

Ecobot Platform Access Terms and Conditions



These Platform Access 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 (“**Ecobot**”, “**we**”, “**us**”, or “**our**”).) and constitute a legally binding agreement concerning Customer’s access to and use of the Ecobot software-as-a-service platform as described at ecobot.com/product, as well as related websites, mobile applications and products that Ecobot may offer to Customer, including updates, any online services, or downloads associated herewith, the software (including firmware) for any related peripherals, and the associated media, printed materials, and documentation (collectively, “**Program**”). These Terms and Conditions and the Order Form are collectively referred to as the “**Agreement.**” Capitalized terms not defined herein are defined in the Ecobot [Website Terms of Use](#) or [Privacy Policy](#), both of which are incorporated into this Agreement.

ECOBOT PROVIDES ACCESS TO THE PROGRAM SOLELY ON THE TERMS AND CONDITIONS SET FORTH IN THIS AGREEMENT AND ON THE CONDITION THAT CUSTOMER ACCEPTS AND COMPLIES WITH THEM. BY SIGNING THE ORDER FORM, CUSTOMER (A) ACCEPTS THIS AGREEMENT AND AGREES THAT CUSTOMER IS LEGALLY BOUND BY ITS TERMS; AND (B) REPRESENTS AND WARRANTS THAT: (I) CUSTOMER IS 18 YEARS OF AGE OR OLDER; AND (II) IF CUSTOMER IS A CORPORATION, GOVERNMENTAL ORGANIZATION, OR OTHER LEGAL ENTITY, CUSTOMER HAS THE RIGHT, POWER, AND AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF SUCH ENTITY AND BIND ENTITY TO ITS TERMS. IF CUSTOMER DOES NOT AGREE TO THE TERMS OF THIS AGREEMENT, ECOBOT WILL NOT AND DOES NOT GRANT ACCESS TO THE PROGRAM TO CUSTOMER AND CUSTOMER MUST NOT ACCESS THE PROGRAM OR DOCUMENTATION.

1. Definitions.

(a) “**Aggregated Data**” means data and information relating to the provision, use, and performance of various aspects of the Program (including, without limitation, information concerning Customer Data and data derived therefrom) that is used by Ecobot in an aggregate and non-identifiable manner, including to compile statistical and performance information related to the provision and operation of the Program and the data therein.

(b) “**Authorized User**” means Customer's employees, consultants, contractors, and agents: (i) who are authorized by Customer to access and use the Program under the rights granted to Customer pursuant to this Agreement; (ii) for whom access to the Program has been purchased hereunder; and (iii) who have accepted the terms of the [End User License Agreement](#).

(c) “**Customer Data**” means, other than Aggregated Data, non-public information, data, and other content, in any form or medium, that is submitted, posted, or otherwise transmitted by or on behalf of Customer or an Authorized User to enable the provision of the Program.

(d) "**Documentation**" means Ecobot's user manuals, handbooks, and guides relating to the Program provided by Ecobot to Customer available at <https://ecobot.zendesk.com/>.

(e) "**Ecobot IP**" means the Program, the Documentation, and any and all intellectual property provided to Customer or any Authorized User in connection with the foregoing. For the avoidance of doubt, Ecobot IP includes Aggregated Data and any information, data, or other content derived from Ecobot's monitoring of Customer's access to or use of the Program, but does not include Customer Data.

2. Access and Use.

(a) Provision of Access. Subject to and conditioned on Customer's payment of Fees and compliance with all other terms and conditions of this Agreement, Ecobot hereby grants Customer a non-exclusive, non-transferable, right to access and use the Program during the Term, solely for use by Authorized Users in accordance with the terms and conditions herein. Such use is limited to Customer's internal use. Ecobot shall provide to Customer the necessary passwords and network links or connections to allow Customer to access the Program. The total number of Authorized Users will not exceed the number set forth in your selected Program plan, except as expressly agreed to by the parties and subject to any appropriate adjustment of the Fees payable hereunder.

(b) Documentation License. Subject to the terms and conditions contained in this Agreement, Ecobot hereby grants to Customer a non-exclusive, non-sublicensable, non-transferable license to use the Documentation during the Term solely for Customer's internal business purposes in connection with its use of the Program.

(c) Use Restrictions. Customer shall not use the Program for any purposes beyond the scope of the access granted in this Agreement. Customer shall not at any time, directly or indirectly, and shall not permit any Authorized Users to: (i) copy, modify, or create derivative works of the Program or Documentation, in whole or in part; (ii) rent, lease, lend, sell, license, sublicense, assign, distribute, publish, transfer, or otherwise make available the Program or Documentation; (iii) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to any software component of the Program, in whole or in part; (iv) remove any proprietary notices from the Program or Documentation; or (v) use the Program or Documentation in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person, or that violates any applicable law.

(d) Reservation of Rights. Ecobot reserves all rights not expressly granted to Customer in this Agreement. Except for the limited rights and licenses expressly granted under this Agreement, nothing in this Agreement grants, by implication, waiver, estoppel, or otherwise, to Customer or any third party any intellectual property rights or other right, title, or interest in or to the Ecobot IP.

(e) Suspension. Notwithstanding anything to the contrary in this Agreement, Ecobot may temporarily suspend Customer's and any Authorized User's access to any

portion or all of the Program if: (i) Ecobot reasonably determines that (A) there is a threat or attack on any of the Ecobot IP; (B) Customer's or any Authorized User's use of the Ecobot IP disrupts or poses a security risk to the Ecobot IP or to any other customer or vendor of Ecobot; (C) Customer, or any Authorized User, is using the Ecobot IP for fraudulent or illegal activities; (D) subject to applicable law, Customer has ceased to continue its business in the ordinary course, made an assignment for the benefit of creditors or similar disposition of its assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution, or similar proceeding; (E) Ecobot's provision of the Program to Customer or any Authorized User is prohibited by applicable law; (ii) any vendor of Ecobot has suspended or terminated Ecobot's access to or use of any third-party Program or products required to enable Customer to access the Program; or (iii) in accordance with **Section 5** (any such suspension described in subclause (i), (ii), or (iii), a “**Service Suspension**”); or (F) Customer usage exceeds plan allowance; or (G) Customer shares their access and or license with another non-licensed individual. Ecobot shall use commercially reasonable efforts to provide written notice of any Service Suspension to Customer and to provide updates regarding resumption of access to the Program following any Suspension. Ecobot shall use commercially reasonable efforts to resume providing access to the Program as soon as reasonably possible after the event giving rise to the Service Suspension is cured. Ecobot will have no liability for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that Customer or any Authorized User may incur as a result of a Service Suspension.

(f) Aggregated Data. Notwithstanding anything to the contrary in this Agreement, Ecobot may monitor Customer's use of the Program and collect and compile Aggregated Data. As between Ecobot and Customer, all right, title, and interest in Aggregated Data, and all intellectual property rights therein, belong to and are retained solely by Ecobot. Customer acknowledges that Ecobot may compile Aggregated Data based on Customer Data input into the Program. Customer agrees that Ecobot may (i) make Aggregated Data publicly available in compliance with applicable law, and (ii) use Aggregated Data to the extent and in the manner permitted under applicable law; provided that such Aggregated Data does not identify Customer or Customer's Confidential Information.

3. Customer Responsibilities. Customer is responsible and liable for all uses of the Program and Documentation resulting from access provided by Customer, directly or indirectly, whether such access or use is permitted by or in violation of this Agreement. Without limiting the generality of the foregoing, Customer is responsible for all acts and omissions of Authorized Users, and any act or omission by an Authorized User that would constitute a breach of this Agreement if taken by Customer will be deemed a breach of this Agreement by Customer. Customer shall use reasonable efforts to make all Authorized Users aware of this Agreement's provisions as applicable to such Authorized User's use of the Program, including the End User License Agreement, and shall cause Authorized Users to comply with such provisions.
4. Support, Patches, and Updates. Ecobot will use commercially reasonable efforts to provide the Program to Customer in accordance with the Service Level Terms as described in **Exhibit A**. Ecobot may deploy or provide mandatory patches, updates, and modifications

to the Program that must be accepted or installed for Customer to continue to use the Program. Ecobot may update the Program remotely without notifying Customer, and Customer hereby grants to Ecobot consent to deploy and apply such patches, updates, and modifications. During Customer's use of the Program pursuant to this Agreement, Ecobot will provide Customer with the technical support services set forth in **Exhibit B**.

5. Fees and Payment.

(a) Customer will pay Ecobot the then applicable fees described on the Ecobot website at ecobot.com/pricing or in a Custom Order Form for the Program in accordance with the terms therein (the "Fees"). If Customer's use of the Program exceeds the Authorized Users or Usage 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. Ecobot 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). To the extent Customer has an account with Ecobot, Customer hereby authorizes Ecobot to debit the amount owed from such account on a recurring basis pursuant to the selected Program plan, regardless of whether or not the balance becomes negative. If Customer believes that any Fees have been incorrectly debited, please contact us at the address provided below. Ecobot may increase fees at any time in its sole discretion by providing written notice to Customer at least thirty (30) calendar days prior to the commencement of such fee increase. If Customer does not agree to the fee increase, Customer may terminate this Agreement pursuant to Section 11 herein.

(b) Ecobot may choose to bill through an invoice, in which case, full payment for invoices issued in any given month must be received by Ecobot thirty (30) days after the mailing date of the invoice. Unpaid amounts are subject to an interest 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 Ecobot's sole discretion, of the Program. Customer shall be responsible for all taxes associated with Program other than U.S. taxes based on Ecobot's net income. Ecobot shall be entitled to recoup from Customer any fees or expenses incurred by Ecobot in connection with collecting on any overdue amounts under this Agreement.

6. Confidential Information. From time to time during the Term, either party may disclose or make available to the other party information about its business affairs, products, confidential intellectual property, trade secrets, third-party confidential information, and other sensitive or proprietary information, whether orally or in written, electronic, or other form or media/in written or electronic form or media, and whether or not marked, designated, or otherwise identified as "confidential" (collectively, "**Confidential Information**"). Confidential Information does not include information that, at the time of disclosure is: (a) in the public domain; (b) known to the receiving party at the time of disclosure; (c) rightfully obtained by the receiving party on a non-confidential basis from a third party; or (d) independently developed by the receiving party. The receiving party shall not disclose the disclosing party's Confidential Information to any person or entity,

except to the receiving party's employees who have a need to know the Confidential Information for the receiving party to exercise its rights or perform its obligations hereunder. Notwithstanding the foregoing, each party may disclose Confidential Information to the limited extent required: (i) in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the party making the disclosure pursuant to the order shall first have given written notice to the other party and made a reasonable effort to obtain a protective order; or (ii) to establish a party's rights under this Agreement, including to make required court filings. On the expiration or termination of the Agreement, the receiving party shall promptly return to the disclosing party all copies, whether in written, electronic, or other form or media, of the disclosing party's Confidential Information, or destroy all such copies and certify in writing to the disclosing party that such Confidential Information has been destroyed. Each party's obligations of non-disclosure with regard to Confidential Information are effective as of the Effective Date and will expire three (3) years from the date of expiration or termination of this Agreement; provided, however, with respect to any Confidential Information that constitutes a trade secret (as determined under applicable law), such obligations of non-disclosure will survive the termination or expiration of this Agreement for as long as such Confidential Information remains subject to trade secret protection under applicable law.

7. Intellectual Property Ownership; Feedback.

(a) Ecobot IP. Customer acknowledges that, as between Customer and Ecobot, Ecobot owns all right, title, and interest, including all intellectual property rights, in and to the Ecobot IP.

(b) Customer Data. Ecobot acknowledges that, as between Ecobot and Customer, Customer owns all right, title, and interest, including all intellectual property rights, in and to the Customer Data. Customer hereby grants to Ecobot a non-exclusive, royalty-free, worldwide license to reproduce, distribute, and otherwise use and display the Customer Data and perform all acts with respect to the Customer Data as may be necessary for Ecobot to provide the Program to Customer, and a non-exclusive, perpetual, irrevocable, royalty-free, worldwide license to reproduce, distribute, modify, and otherwise use and display Customer Data incorporated within the Aggregated Data.

(c) Feedback. If Customer or any of its employees or contractors sends or transmits any communications or materials to Ecobot by mail, email, telephone, or otherwise, suggesting or recommending changes to the Ecobot IP, including without limitation, new features or functionality relating thereto, or any comments, questions, suggestions, or the like ("**Feedback**"), Ecobot is free to use such Feedback irrespective of any other obligation or limitation between the Parties governing such Feedback. Customer hereby assigns to Ecobot on Customer's behalf, and on behalf of its employees, contractors and/or agents, all right, title, and interest in, and Ecobot is free to use, without any attribution or compensation to any party, any ideas, know-how, concepts, techniques, or other intellectual property rights contained in the Feedback, for any purpose whatsoever, although Ecobot is not required to use any Feedback.

8. Warranty Disclaimer. THE PROGRAM IS PROVIDED "AS IS" AND ECOBOT HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. ECOBOT 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. ECOBOT MAKES NO WARRANTY OF ANY KIND THAT THE ECOBOT IP, 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 SOFTWARE, SYSTEM, OR OTHER PROGRAM, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR FREE.
9. Indemnification. Customer shall indemnify, hold harmless, and, at Ecobot's option, defend Ecobot from and against any and all losses, damages, liabilities, costs ("**Losses**") incurred by Ecobot resulting from any third-party claim, suit, action, or proceeding ("**Third-Party Claim**") that the Customer Data, or any use of the Customer Data in accordance with this Agreement, infringes or misappropriates such third party's intellectual property rights, and any Third-Party Claims based on Customer's or any Authorized User's: (i) negligence or willful misconduct; (ii) use of the Program in a manner not authorized by this Agreement; (iii) use of the Program in combination with data, software, hardware, equipment, or technology not provided by Ecobot or authorized by Ecobot in writing; or (iv) modifications to the Program not made by Ecobot, provided that Customer may not settle any Third-Party Claim against Ecobot unless Ecobot consents to such settlement, and further provided that Ecobot will have the right, at its option, to defend itself against any such Third-Party Claim or to participate in the defense thereof by counsel of its own choice.
10. Limitations of Liability. IN NO EVENT WILL ECOBOT BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY: (a) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES; (b) INCREASED COSTS, DIMINUTION IN VALUE OR LOST BUSINESS, PRODUCTION, REVENUES, OR PROFITS; (c) LOSS OF GOODWILL OR REPUTATION; (d) USE, INABILITY TO USE, LOSS, INTERRUPTION, DELAY, OR RECOVERY OF ANY DATA, OR BREACH OF DATA OR SYSTEM SECURITY; OR (e) COST OF REPLACEMENT GOODS OR SERVICES, IN EACH CASE REGARDLESS OF WHETHER ECOBOT WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE. IN NO EVENT WILL ECOBOT'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE EXCEED THE TOTAL AMOUNTS PAID TO ECOBOT UNDER THIS AGREEMENT IN THE ONE YEAR PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM. IN NO EVENT WILL ECOBOT'S LIABILITY UNDER THIS AGREEMENT EQUAL MORE THAN THE AMOUNTS PAID BY

CUSTOMER TO ECOBOT IN THE 12 MONTHS IMMEDIATELY PRIOR TO THE EVENT GIVING RISE TO THE CAUSE OF ACTION.

11. Term, Termination, and Suspension.

(a) 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.

(b) 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 access to the Program at the full, non-discounted retail rate as shown in the Order Form, as calculated up to and including the last day on which access to the Program is provided.

(c) 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.

(d) Without limiting the foregoing, if Ecobot determines that Customer or any party using Customer’s account to access the Program has violated this Agreement or acted in way that is detrimental to the Program or Ecobot, Ecobot 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 Program, each in Ecobot’s sole discretion.

12. Miscellaneous.

(a) Entire Agreement. This Agreement constitutes the sole and entire agreement of the Parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, and representations and warranties, both written and oral, with respect to such subject matter. If any provision of this Agreement is held to be unenforceable, the applicable provision shall be reformed only to the extent necessary to make it enforceable and the remaining provisions of this Agreement shall not be affected, except as otherwise expressly provided herein.

(b) Waivers; Amendments. Any waiver amendments, or modification of this Agreement must be in a writing signed by both parties, except as otherwise provided herein.

(c) Electronic Communications. For contractual purposes, Customer (a) consents to receive communications from Ecobot in an electronic form via the email address Customer has provided in Customer’s registration; and (b) agree that all communications regarding this Agreement, other agreements, notices, disclosures, and other communications that Ecobot provides to Customer electronically satisfies any legal

requirement that such communications would satisfy if it were in writing. The foregoing does not affect Customer's non-waivable rights. We may also use Customer's email address to send Customer other messages, including information about Ecobot and special offers. Customer may opt out of such email by changing Customer's account settings or by contacting customer support at support@ecobot.com.

(d) Governing Law; Submission to Jurisdiction. This Agreement is governed by and construed in accordance with the internal laws of the State of North Carolina without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any jurisdiction other than those of the State of North Carolina. Any legal suit, action, or proceeding arising out of or related to this Agreement or the licenses granted hereunder will be instituted exclusively in the federal or state courts in each case located in the County of Buncombe, North Carolina, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.

(e) Assignment. Customer may not assign any of its rights or delegate any of its obligations hereunder without the prior written consent of Ecobot. Any purported assignment or delegation in violation of this Section 12(e) will be null and void. No assignment or delegation will relieve the assigning or delegating Party of any of its obligations hereunder. This Agreement is binding upon and inures to the benefit of the Parties and their respective permitted successors and assigns.

(f) Equitable Relief. Each Party acknowledges and agrees that a breach or threatened breach by such Party of any of its obligations under Section 6 or, in the case of Customer, Section 2(c), would cause the other Party irreparable harm for which monetary damages would not be an adequate remedy and agrees that, in the event of such breach or threatened breach, the other Party will be entitled to equitable relief, including a restraining order, an injunction, specific performance, and any other relief that may be available from any court, 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.

EXHIBIT A

Service Level Terms

The Program 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 Ecobot's control will also be excluded from any such calculation. Customer's sole and exclusive remedy, and Ecobot's entire liability, in connection with Service availability shall be that for each period of downtime lasting longer than one hour, Ecobot 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 Ecobot) recognizes that downtime is taking place and continues until the availability of the Program is restored. To receive downtime credit, Customer must notify Ecobot 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. Ecobot will only apply a credit to the month in which the incident occurred. Ecobot's blocking of data communications or other Service in accordance with its policies shall not be deemed to be a failure of Ecobot to provide adequate service levels under this Agreement.

EXHIBIT B

Support Terms

Ecobot 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 Ecobot for support. Customer may initiate a helpdesk ticket during Support Hours via the Ecobot Manager, or by emailing support@ecobot.com.

Ecobot 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.