

Terms of Service

Botmind SAS - RCS Melun 844 279 380
Effective October 8th, 2018

1. Definitions

In this Terms of Use:

1.1. Terms defined in the Intent Order have the same meaning in this Agreement unless the document indicates otherwise.

1.2. "Agreement" or "Terms of Use" means these terms of service. "Bot" means Botmind's proprietary conversational, artificial intelligence powered, virtual assistant that can access End User Data and be deployed on the Channel.

1.3. "Customer" means the company buying Botmind's Services as defined in the Intent Order. "Channel" means the communication channel specified in the Intent Order. "End User" means users of Customer who access the Services via the Channel. "Supplier" means Chillax Capital SAS.

1.4. "End User Data" means all data relating to End Users which Customer gets, gathers, processes, stores or has access to.

1.5. "Conversation" means an instance of conversation between an End User and the Bot on any Channel.

1.6. "Initial Term" has the meaning given to it in Section 7.1.

1.7. "Intellectual Property Rights" means all industrial and other intellectual property rights relating to: (a) patents; (b) trade-marks; (c) Internet domain names, web addresses, website and URLs; (d) works of authorship, designs, software and firmware, application programming interfaces, architecture, files, records, data, data files, and databases and documentation; (e) trade secrets; and (f) all other intellectual property rights, and all rights, interests and protections that are associated with it, such rights or protections under the laws of any jurisdiction in any part of the world.

1.8. "Intent Order" means either (i) an online form submitted through the Website registering for the Services; or (ii) a form signed by Customer and Botmind subscribing for the Services, that incorporate these Terms of Use.

1.9. "Pattern Data" means non-personally identifiable information and data compiled through the Service, including but not limited to demographics, location and trend data or statistics indicating usage and popularity of the services. Pattern Data is data that does not identify a specific Customer or its end users and is data which does not relate to a specific Customer's business.

1.10. "Site" means www.botmind.io and any sub-site of that site.

1.11. "Services" has the meaning given to it in Section 3.1.

1.12. "Software Service API" means the application programmable interface that enables the access to End User Data by Services.

1.13. "Term" means the period of the Initial Term and any subsequent Renewal Term.

1.14. "You" means Customer or any other user of the Website.

2. Licence

2.1. License Grant: The Services are protected by trade secret, copyright, and intellectual property laws. Botmind grants Customer a limited, non-exclusive, non-transferable right and license to use the Services during the Term set out in the Intent Order submitted by Customer and accepted by Botmind in accordance with the terms of this Terms of Use. You shall not use the Service in the absence of an agreed and executed Intent Order. Customer understands that only Botmind has the right to maintain, enhance or modify the Services unless specific permissions are granted to Customer in a separate agreement with Botmind.

2.2. Services Restrictions: Customer shall use the Services only as contemplated in this Terms of Use and shall not directly or indirectly license, sublicense, distribute, sell, lease, assign, or transfer, as expressly permitted by this Terms of Use, otherwise make the Services available to any third party including making the Services available through any file-sharing method or hosting service. Customer shall not, except to the extent expressly agreed with Botmind:

a. modify, reverse engineer, translate, decompile, disassemble, or create derivative works based on the Service; or

b. remove any proprietary labels, notices, or marks from the Services; or

c. access the Services in order to (i) build a competitive product or service; or (ii) copy features, ideas, functions or graphics of the Services; or

d. use the Services in a way that:

v. Violates the intellectual property rights or any other rights of anyone else;

vi. Violates any law or regulation;

vii. Is harmful, deceptive, fraudulent, threatening, harassing, obscene, or otherwise objectionable;

viii. Attempts, in any manner, to obtain the password, account, or other security information from any other user;

ix. Violates the security of any computer network, or cracks any passwords or security encryption codes; or

x. Runs any form of "spam" on the Services, or any processes that run while Customer are not logged into the Services, or that otherwise interfere with the proper working of the Services.

3. Use

3.1. Services: During the Term and following to the Intent Order statements between Customer and Botmind, Botmind shall provide the following services ("Services") to Customer in accordance with the terms and conditions defined in this Terms of Use:

a. Automated responses to End-User queries using the Bot through the Channels in the Language, as fully described in the Intent Order; and

b. Other services that may be expressly agreed between Customer and Botmind as set out in the Intent Order.

3.2. Support Services: During the Term Botmind shall provide the Support Services to Customer in accordance with and subject to the terms and conditions defined in this Terms of Use.

3.3. End User Data Terms: If an End User receives, stores, processes or has access to any End User Data via the Services, Customer is the only responsible for obtaining the permission from End Users to use of their data via the Services.

4. Price & Payment

4.1. Services Fees: Software Service Fees are fees described in the Intent Order.

4.2. Invoices and payment: Invoices will be sent, and payment will be due in accordance with the terms of the Agreement. If not stated otherwise in the Intent Order, invoicing and billing will be monthly.

5. Proprietary Rights

5.1. Reservation of Rights: All right, interest, and title in the Services, including all Intellectual Property Rights therein are and will remain property to Botmind. Customer acknowledges and agrees that it has no right or authorization over any of the Services except as expressly defined in this Terms of Use.

5.2. Feedback: Botmind may use any suggestions, ideas, or feedback Customer may provide. By providing any suggestions to Botmind, Customer grants Botmind a worldwide, perpetual, transferable, non-revocable, sublicensable, royalty free, license to use the suggestion that Customer provides. Botmind may use this suggestion as it wishes that can include (but not limited) to modify and improve the Services.

5.3. Customer Data. Customer owns Customer content that Customer gathers, stores, provides or processes via the Service including End User. Customer grants

Botmind a worldwide, perpetual, and royalty-free license to access Customer Data to: (i) provide the Services; (ii) create Pattern Data and (iii) otherwise use anonymized Customer Data to improve the Service. This statement and Section 5.2 constitute the "Content License". Customer understands that Botmind, in order to provide the Services, may transmit or distribute Customer Data over various public or private networks and in various media; and make changes to Customer Data as are necessary to adapt that data to the technical requirements of connecting devices, networks, Services or media. Customer warrants Botmind that Customer has all the authority to grant the above Content License and that using the Content in the manner defined in these Terms of Service will not violate the rights of any third party.

5.4. Content Responsibilities. Customer is responsible for all content provided to use the Services and for obtaining necessary consents and permissions to use all content provided to use the Services.

6. Confidentiality

6.1. "Confidential Information" means all confidential and proprietary information of a party (the "Disclosing Party") disclosed to the other party (the "Receiving Party"), whether in writing or orally. This confidential information is defined as confidential given the nature of the information and the circumstances of disclosure, the Customer Data, including the terms and conditions of this Agreement, the Service, and technical information, and designs.

6.2. Confidentiality: The Receiving Party shall not use or disclose any Confidential Information from the Disclosing Party for any intent outside the scope of this Agreement.

6.3. Protection: Each party agrees to protect the Confidential Information of the other party in the same manner that it protects the confidentiality of its own confidential information.

6.4. Compelled Disclosure: If the Receiving Party is compelled by law to disclose Confidential Information of the Disclosing Party, it shall provide the Disclosing Party with prior notice of such compelled disclosure, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure.

7. Terms and Termination

7.1. Term: These Terms of Use in respect of use of the Software Service comes into effect on the commencement date set out in the Intent Order for an initial period ("Initial Term") set out in the Intent Order, unless terminated sooner in accordance with this Terms of Use.

7.2. Renewal: This Terms of Use will automatically renew for additional one (1) year terms (each a "Renewal Term") if Customer provides at least 15 days written notice to Botmind, prior to a new term starting, stating its intention to renew the same.

7.3. Suspension or Termination in Emergency: The Botmind shall have right to suspend or terminate this Terms of Use immediately in the event of an emergency,

suspected fraud, enforcement by external authorities or regulatory requirement or on provision of at least ten (10) days prior written notice to Customer of all other suspensions or terminations where practicable.

7.4. Termination for convenience. Botmind retains the right to terminate this agreement at any time for convenience upon giving not less than 60 days advance written notice. On such termination Botmind shall refund all unused Fees that may have been prepaid by You.

7.5. Effect of Termination:

a. Any termination of this Terms of Use (howsoever occasioned) shall not affect any accrued rights or liabilities of either Party nor shall it affect the coming into force or the continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.

b. Upon termination of this Terms of Use, Customer shall, at Botmind's choice, return all Confidential Information of Botmind (including without limitation all End User Data) and any copies thereof or destroy or permanently delete all such Confidential Information and provide written certification that it has done so.

c. Upon termination of this Terms of Use, Botmind shall destroy or permanently delete all Confidential Information of Customer (including without limitation all End User Data and raw Customer Data) and any copies thereof, but excluding Pattern Data for which Botmind retains exclusive ownership

d. Notwithstanding anything to the contrary herein, the obligation to return, destroy or permanently delete all copies of the Confidential Information of the other Party (including without limitation End User Data) does not extend to (i) automatically generated computer backups or archival copies on Parties' automatic backup systems, provided that such copies are held in accordance with the provisions of this Terms of Use for so long as they are retained; and (ii) anonymized and aggregate Protected Information in each Party's possession.

8. Warranties, Disclaimers, & Indemnification

8.1. Mutual Warranties: Each Party represents, warrants to the other Party that: (i) it is a corporation, duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation; (ii) it has all requisite power and authority and approvals to execute, deliver and perform its obligations under this Terms of Use; (iii) the execution and delivery of this Terms of Use and the performance of its obligations hereunder have been duly authorized by it and any necessary third parties; and (iv) it will perform its duties and obligations hereunder in a careful, diligent, professional, proper, efficient and businesslike manner.

8.2. Botmind Warranties: Botmind represents and warrants to Customer that during the Term of this Terms of Use it will provide the Services in a manner consistent with any service levels or terms set out in this Terms of Use. Botmind does not warrant that use of the Services will be error-free, uninterrupted or secure.

8.3. Disclaimer: Except as specifically set out herein the Services are provided "As is", without any representation and/or warranty of any kind. Vendor and its licensors and/or suppliers make no other representations and give no other warranties, express, implied, statutory, or otherwise regarding the services provided under this agreement and vendor specifically disclaims any and all statutory representations and/or warranties against non-infringement and any and all implied representations and/or warranties of merchantability, durability, title and fitness for a particular purpose to the maximum extent permitted by applicable law.

8.4. Mutual indemnification: each party agrees to indemnify, defend and hold the other party and its representatives harmless from all losses arising out of its gross negligence or willful misconduct (including, without limitation, fraud or any other unlawful act) in performing its obligations pursuant to this agreement or, in the case of customer, in its use of the services.

8.5. Indemnity for end user claims: customer shall keep vendor, both during the term and after expiration of this agreement, fully and effectively indemnified against all losses, claims, damages, liabilities, costs and expenses incurred by or imposed upon vendor as a consequence of any award or judgment in favor of an end user of customer arising in connection with the Services (save where such claim would otherwise be indemnified by vendor under section 8.4 or 8.6).

8.6. Indemnity for security breach claims: each party (the "Indemnifying party") shall keep the other party (the "Indemnified party") fully and effectively indemnified against all direct losses, claims, damages, liabilities, costs and expenses incurred by or imposed upon the indemnified party arising out of the disclosure to or access by an unauthorized third party of end user data (a "Security breach") as a result of a breach of the terms of this agreement by the indemnifying party or otherwise due to the indemnifying party's willful misconduct or gross negligence.

8.7. Indemnity by Botmind: Botmind shall defend Customer against any claim, demand, suit, or proceeding made or brought against Customer by a third party alleging that the use of the Services as permitted hereunder infringes or misappropriates the Intellectual Property Rights of a third party, and shall indemnify Customer for any damages finally awarded against, and for reasonable attorney's fees incurred by, Customer in connection with any such claim; provided that Customer (a) promptly gives Botmind written notice of the claim; (b) gives Botmind sole control of the defense and settlement of the claim; and (c) provides to Botmind all reasonable assistance, at Botmind's expense.

9. Limitation of Liability

9.1. Limitation on indirect liability: neither party shall be responsible for any other person's or entity's errors, acts, omissions, failures to act, negligence or intentional conduct, including without limitation entities such as either party's affiliates, subsidiaries, agents or subcontractors. In no event shall either party be liable for any consequential, incidental, punitive or special damages which either party or end users, affiliates, parent companies, associates, agents, officers, directors or employees may incur or suffer in connection with this agreement, resulting from either party's acts or omissions pursuant to this agreement. 9.2. Limitation on amount

of liability: to the maximum extent permitted by applicable law, each party's aggregate liability for all claims relating to this agreement shall not exceed the equivalent of the fees paid by customer to vendor in the previous six (6) months preceding the claim.

9.2. Exceptions to Limitations: These limitations of liability do not apply to breaches of confidentiality obligations set out in Section 6, violations of a Party's Intellectual Property Rights by the other Party, or to the indemnification obligations set out in Section 8.7.

10. Miscellaneous

10.1. Support: Botmind will provide support to Customer in accordance with the terms in the Technical Support Agreement. Customer is solely responsible for providing all support and technical assistance to its End Users with respect to the Services. Customer acknowledges and agrees that Botmind has no obligation to provide support or technical assistance directly to the End Users of Services and Customer shall not represent to any such End Users that Botmind is available to provide such support. Customer agrees to use commercially reasonable efforts to provide reasonable support to End Users of the Services.

10.2. Governing Law and Jurisdiction: This Terms of Use shall be construed and enforced in accordance with, and the rights of the Parties shall be governed by, the laws of France without reference to its choice of law rules. Each of the Parties hereto hereby attorns to the non-exclusive jurisdiction of the courts of the Tribunal de Grande Instance de Paris.

10.3. Assignment: Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld). Notwithstanding the foregoing, each party may assign this Agreement in its entirety, without consent of the other party, in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its stock or assets. Any attempt by a party to assign its rights or obligations under this Agreement in breach of this section shall be void and of no effect. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

10.4. Binding Nature of Agreement: This Terms of Use shall ensure to the benefit of and shall be binding upon the Parties hereto together with their successors and permitted assigns.

10.5. Amendments, Waiver: Any amendment, modification or waiver in respect of this Terms of Use will only be effective if in writing (including a writing evidenced by facsimile or electronic mail) and executed by the Parties.

10.6. Further Assurances: The Parties covenant and agree to do such things and execute such further documents, agreements and assurances as may be necessary or advisable from time to time in order to carry out the terms and conditions of this Terms of Use in accordance with their true intent.