

## END USER TERMS OF SERVICE

These End User Terms of Service (these “Terms of Service”) set forth the terms and conditions upon which GrowthBook, Inc. (“Company”) offers you, our end users (each, an “End User”), access to any of Company’s software, services, products, applications, tools, or marketplace (collectively, the “Service” or “Services”) solely for the purpose and to the extent authorized by Company and, if applicable, the Company partner or customer on whose behalf you are accessing the Service (“Entity”) and, if applicable, solely in accordance with, and subject to, the then-effective written agreement(s) between Company and Entity (collectively, the “Entity Agreement”). Company and End User are each sometimes individually referred to herein as a “Party” and are sometimes collectively referred to herein as the “Parties.” By clicking “Sign up” or “I agree” or otherwise indicating your assent or by accessing or using the Service, you agree to be bound by these Terms of Service. If you do not agree to these Terms of Service, do not access or use the Service. **This is a legally enforceable contract.** From time to time, Company may modify these Terms of Service, effective upon notice to you. Your continued access to or use of the Service constitutes your acceptance of any such revisions. Neither any course of conduct between Company and you (or, as applicable, Entity) nor any trade practices shall act to modify these Terms of Service. Company’s Privacy Notice (as Company may amend from time to time, the “Privacy Notice”) is incorporated into and made part of these Terms of Service, and you hereby agree to the terms of the Privacy Notice.

### 1. LICENSE

1.1 Limited License to Use the Service. Subject to the terms and conditions of these Terms of Service, Company hereby grants to End User a limited, personal, non-exclusive, non-transferable license, during the term of these Terms of Service, to access and use the Service solely for the purpose and to the extent authorized by Company (and, if applicable, Entity) and, if applicable, solely in accordance with the Entity Agreement. Except for the limited license rights expressly granted under these Terms of Service, no licenses or rights are granted by Company to End User hereunder, by implication, estoppel or otherwise. All such other licenses and rights are reserved by Company, and any unauthorized use of the Service by the End User may result in termination of these Terms of Service and legal action.

1.2 License Restrictions. End User shall not, and shall not permit any third party to, access or use the Service except as expressly authorized by these Terms of Service (and, if applicable, the Entity Agreement). For purposes of clarity and without limiting the generality of the foregoing, except as expressly authorized by these Terms of Service (and, if applicable, the Entity Agreement), End User shall not (a) copy, modify, or create derivative works or improvements of the Service; (b) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available the Service to any third party, including on or in connection with the internet or any time-sharing, service bureau, software as a service, cloud, or other technology or service; (c) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to the source code of the Service, in whole or in part; (d) bypass or breach any security device or protection used by the Service or access or use the Service other than through his or her own then valid access credentials; (e) input, upload, transmit, or otherwise provide to or through the Service or Company’s systems, any information or materials that are unlawful or injurious, or contain, transmit, or activate any software, device or other subject matter (including any service, code, file or program) that is designed to (i) prevent, impair or otherwise adversely affect the operation of any computer service, hardware or network, any telecommunications service, equipment or network or any other service or device, (ii) prevent, impair or otherwise adversely affect access to or the operation of any program or data, including the reliability of any program or data (whether by re-arranging, altering or erasing the program or data in whole or part or otherwise), or (iii) adversely affect the user experience, including worms, Trojan horses, viruses and other similar devices; (f) damage, destroy, disrupt, disable, impair, interfere with, or otherwise impede or harm in any manner the Service,

Company's systems, or Company's provision of any products or services to any third party; (g) use the Service for any illegal or unauthorized purpose; or (g) take any actions that Company (in our sole discretion) determines to be inappropriate. Company reserves the right to take down content, terminate your account, prohibit you from using the Services, and take appropriate legal actions. End User shall treat the content, features, functionality, underlying algorithms, ideas and data, structure and other proprietary aspects of the Service as confidential information and at all times strictly maintain the confidentiality of the foregoing. End User shall not access or use the Services or Company Materials in, or in association with, the transmission of "Highly Sensitive Personal Information" defined as an (i) individual's government-issued identification number (including Social Security number, driver's license number, or state-issued identification number); (ii) confidential financial information, financial account number, credit card number, debit card number, or credit report information, with or without any required security code, access code, personal identification number, or password that would permit access to an individual's financial account; or (iii) biometric, genetic, health, medical, or medical insurance data. In addition, End User shall, if applicable, comply with Entity's confidentiality obligations under the Entity Agreement. Certain fees may apply, and Company reserves the right, at any time, to charge or modify fees in connection with the Service. End User's access to and use of the Service is conditional on full, timely payment of all applicable fees.

1.3 Third Party Providers. Company may use certain third party providers to gather End User related data and other information from, and transmit such information to, financial institutions for accounting purposes or other purposes related to the Services. End User hereby appoints such third party providers as End User's authorized agents to access and transmit such information for such purposes and to perform such services. End User will be responsible for providing reasonably requested (or customary) pertinent information to or for such third party providers, and taking reasonably requested (or customary) actions, in connection with such services.

1.4 Third Party Materials. From time to time, Company may make available (through the Service or a related Company service) certain third party services, documents, forms, data, content, products, applications, utilities, software, hardware, systems, networks, connections, and other materials (collectively, "Third Party Materials"). Any acquisition by End User of any Third Party Materials, and any exchange of data between End User and any third party or Third Party Materials, is solely between End User (or, if applicable, Entity) and the applicable third party provider. Company shall not be liable or responsible for any third party or any Third Party Materials, or for any loss, damage, injury, malfunction, interruption or claim arising therefrom or related thereto. Company does not warrant or support Third Party Materials or their interoperation with the Service, whether or not they are designated by Company as "certified," "approved," or any similar status. Company is not responsible for any disclosure, modification, or deletion of data resulting from access by any third party provider. End User shall use any such Third Party Materials solely in accordance with the independent rights that End User (or, if applicable, Entity) has directly secured. If any terms associated with any Third Party Materials are required by the applicable third party provider and are posted in the Service (or otherwise made available to End User), End User shall carefully review and agree to any such terms before accessing or using such Third Party Materials. End User hereby grants to Company permission to allow the third party provider to access End User Data (as defined below) as relevant for the interoperation of Third Party Materials. The Services may include features that operate in conjunction with certain third party social networking websites such as Facebook, Instagram, YouTube, Vimeo, and Twitter ("Social Network Features"). While your use of the Social Network Features is governed by these Terms of Service, your access and use of third party social networking sites and the services provided through the Services is governed by the terms of service and other agreements posted on these sites. You are responsible for ensuring that your use of those sites complies with any applicable terms of service or other agreements.

## **2. INTELLECTUAL PROPERTY**

2.1 Allocation of Rights. Company, third party providers and their respective licensors retain all intellectual property rights in and to the Service and any Third Party Materials (including all related copyrights, patents, service marks, trademarks and other intellectual property rights), including but not limited to any and all updates, enhancements, customizations, revisions, modifications, future releases and any other changes thereto, and all related information, materials and documentation. Except for any rights specifically granted to End User under these Terms of Service, End User hereby assigns to Company all other intellectual property rights it may now or hereafter possess in the Service, any related documentation, or any suggestions or other feedback related to the Service or Company's business that End User may provide, and all derivative works and improvements thereof, and agrees to execute all documents, and take all actions, that may be reasonably necessary to confirm such rights. End User also agrees to keep intact all proprietary marks, legends and patent and copyright notices that appear on the Service or any related documentation delivered or made available to End User by Company. End User is not granted any rights to Company's intellectual property. End User shall not engage in or authorize any act or omission that would violate, contradict, challenge or limit Company's intellectual property rights. Nothing contained in these Terms of Service will restrict Company from using any feedback, skills, knowledge, concepts, methodologies, functionalities, processes, techniques or information in intangible form that is gained from End User or access to End User's information or materials (collectively, "Residuals"). All Residuals shall remain the property of Company.

2.2 End User Data. "End User Data" means, collectively, any data, information, access, credentials, instructions, materials or other content that is uploaded or otherwise provided to Company through, or in connection with, the Service by or on behalf of End User or under End User's account. End User represents, warrants, and covenants to Company that (a) the End User Data shall at all times be current, accurate, true, lawful, lawfully obtained and complete, shall not infringe or violate any third party rights, and shall, as applicable, be updated by End User as soon as practicable; (b) End User has provided all notices and obtained all rights, consents and authority necessary to (i) provide to Company, and for Company to use as permitted under these Terms of Service, the End User Data, and (ii) obtain or access any data, materials or other content that End User requests or orders through or in connection with the Service; and (c) if End User is working on behalf of an Entity, End User's data usage, sharing, and processing activities otherwise comply with the Company Customer Agreement entered into by the Entity you represent, if applicable. Company reserves the right, but not the obligation, to block, remove or limit access to any End User Data or any other content (including communications) that Company determines, in its sole discretion, to be unacceptable or inappropriate and to take appropriate legal actions. End User Data does not contain: (i) protected health information or information subject to HIPAA compliance or other relevant law or regulation; (ii) information subject to SOX, GLBA requirements or other relevant law or regulation; (iii) information that falls within the definition of "special categories of data" under data protection laws, unless explicitly and affirmatively consented to by End User. End User hereby grants to Company the non-exclusive right to use End User Data in accordance with the Privacy Notice and these Terms of Service, as reasonably necessary for Company to offer, provide and improve the Service, both during the term of these Terms of Service and thereafter. In addition, End User hereby grants to Company a perpetual, irrevocable, worldwide, royalty-free, non-exclusive right to use, copy, store, modify, process and disclose any data collected in connection with the Service on a de-identified basis for any lawful purpose related to the Service or Company's business in accordance with the Privacy Notice.

## **3. DISCLAIMERS; LIMITATIONS OF LIABILITY.**

3.1 Warranty Disclaimer. EXCEPT FOR ANY WARRANTIES EXPRESSLY SET FORTH IN THIS SECTION, COMPANY DISCLAIMS ANY AND ALL WARRANTIES RELATING TO THE SERVICE, ANY OTHER COMPANY PRODUCTS OR SERVICES, ANY THIRD PARTY MATERIALS OR ANY OTHER MATTER COVERED BY THESE TERMS OF SERVICE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE. COMPANY DOES NOT PROVIDE LEGAL ADVICE, DOES NOT GUARANTEE ANY PARTICULAR RESULTS AND DOES NOT WARRANT THAT THE SERVICE WILL OPERATE WITHOUT INTERRUPTION, DELAY OR ERRORS OR THAT ANY ERRORS WILL BE CORRECTED. COMPANY MAKES NO WARRANTIES OR REPRESENTATIONS AS TO THE ACCURACY OR APPROPRIATENESS OF ANY CONTENT PROCESSED OR AVAILABLE IN CONNECTION WITH THE SERVICE. ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY THIRD PARTY MATERIALS IS STRICTLY BETWEEN END-USER (OR, IF APPLICABLE, ENTITY) AND THE APPLICABLE THIRD PARTY PROVIDER. COMPANY'S PERFORMANCE SHALL AT ALL TIMES BE CONDITIONED UPON END-USER'S PROPER AND TIMELY (A) PROVISION OF CURRENT, ACCURATE, TRUE, LAWFUL, LAWFULLY OBTAINED AND COMPLETE END-USER DATA; AND (B) PERFORMANCE OF ITS OBLIGATIONS HEREUNDER, AND COMPANY IS NOT RESPONSIBLE FOR ANY FAILURE OR DELAY IN PERFORMANCE RESULTING FROM THE END USER'S FAILURE TO MEET THESE CONDITIONS. Company does not endorse any third party provider or Third Party Materials. Company shall not be liable or responsible for any acts or omissions of any third party provider or for any Third Party Materials, or for any loss, damage, injury, malfunction, interruption or claim arising therefrom or related thereto. Company reserves the right, at any time, to modify, suspend or discontinue the Service, and End User agrees that Company shall not be liable for any such action and that the Service may not include any particular functionality or features (regardless of any Company statements or documentation).

3.2 Limitations of Liability. IN NO EVENT SHALL COMPANY, ITS AFFILIATES OR ANY OF ITS OR THEIR RESPECTIVE LICENSORS, SERVICE PROVIDERS, OR SUPPLIERS BE LIABLE UNDER OR IN CONNECTION WITH THESE TERMS OF SERVICE OR ITS SUBJECT MATTER FOR LOST PROFITS OR BUSINESS, LOSS OF GOODWILL, LOSS OF DATA, INTERRUPTION OF BUSINESS, COST OF REPLACEMENT OR SUBSTITUTE GOODS OR SERVICES, OR FOR ANY EXEMPLARY, PUNITIVE, SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, REGARDLESS OF THE BASIS OR THEORY OF ANY CLAIM AND REGARDLESS OF WHETHER COMPANY IS ADVISED OF THE POSSIBILITY OF ANY SUCH DAMAGES OR LOSSES. IN NO EVENT SHALL THE AGGREGATE LIABILITY OF COMPANY, ITS AFFILIATES OR ANY OF ITS OR THEIR RESPECTIVE LICENSORS, SERVICE PROVIDERS, OR SUPPLIERS UNDER OR IN CONNECTION WITH THESE TERMS OF SERVICE OR ITS SUBJECT MATTER, REGARDLESS OF THE BASIS OR THEORY OF ANY CLAIM, EXCEED \$500.

3.3 Essential Part of the Bargain. The Parties acknowledge that the disclaimers and limitations set forth in this Section are an essential element of these Terms of Service between the Parties and the Parties would not have entered into these Terms of Service without such disclaimers and limitations.

#### **4. INDEMNIFICATION; UNAUTHORIZED USE**

4.1 Indemnification. End User shall indemnify and hold harmless Company and its subcontractors and affiliates, and each of its and their respective officers, directors, employees, agents, successors, and assigns (each, a "Company Indemnitee") from any and all liabilities, losses, damages, costs and expenses (including, without limitation, reasonable attorneys' fees and costs) incurred by such Company Indemnitee in connection with any claims, proceedings or causes of action that arise out of or result from, or are alleged to arise out of or result from, any (a) End User Data, including any access, use, collection,

generation, handling, processing, copying, storage, hosting, transmission, disclosure, transfer, disposal or destruction of End User Data by or on behalf of Company as permitted under these Terms of Service; (b) access to or use of the Service, any other user's content or any Third Party Materials by End User or under End User's account in violation of any applicable law, regulation or third party terms, policies or agreements; (c) breach by End User of these Terms of Service; or (d) negligence, gross negligence, or more culpable act or omission (including recklessness or willful misconduct) by or on behalf of End User in connection with these Terms of Service.

4.2 Notification of Unauthorized Use. End User shall promptly notify Company in writing upon its discovery of any unauthorized use or infringement of the Service or the related documentation, or Company's intellectual property rights with respect thereto. Company shall have the sole and exclusive right to bring any infringement action or proceeding against any third party in relation to the Service, and End User shall cooperate and provide all reasonable information and assistance to Company and its counsel in connection with any such action or proceeding.

## **5. TERM AND TERMINATION**

5.1 Term. End User's access to the Service shall begin on the date End User registers for the Service and shall continue until the earlier of (a) termination in accordance with these Terms of Service; or (b) if applicable, expiration or termination of the Entity Agreement.

5.2 Termination for Convenience. Company may terminate or suspend these Terms of Service, or End User's access to or use of the Service, at any time. End User may terminate these Terms of Service at any time by cancelling its account. For the avoidance of doubt, such termination by End User will not impact any Entity Agreement nor would such termination entitle End User or Entity to any refunds.

5.3 Effect of Termination. Upon the expiration or termination of these Terms of Service, all license rights of End User under these Terms of Service shall automatically and immediately cease and End User shall promptly cease all use of the Service. Subject to the terms of these Terms of Service (a) the confidentiality and indemnification obligations of the Parties contained herein will survive the expiration or earlier termination of these Terms of Service; and (b) any provision that, in order to give proper effect to its intent or express terms, should survive such expiration or termination, will survive the expiration or earlier termination of these Terms of Service.

## **6. GENERAL**

6.1 Trade Compliance. End User agrees and understands that the Services are subject to U.S. export controls and sanctions laws and regulations, and the export controls and sanctions laws of any other applicable jurisdiction. End User agrees and acknowledges that End User will not access, register for, or otherwise use the Services in a country or region subject to U.S. comprehensive trade sanctions (including Cuba, Iran, North Korea, Syria, and the Crimea region, the Donetsk People's Republic ("DNR") and Luhansk People's Republic ("LNR") of Ukraine) ("Embargoed Countries"), nor will End User use the Services in any manner prohibited by U.S. export controls or sanctions laws and regulations. End User represents that it is not (i) a resident or national of any Embargoed Countries, or an entity organized under the laws of any Embargoed Countries; (ii) designated on any list of prohibited or restricted parties maintained by the U.S. Government or other applicable jurisdictions, including but not limited to the Office of Foreign Assets Control's (OFAC) Specially Designated Nationals and Blocked Persons List; other OFAC Lists or Directives; the Entity, Denied Persons, Military End User, and Unverified Lists maintained by the U.S. Department of Commerce; and the UN Security Council Consolidated List; or (iii) 50% or more owned by any party designated on any of the above lists. End User agrees and understands that Company may terminate Services and this Agreement immediately without notice or liability to

comply with applicable export controls and sanctions laws and regulations, in its sole and absolute discretion.

6.2 Independent Contractors. In making and performing these Terms of Service, the Parties are acting and shall act as independent contractors. Neither Party is, nor will be deemed to be, an agent, legal representative, joint venturer or partner of the other Party for any purpose.

6.3 Force Majeure. Company shall not be liable to End User for failure or delay in performance under these Terms of Service if such failure or delay is caused by riot, flood, earthquake, natural disaster, electronic virus, electronic attack of infiltration, internet disturbance, government act or any other cause beyond Company's control.

6.4 Governing Law; Dispute Resolution. These Terms of Service shall be governed by and construed in accordance with the laws of California, excluding its conflict of laws provisions. In the event of any controversy or claim arising out of or in connection with these Terms of Service, or a breach thereof, the Parties agree to use the following procedure. Except as otherwise set forth in these Terms of Service, the Parties shall first attempt to settle the dispute by good faith discussion. The Parties consent and submit to the exclusive jurisdiction and venue over any claim that may arise out of or in connection with these Terms of Service in the courts located in Santa Clara County, California, provided that either Party may, without limiting any of its rights or remedies (whether under these Terms of Service, at law, in equity or otherwise), seek injunctive relief and other equitable remedies at any time in any court of competent jurisdiction for any actual or threatened breach of these Terms of Service relating to intellectual property rights or confidentiality obligations. Each Party acknowledges that its breach of any of the provisions related to its confidentiality obligations or the other Party's intellectual property rights may cause irreparable injury to the other Party for which monetary damages are not an adequate remedy.

6.5 Assignment. End User may not assign any of its rights or privileges, or delegate any of its duties or obligations hereunder, to any third party without the prior written consent of Company. Any purported assignment in contravention of this Section shall be null and void. Subject to the foregoing, these Terms of Service shall be binding upon and inure to the benefit of the Parties and their respective permitted successors and assigns.

6.6 Notices. If End User is providing notice, notice shall be provided in writing and delivered by hand or by certified mail or overnight delivery service to GrowthBook; Attn: Legal Department; 1950 W Corporate Way #34560; Anaheim, CA 9280, in addition to sending a copy to legal@growthbook.io. If Company is providing notice, notice shall be provided by email to the email address associated with End User's account or by posting such information to the Service. Notices shall be effective when delivered in accordance with the foregoing. You agree that all agreements, notices, disclosures and other communications that are provided to you electronically satisfy any legal requirement that such communications be in writing. Please send any questions, comments or concerns about the Service to support@growthbook.io.

6.7 Entire Agreement. These Terms of Service, including the Privacy Notice (and, as applicable, the Entity Agreement), constitute the entire agreement between the Parties concerning the subject matter hereof and supersedes all prior understandings and agreements between the Parties, whether written or oral, regarding the subject matter hereof.

6.8 Waivers. A waiver by either Party of a breach or violation of any provision of these Terms of Service will not constitute or be construed as a waiver of any subsequent breach or violation of that provision or as a waiver of any breach or violation of any other provision of these Terms of Service.

6.9 Severability. These Terms of Service are severable, and if any provision of these Terms of Service is, for any reason, finally determined to be invalid, illegal or unenforceable, such provision shall be enforced to the maximum extent legally permissible and such invalidity, illegality, or unenforceability shall not affect any of the remaining provisions of these Terms of Service.