERVICES ARE PROVIDED "AS IS", AND COMPANY SPECIFICALLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. COMPANY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. COMPANY MAKES NO WARRANTY OF ANY KIND THAT THE SERVICES, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET CUSTOMER'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY OF CUSTOMER'S OR ANY THIRD PARTY'S SOFTWARE, SYSTEM, OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR-FREE, OR THAT ANY ERRORS OR DEFECTS CAN OR WILL BE CORRECTED.

## 8. INDEMNIFICATION

Customer agrees to indemnify, defend, and hold harmless Company and its officers, directors, employees, agents, affiliates, successors, and assigns from and against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys'

fees, arising from or relating to (a) Customer's use or misuse of the Services, (b) Customer's breach of this Agreement, and (c) Customer's incorporation or use of any data or other information provided through the Services in connection with any external product, service, or communication. In the event Company seeks indemnification or defense from Customer under this provision, Company will promptly notify Customer in writing of the claim(s) brought against Company for which Company seeks indemnification or defense. Company reserves the right, at its option and in its sole discretion, to assume full control of the defense of claims with legal counsel of Company's choice. Customer may not enter into any third-party agreement that would, in any manner whatsoever, constitute an admission of fault by Company or bind Company in any manner, without Company's prior written consent. In the event Company assumes control of the defense of such claim, Company will not settle any such claim requiring payment from Customer without Customer's prior written approval.

## 9. LIMITATION OF LIABILITY

NOTWITHSTANDING ANYTHING TO THE CONTRARY, IN NO EVENT WILL COMPANY OR ITS SUPPLIERS (INCLUDING BUT NOT LIMITED TO ALL EQUIPMENT AND TECHNOLOGY SUPPLIERS), OFFICERS, AFFILIATES, REPRESENTATIVES, CONTRACTORS, EMPLOYEES, OR AGENTS BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR TERMS AND CONDITIONS RELATED THERETO UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY: (A) FOR ERROR OR INTERRUPTION OF USE OR FOR LOSS OR INACCURACY OR CORRUPTION OF DATA OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY OR LOSS OF BUSINESS; (B) FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES; (C) FOR ANY MATTER BEYOND COMPANY'S REASONABLE CONTROL; OR (D) FOR ANY AMOUNTS THAT, TOGETHER WITH AMOUNTS ASSOCIATED WITH ALL OTHER CLAIMS, EXCEED THE FEES PAID BY CUSTOMER TO COMPANY FOR THE SERVICES UNDER THIS AGREEMENT IN THE 12 MONTHS PRIOR TO THE ACT THAT GAVE RISE TO THE LIABILITY, IN EACH CASE, WHETHER OR NOT COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

## 10. MISCELLANEOUS

10.1 If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable.

10.2 This Agreement is not assignable, transferable or sublicensable by Customer except with Company's prior written



consent. Company may transfer and assign any of its rights and obligations under this Agreement at any time without Customer's consent.

10.3 This Agreement is the complete and exclusive statement of the mutual understanding of the parties with respect to the Services and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement.

10.4 Any waiver amendments, or modification of this Agreement must be in a writing signed by both parties, except as otherwise provided herein.

10.5 No agency, partnership, joint venture, or employment is created as a result of this Agreement. Customer does not have any authority of any kind to bind Company in any respect whatsoever.

10.6 In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover reasonable costs and attorneys' fees.

10.7 All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested.

10.8 Customer acknowledges and agrees that a breach or threatened breach by Customer or any party utilizing the Services on Customer's behalf of any of its obligations under Section 2 or Section 3 of these Terms and Conditions would cause Company irreparable harm for which monetary damages would not be an adequate remedy and agrees that, in the event of such breach or threatened breach, Company will be entitled to equitable relief without any requirement to post a bond or other security or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity, or otherwise.

10.9 This Agreement shall be governed by the laws of the State of North Carolina without regard to its conflict of laws provisions.

10.10 **BINDING ARBITRATION.** THE PARTIES EXPRESSLY AGREEMENT TO SUBMIT ALL DISPUTES ARISING UNDER THIS AGREEMENT TO ARBITRATION IN BUNCOMBE COUNTY, NORTH CAROLINA, BEFORE A SINGLE ARBITRATOR OF THE AMERICAN ARBITRATION ASSOCIATION ("AAA"). THE ARBITRATOR SHALL BE SELECTED BY APPLICATION OF THE RULES OF THE AAA, OR BY MUTUAL AGREEMENT OF THE PARTIES, AND SUCH ARBITRATOR'S FINAL RULING SHALL BE BINDING ON BOTH PARTIES. THE EXPENSES OF SUCH ARBITRATION SHALL BE BORNE BY THE NON-PREVAILING PARTY, AND SUCH NON-PREVAILING PARTY AGREES TO REIMBURSE THE PREVAILING PARTY FOR ANY REASONABLE ATTORNEYS FEES INCURRED BY THE PREVAILING PARTY IN CONNECTION WITH SUCH ARBITRATION. NO PARTY TO THIS AGREEMENT WILL CHALLENGE THE JURISDICTION OR VENUE PROVISIONS AS PROVIDED IN THIS SECTION. NOTHING CONTAINED HEREIN SHALL PREVENT COMPANY FROM OBTAINING AN INJUNCTION OR OTHER EQUITABLE RELIEF FROM ANY COURT OF COMPETENT JURISDICTION.

10.11 **CLASS ACTION WAIVER.** TO THE EXTENT ALLOWED BY LAW, CUSTOMER AGREES THAT ANY PROCEEDINGS TO RESOLVE OR LITIGATE ANY DISPUTE ARISING FROM OR RELATED TO THIS AGREEMENT, WHETHER IN ARBITRATION, IN COURT, OR OTHERWISE, WILL BE CONDUCTED SOLELY ON AN INDIVIDUAL BASIS, AND THAT CUSTOMER WILL NOT SEEK TO HAVE ANY DISPUTE HEARD AS A CLASS ACTION, A REPRESENTATIVE ACTION, A COLLECTIVE ACTION, A PRIVATE ATTORNEY-GENERAL ACTION, OR IN ANY PROCEEDING IN WHICH CUSTOMER ACTS OR PROPOSES TO ACT IN A REPRESENTATIVE CAPACITY. CUSTOMER FURTHER AGREES THAT NO ARBITRATION OR PROCEEDING WILL BE JOINED, CONSOLIDATED, OR COMBINED WITH ANOTHER ARBITRATION OR PROCEEDING WITHOUT THE PRIOR WRITTEN CONSENT OF COMPANY AND ALL OTHER PARTIES TO ANY SUCH ARBITRATION OR PROCEEDING.



## **EXHIBIT A**

### **Service Level Terms**

The Services shall be available 99.5% (up to 3.65 hours of downtime per month), measured monthly, excluding holidays and weekends and scheduled maintenance. If Customer requests maintenance during these hours, any uptime or downtime calculation will exclude periods affected by such maintenance. Further, internet unavailability of Customer devices, and downtime resulting from outages of third-party connections or utilities or other reasons beyond Company's control will also be excluded from any such calculation. Customer's sole and exclusive remedy, and Company's entire liability, in connection with Service availability shall be that for each period of downtime lasting longer than one hour, Company will credit Customer 5% of Service fees for each period of 60 or more consecutive minutes of downtime, provided that no more than one such credit will accrue per day. Downtime shall begin to accrue as soon as Customer (with notice to Company) recognizes that downtime is taking place and continues until the availability of the Services is restored. To receive downtime credit, Customer must notify Company in writing within 24 hours from the time of downtime, and failure to provide such notice will forfeit the right to receive downtime credit. Such credits may not be redeemed for cash and shall not be cumulative beyond a total of credits for one (1) week of Service Fees in any one (1) calendar month in any event. Company will only apply a credit to the month in which the incident occurred. Company's blocking of data communications or other Service in accordance with its policies shall not be deemed to be a failure of Company to provide adequate service levels under this Agreement.



**EXHIBIT B**

**Support Terms**

Company will provide Technical Support to Customer via both telephone and electronic mail on weekdays during the hours of 9:00 am through 5:00 pm Eastern time, with the exclusion of Federal Holidays (“**Support Hours**”).

Only the contact person(s) identified by the Customer can contact the Company for support. Customer may initiate a helpdesk ticket during Support Hours via the Ecobot Web Dashboard, or by emailing [support@ecobotapp.com](mailto:support@ecobotapp.com), or by calling 828-423-0808.

Company will use commercially reasonable efforts to respond to all helpdesk tickets within one (1) business day.

Service time is limited to 4 hours per month. Additional support is available for an hourly fee.