

# BOTANALYTICS TERMS OF USE

EFFECTIVE DATE: May 25, 2018

## 1. INTRODUCTION

Thank you for choosing Botanalytics! These Terms of Use (the “Terms”) cover your rights and obligations relating to your access and use of the Botanalytics website, service, and related services, which may include a web application, mobile application, and/or other related services provided by us (collectively, the “Service”). All references to “we”, “us”, “our”, “or “Botanalytics” refer to Botanalytics, Inc., a Delaware corporation. All references to “you”, “your”, or “Client” refers to the user of the Service, which includes individuals and entities that seek analytics and metrics in order to improve the performance of chatbots. All references to “your End-Users” refer to the Client’s users, which include individuals who interact with your chatbots. In addition to these Terms, please review the Botanalytics Privacy Policy (<https://botanalytics.co/privacy>), which describes our practices related to collection and use of your information and your End-Users’ information to provide the Service. These Terms apply to our Privacy Policy as well and both these Terms and our Privacy Policy have been updated to comply with the requirements of a new data privacy law known as the EU General Data Protection Regulation (“GDPR”). By using the Service, you represent and agree that you have read, understand, and agree to be bound by both these Terms and our Privacy Policy as binding agreements. Further, you agree that these Terms and our Privacy Policy apply to your past use, if any, of the Service prior to the Effective Date.

However, to the extent Client enters into a separate agreement that specifically modifies these Terms, the terms of the separate agreement shall apply where they conflict with these Terms.

PLEASE CAREFULLY READ THESE TERMS, AS THEY CONTAIN IMPORTANT INFORMATION ABOUT YOUR RIGHTS AND RESPONSIBILITIES, INCLUDING LIMITATION OF OUR LIABILITY AND BINDING ARBITRATION. IF YOU DO NOT ACCEPT THIS AGREEMENT IN ITS ENTIRETY, YOU MAY NOT ACCESS OR USE THE SERVICE.

Do not hesitate to contact us at [hello@botanalytics.co](mailto:hello@botanalytics.co) if you have any questions or want to discuss either of these important documents.

## 2. AGE POLICY; PERMITTED USERS

We do not intend that the Service be used by anyone under 18 years old. If we learn or have reason to suspect that a Client is under 18 years of age, we will promptly delete that person’s account and any personally identifiable information in that user’s account. Further, you represent and warrant that your use of the Service does not and will not conflict with any pre-existing obligation in conflict or in any way inconsistent with the provisions of these Terms.

### 3. OVERVIEW OF SERVICE

The Service fundamentally provides a conversational analytics and engagement tool for chatbots, which can be used to improve the performance of bots. The Service can be used to improve communication between your bots and your End-Users, but by using the Service, you agree that Botanalytics is not a party to any arrangement or business relationship between you and your End-Users.

### 4. END-USER DATA

As a key aspect of the functionality of the Service, Botanalytics collects information submitted by, and about, your End-Users (“End-User Data”) as described in our Privacy Policy. You agree Botanalytics is not responsible for any such End-User Data, except to the extent required by GDPR and as described in the terms of the Data Processing Addendum (available here: <https://botanalytics.co/dpa>), which apply to your use of the Service if you use the Service in connection with End-Users in the European Economic Area or Switzerland. Further, you are solely responsible for obtaining your End-Users’ consent to collect and share End-User Data with us in connection with your Service in compliance with GDPR.

### 5. ACCOUNTS & YOUR INFORMATION

To access the Service, you are required to create an account and will be required to provide information to us to do so (please see our Privacy Policy (<https://botanalytics.co/privacy>) for more information on our practices related to collection and use of your data). You are solely responsible for keeping your account information, including password, safe. You may not use another user’s account. If you become aware of any unauthorized use of your account, you must promptly notify us of such use. You agree that we will not be liable for any loss or harm that you incur if someone else uses your account or password, either with or without your knowledge, and that you will be solely responsible for such use, whether or not you authorized the use.

In addition to the information required to create an account, you will be able to provide additional information, which may include personal details about you and your End-Users that you provide voluntarily or that we collect through the Service as part of the functionality of the Service (again, please see our Privacy Policy <https://botanalytics.co/privacy> for more information on our practices related to collection and use of your data). By using the Service, you understand and agree that information about you, as well as End-User Data, may be used by Botanalytics, as explained in these Terms and our Privacy Policy.

### 6. INFORMATION WE MAKE AVAILABLE TO YOU

As part of the Service, we may provide you with various information in furtherance of the Service. Our intention in doing so is to be helpful and to make the Service more useful to you. However, you agree that all information and suggestions that we provide to you through the Service is strictly for informational purposes and shall not be construed or relied upon in any way. You agree that, to the fullest extent permitted by law, and as detailed below in the “Limitation of Liability” section of these Terms, we will not incur any liability at all whatsoever

in the event that your reliance on any information provided by us results in harm or damage to you or your property.

## 7. INFORMATION YOU PROVIDE TO US

As a core aspect of the functionality of the Service, you may provide us with information about yourself and your End-Users, by giving us access to information collected by third parties, and by using the Service. By providing this information and content, you grant us the right to use the information and content for the purposes described in these Terms and our Privacy Policy (<https://botanalytics.co/privacy>). While we do not claim ownership over any such information and content that you provide, you agree that we have the right to use such information and content in furtherance of the Service. Further, by providing us with information and content through the Service, you represent and warrant that you own, or have the full legal authority to distribute, all information, including End-User Data, that you provide through the Service.

In addition, we should not be relied upon as a means to store your data or information and we assume no responsibility for such activities.

## 8. PROHIBITED, ILLEGAL, AND INAPPROPRIATE CONTENT

As part of the functionality of the Service, you may provide us with information about you, as well as End-User Data. You agree to refrain from submitting, either directly or through your End-Users, certain types of sensitive information, including information collected from children under the age of 13.

You also agree not to post or make available any inappropriate content on the Service including, but not limited to, libelous, defamatory, obscene, pornographic, abusive, or threatening content; content that advocates or encourages conduct that could constitute a criminal offense, give rise to civil liability, or otherwise violate any applicable local, state, national, or foreign law or regulation; content that is misleading or not true; or advertise or otherwise solicits funds for goods or services. If you post prohibited, illegal, or inappropriate content, we may remove such content from our servers, and we may suspend or terminate your account, and we reserve the right to investigate, and seek applicable remedies for, violations of applicable law to the fullest extent of the law.

## 9. INTELLECTUAL PROPERTY INFRINGEMENT CLAIMS

We take claims of intellectual property infringement seriously. As such, we reserve the right to suspend and/or terminate the account of any user who is found to have infringed on the intellectual property rights of third parties, or us, or otherwise is found to have violated any intellectual property laws.

## 10. YOUR USE OF OTHERS' INTELLECTUAL PROPERTY

Although you may provide information and content to Botanalytics as part of your use of the Service, you agree to be respectful of others' intellectual property rights. You may not upload,

transmit, or otherwise distribute any information or content in violation of intellectual property laws or proprietary rights of any third parties. If you do not respect a third party's intellectual property or proprietary rights, you are solely responsible for any violations of law. In addition, you are solely responsible for infringement of third party rights caused by any information that is generated from your account.

#### 11. PUBLICITY

You agree that Botanalytics may use your trademarks, logos, domain names, links to your website, trade names, service marks, or other brand information in order to promote the Service, including in our marketing materials, presentations, customer lists, financial reports, on our website, or for other advertising or marketing purposes.

#### 12. THIRD PARTY SITES AND SERVICES

Our Service is integrated with services provided by third parties as part of the functionality of the Service. We have no control over third parties and make no guarantees about, and assume no responsibility for, the information or services provided by third parties, except to the extent required by GDPR.

Additionally, we may provide links to third-party websites and businesses. You acknowledge and agree that we are not responsible for the accuracy, content, or functionality of services provided on or by such third-party websites or businesses, and we do not endorse, nor assume any liability related to your use of, such websites or businesses in any way, except to the extent required by GDPR.

#### 13. ACCOUNT TERMINATION

At any time, you may terminate your account through the Service. Please visit our Privacy Policy (<https://botanalytics.co/privacy>) to understand how we treat your information when you terminate your account.

We reserve the right to suspend or terminate your account, or take other action to limit or prevent your access to our Service, if we, in our sole discretion, deem that such action is necessary based on: your use of the Service in a way that would potentially expose us to liability; disruption of the Service by you to others; your violation of these Terms or our Privacy Policy; your violation of any applicable laws, rules, regulations, and agreements that may apply to you.

#### 14. PROPER USE OF THE SERVICES

You shall not violate or attempt to violate any security features of the Service, including, without limitation, (a) accessing content or data not intended for you, or logging onto a server or account that you are not authorized to access; (b) attempting to probe, scan, or test the vulnerability of the Service, or any associated system or network, or to breach security or authentication measures without proper authorization; (c) interfering or attempting to interfere with service to any user, host, or network, including, without limitation, by means of submitting a virus to the Service,

overloading, “flooding,” “spamming,” “mail bombing,” “crashing,” or undertaking similar activities; and (d) forging any TCP/IP packet header or any part of the header information in any e-mail or in any posting using the Service.

#### 15. OUR INTELLECTUAL PROPERTY

The software, including all files and images contained in the Service, and accompanying data, as well as all data provided by users and/or collected by us through the Service (collectively “Our IP”) are the property of Botanalytics or are used with permission from third parties. As part of these Terms, we grant you a nonexclusive, nontransferable, and revocable license to use Our IP solely for the purposes for which it is intended. And, specifically, you may not sell, redistribute, download, export, or reproduce Our IP in any way. You also may not decompile, reverse-engineer, disassemble, or otherwise convert Our IP without our permission. This Section does not apply to any component of Our IP that may be offered under an open source license.

#### 16. FEES

Botanalytics reserves the right to charge fees in exchange for providing the Service. Changes to the fees or payment policies will be posted or otherwise made available to you through the Service or otherwise. Unless otherwise stated, all fees are quoted in U.S. Dollars. Any outstanding balance becomes immediately due and payable upon termination of this Agreement and any collection expenses (including attorneys' fees) incurred by Botanalytics will be included in the amount owed.

#### 17. DISCLAIMER OF WARRANTIES; “AS IS”

WE ARE MAKING THE SERVICE AVAILABLE “AS IS” AND, TO THE MAXIMUM EXTENT PERMITTED BY LAW, WE EXPRESSLY DISCLAIM ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE SERVICE, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT. YOU ASSUME THE RISK OF ANY AND ALL DAMAGE OR LOSS FROM USE OF, OR INABILITY TO USE, THE SERVICE. WE DO NOT WARRANT THAT OPERATION OF THE SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE.

#### 18. LIMITATION OF LIABILITY

TO THE MAXIMUM EXTENT PERMITTED BY LAW, WE SHALL NOT BE LIABLE FOR DAMAGES OF ANY KIND (INCLUDING, BUT NOT LIMITED TO, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, LOST PROFITS, OR LOST DATA, REGARDLESS OF THE FORESEEABILITY OF THOSE DAMAGES) ARISING OUT OF OR IN CONNECTION WITH YOUR USE OF THE SERVICE INCLUDING, BUT NOT LIMITED TO, DAMAGES ARISING FROM OR RELATED TO ANY OF THE FOLLOWING: ANY CLAIM RELATED TO PERSONAL OR BODILY INJURY IN CONNECTION WITH THE USE OF THE SERVICE; ANY HARM OR DAMAGE CAUSED BY, OR OTHERWISE RELATED TO, YOUR RELIANCE ON INFORMATION PROVIDED

THROUGH THE SERVICE; ANY LOSS OR UNAUTHORIZED DISCLOSURE OF DATA; ANY HARM OR DAMAGE CAUSED BY, OR OTHERWISE RELATED TO, YOUR USE OF OR INTERACTION WITH ANY SERVICES OFFERED THROUGH THE SERVICE; AND ANY VIOLATIONS OF APPLICABLE LAWS, RULES, REGULATIONS, AND OTHER AGREEMENTS. THIS LIMITATION SHALL APPLY REGARDLESS OF THE LEGAL THEORY OR FORM OF ACTION.

IN NO EVENT WILL OUR AGGREGATE LIABILITY ARISING OUT OF OR IN CONNECTION WITH THESE TERMS AND YOUR USE OF THE SERVICE EXCEED ONE HUNDRED DOLLARS (\$100.00).

THE LIMITATIONS OF DAMAGES SET FORTH ABOVE ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN YOU AND US.

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CERTAIN TYPES OF DAMAGES OR CAUSES OF ACTION, SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

#### 19. INDEMNIFICATION

In the event that any third party, including without limitation another Client or your End-User, brings a claim against us related to your actions, content, information, or any other use of the Service by you, you agree to indemnify, defend, and hold us and our agents harmless from and against any and all third party claims, including privacy violations, losses, liability, damages, and/or costs (including reasonable attorney fees and costs) relating to such claim. We will notify you promptly of any such claim and will provide you with reasonable assistance, at your expense, in defending any such claim, provided, however, that our failure to so notify you shall not relieve you of your indemnity obligations, but instead shall reduce those obligations by the amount of damages or increased costs and expenses attributable to our failure to give notice. We reserve the right to approve counsel retained by you, to take control of the defense (at our expense) of any claim for which indemnity is required, and to participate in the defense of any claim (at our expense) for which indemnity is required. You may not settle any claim without our prior consent.

#### 20. DISPUTE RESOLUTION

You agree to resolve any dispute, claim, or controversy with Botanalytics arising out of or relating to your use of the Service in the following manner. First, we both agree to attempt in good faith to resolve the dispute informally by contacting each other by email (you can email us at [hello@botanalytics.co](mailto:hello@botanalytics.co) ). Second, if the dispute is not resolved through informal resolution, we both agree to attempt in good faith to resolve the dispute through mediation administered by JAMS, which shall take place in San Francisco, CA, and the costs of which shall be divided equally between you and Strive. Third, if the dispute is not resolved through informal resolution and mediation, we both agree to participate in binding arbitration administered by JAMS, which

shall take place in San Francisco, CA.

Either you or we may bring a lawsuit solely for injunctive relief without first engaging in the dispute resolution process described above.

We both agree that, in the event of arbitration, or in the event of a lawsuit as permitted by this Section or otherwise, the prevailing party shall be entitled to costs and fees (including reasonable attorneys' fees). Arbitration pursuant to this Section shall be confidential, and neither you, nor Botanalytics, nor the arbitrator may disclose the existence, content or results of any arbitration, except as may be required by law or for purposes of enforcement or appeal of the arbitration award. Judgment on any arbitration award may be entered in any court having proper jurisdiction. There shall be no right or authority for any claims subject to this arbitration clause to be arbitrated on a class action or consolidated basis or on bases involving claims brought in a purported representative capacity on behalf of the general public (including, but not limited to, as a private attorney general). If any portion of this arbitration clause is determined by a court to be inapplicable or invalid, then the remainder shall still be given full force and effect.

YOU AND BOTANALYTICS EACH HEREBY IRREVOCABLY WAIVE ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Nothing contained in this Section shall limit our ability to terminate, or otherwise take action related to, your account as provided in these Terms.

#### 21. GOVERNING LAW, VENUE, & PERSONAL JURISDICTION

These Terms shall be governed by the laws of the State of Delaware, without regard to conflict of law provisions. In the event that a lawsuit is filed where permitted under the provisions above, or in the event that the provisions above are found not to apply to you or to a given dispute, we both agree that any judicial proceeding will be brought in the federal or state courts of San Francisco County, CA. Both you and we consent to venue and personal jurisdiction there.

#### 22. SEVERABILITY WAIVER

If, for whatever reason, any term or condition in these Terms is found unenforceable, all other terms and conditions will remain unaffected and in full force and effect. The failure to enforce any provision of these Terms is not a waiver of our right to do so later, and no waiver shall be effective unless made in writing and signed by an authorized representative of the waiving party.

#### 23. CHANGES TO THESE TERMS

Botanalytics reserves the right to change these Terms from time to time, with or without notice to you. If you continue to use the Service, you consent to the new Terms. Any changes to these Terms will become effective on the "Effective Date" indicated above. If you continue to use the Service after the Effective Date, you consent to the new Terms. Botanalytics will always have

the latest Terms posted on the Service.

#### 24. CONTACT US

If you have any questions about these Terms or our Service, please feel free to contact us by email at [hello@botanalytics.co](mailto:hello@botanalytics.co).

#### 25. HEADINGS USED IN THESE TERMS

The section headings contained in these Terms are for reference purposes only and shall not affect the meaning or interpretation of these Terms in any way.