

GrowSumo - User Terms of Use

Last Updated: May 18, 2016

BY ACCESSING OR USING THE PLATFORM (AS THAT TERM IS DEFINED BELOW), THE PERSON USING THE PLATFORM TO PARTICIPATE IN DISTRIBUTION CHANNEL PROGRAMS UNDER THIS AGREEMENT (THE "USER") ACCEPTS AND AGREES TO BE BOUND BY AND COMPLY WITH THESE TERMS OF USE, AS UPDATED FROM TIME TO TIME IN ACCORDANCE WITH SECTION 2 BELOW TITLED "CHANGES TO THESE TERMS OF USE AND PLATFORM". IF USER DOES NOT ACCEPT AND AGREE TO BE BOUND BY THESE TERMS OF USE, IT MUST NOT USE THE PLATFORM. THE INDIVIDUAL ENTERING INTO THESE TERMS ON BEHALF OF THE USER IS, REPRESENTS AND WARRANTS THAT HE OR SHE HAS THE AUTHORITY TO BIND THE USER TO THESE TERMS OF USE.

1. Acceptance of Terms of Use

- (a) The following terms of use (the "**Terms of Use**") govern User's use of: (1) the GrowSumo website located at www.GrowSumo.com (the "**Website**"); (2) the GrowSumo online platform that provides tools to build, manage, and grow channel programs; (3) GrowSumo's marketplace that facilitates the matching of resellers and affiliates (each, a "**Company**") interested in finding and participating in channel program opportunities with companies that provide such channel program opportunities; (4) GrowSumo's JavaScript snippets and customized APIs; and (5) all other products or services provided by GrowSumo, as described on the Website (collectively, the "**Platform**").
- (b) These Terms of Use form an agreement between GrowSumo Inc. ("**GrowSumo**", "**us**", "**we**", "**our**") and User.
- (c) The Platform is provided solely (the "**Permitted Use**") to: (1) enable Users to search for and view channel programs made available by Companies on the Platform, including, if applicable, details about a Company's products, services, and commissions (each, a "**Channel Program Profile**"); and (2) facilitate communication with Companies with the objective of entering into a Channel Program Agreement ("**Platform Services**").

2. Changes to these Terms of Use and Platform

- (a) Except where prohibited by applicable law, GrowSumo reserves the right to change these Terms of Use at any time without notice. User's continued use of the Platform after any changes to these Terms of Use indicates User's acceptance of such changes. It is User's responsibility to review these Terms of Use regularly for any changes.
- (b) GrowSumo reserves the right to change any information, material or content (including, but not limited to, details, features and availability of Platform

Services, Companies, and Channel Program Profiles) contained on or provided through the Platform at any time, and from time to time, without notice.

3. **Use of the Platform**

- (a) As a condition of being granted a right to use of the Platform, User represents, covenants, and warrants that: (1) it possesses the legal authority to create a binding legal obligation; (2) in the case where User is a natural person, it has reached the age of majority in its jurisdiction of residence; (3) it will use the Platform in accordance with these Terms of Use; and (4) all information supplied by User on the Platform is true, current, accurate, and complete.
- (b) GrowSumo retains the right, at its sole discretion, to temporarily or permanently deny User access to the Platform or the Platform Services for violation of these Terms of Use. User will cease and desist from any such access or use immediately upon request by GrowSumo.

4. **License Grants**

- (a) Subject to these Terms of Use, GrowSumo grants User a personal, revocable, non-exclusive and non-transferable license during the Term to use the Platform in accordance with these Terms of Use for the Permitted Use only.
- (b) Subject to these Terms of Use, User grants to GrowSumo a perpetual, irrevocable, royalty-free, fully paid-up, and worldwide license to access, collect, store, disclose and use any data, information, records and files that: (1) User loads, transmits to or enters into the Platform, or (2) we collect from third-parties on User's behalf, including all compilations, adaptations, translations, derivative works thereof, and results from processing such data, information, records and files, for the purposes of: (i) providing the Platform Services and developing the Platform, (ii) complying with applicable law, and (ii) GrowSumo's reasonable audit and data retention policies.

5. **User Account**

User will be required to sign up for a User Account (the **"User Account"**) using the available interfaces on the Platform and be issued with a username and password login credentials (the **"User ID"**) in order to use the Platform and communicate with Companies through the Platform. User will keep the User ID secure and will not share the User ID with anyone else. User is responsible for all acts or omissions carried out under the User ID. GrowSumo reserves the right to disable the User Account issued to User at any time in in the event its believes or reasonably suspects that the User ID has been used contrary to these Terms of Use or otherwise misused.

6. **Term and Termination**

These Terms of Use will commence on the day User first uses the Platform and will continue in force until terminated by either party (the “**Term**”). Either party may terminate these Terms of Use as follows: (a) GrowSumo may terminate these Terms of Use at any time and with immediate effect by giving 30 days prior written notice to User, by email (at User’s current email address on file with GrowSumo) or through the Platform; (b) User may terminate these Terms of Use upon 30 days prior written notice by requesting (by email or through any then-available interfaces on the Platform) that these Terms of Use be terminated between the parties and the User Account be deleted and by ceasing use of the Platform.

7. **Channel Program Agreements with Companies**

- (a) If User requests to participate in a Company’s channel program through the Platform, User may enter into an agreement through the Platform with that Company (e.g., whether as an independent contractor or as an employee) on such terms and conditions as may be agreed to between User and that Company (“**Channel Program Agreement**”). For example, the Channel Program Agreement may, without limitation, contain: (1) a description of Company’s channel program; (2) payment terms such as the percentage commission; and (3) any other terms and conditions as communicated between User and the Company through this Platform or otherwise.
- (b) The Platform permits User to accept the Channel Program Agreement presented to User by Companies electronically. Notwithstanding the foregoing, User acknowledges that it is engaging directly with the Company and not GrowSumo, and that GrowSumo is not a party to and will be in no way responsible for the performance of either User or the Company under any Channel Program Agreement. Without limiting the foregoing, if User and the Company agree that the User will be engaged as an employee under a Channel Program Agreement, User understands and agrees that the User will be solely an employee of Company and not GrowSumo. GrowSumo does not make any representations or warranties of any kind with respect to a Company or a Channel Program Agreement and User acknowledges and agrees that GrowSumo is not an agent or representative of User or any Company.

8. **Commission Deposits; Transaction Costs**

- (a) Payment Processing Services. Payment processing services for the Platform are provided by Tipalti Solutions Ltd. (the “**Payment Processing Services Provider**”). As a condition of us enabling payment processing services through the Payment Processing Services Provider, User agrees to enter into and comply with any terms and conditions of the Payment Processing Services Provider that applies to such payment processing services and provide us with User’s account information with the Payment Processing Services Provider (the “**User Payment Accounts**”).

- (b) Channel Program Agreement Deposit. From time to time, we may make a deposit into the User Payment Accounts on a Company's behalf in an amount that is equal to: (i) the total amount that we have received such Company under all of their Channel Program Agreements with User for deposit into the User Payment Accounts; less (ii) all transaction costs required to facilitate the transfer of such amounts referred to in paragraph (i) from such Company to us, and subsequently from us to User (the "**Channel Program Agreement Commission**"). User authorizes us to deposit the Channel Program Agreement Commission on Company's behalf into the User Payment Accounts (the date we make such deposit, the "**Commission Deposit Date**").
- (c) Channel Program Agreement Commission Dispute.
 - (i) Users will notify Companies (and not us) directly of any disagreement with any Channel Program Agreement Commissions. User acknowledges and agrees that while we may make Channel Program Agreement Commission deposits on behalf of Companies, we are not responsible for any late or incorrect Channel Program Agreement Commissions.
 - (ii) Without limiting Section 8(c)(i), if User disagrees with the transaction costs related to the deposit of any Channel Program Agreement Commission, User will notify us of its disagreement within 15 days of the Commission Deposit Date. If User fails to notify us of any disagreement within such 15 day period, User will be deemed to have irrevocably accepted and agreed with the transaction costs related to such Channel Program Agreement Deposit.
- (d) Change to User Payment Accounts. It is User's responsibility to promptly notify us of any changes to the User Payment Accounts and User acknowledges and agrees that we will not be responsible for any incorrect or delayed payments made to the User Payment Accounts attributable to the information User has provided us in respect of the User Payment Accounts.

9. **Ownership**

GrowSumo expressly reserves all rights in the Platform that are not specifically granted to User under these Terms of Use. User acknowledges that all right, title and interest in the Platform, all information, material, or content provided by GrowSumo in connection with these Terms of Use, and any update, adaptation, translation, customization or derivative work thereof, and all intellectual property rights therein will remain with GrowSumo (or third party suppliers, if applicable), and that the Platform and all materials provided by GrowSumo hereunder are licensed and not "sold" to User.

10. **Privacy Policy; Privacy Warranty**

- (a) Please click the following link to review our current Privacy Policy, which contains important information about our practices in collecting, storing, using

and disclosing personal information, and which is hereby incorporated into and forms a part of these Terms of Use: www.growsumo.com/app/privacy

- (b) User agrees and warrants that: (i) User will, at all times, comply with all applicable laws (including all applicable privacy laws); and (ii) all information, material, or content that User provides to us will contain no information about an identifiable individual or information that is otherwise subject to applicable privacy laws, including the *Personal Information Protection and Electronic Documents Act* (Canada) or equivalent provincial legislation (“**Personal Information**”), except for Personal Information in respect of which User has obtained all applicable third party consents, authority and permissions, and have made all applicable third party disclosures, in each case if and as required by applicable laws (including privacy laws), regarding all collection, storage, use, disclosure and transmission, including to us and to all applicable third parties.

11. **No Unlawful or Prohibited Use**

User will not, without GrowSumo's prior written permission, use the Platform for purposes other than the Permitted Use. Without limiting the generality of the foregoing, User will not, and will not permit anyone else to: (a) “frame”, “mirror” or otherwise incorporate the Platform or any part thereof on any commercial or non-commercial website; (b) access, monitor or copy any part of the Platform using any robot, spider, scraper or other automated means or any manual process for any purpose without our express written permission; (c) violate the restrictions in any robot exclusion headers on the the Platform or bypass or circumvent other measures employed to prevent or limit access to the Platform; (d) take any action that imposes, or may impose, in GrowSumo’s discretion, an unreasonable or disproportionately large load on the Platform; (e) deep-link to any portion of the Platform for any purpose; (f) remove (or permit anyone else to remove) any watermarks, labels or other legal or proprietary notices included in the Platform; (g) modify or attempt to modify (or permit anyone else to modify or attempt to modify) the Platform, including any modification for the purpose of disguising or changing any indications of the ownership or source of the Platform; (h) use the Platform as part of any service for sharing, lending or multi-person use; (i) attempt to, assist, authorise or encourage others to circumvent, disable or defeat any of the security features or components, such as digital rights management software or encryption, that protect the Platform; (j) copy, reproduce, modify, distribute, transfer, sell, publish, broadcast, perform, transmit, publish, license or circulate in any form any part of the Platform; (k) create adaptations, translations, or derivative works based on the Platform, in whole or in part, or decompile, disassemble, reverse engineer or other exploit any part of the Platform; (l) use of access the Platform in a manner that violates the rights (including, but not limited to intellectual property rights) of any third party; or (m) upload to or transmit through the Platform any information, images, text, data, media or other content that is offensive, hateful, obscene, defamatory or violates any laws, in each case as determined by GrowSumo in its sole discretion.

12. **Third Party Websites**

The Platform may provide links to third party websites. GrowSumo does not endorse the information contained on those web sites or guarantee their quality, accuracy, reliability, completeness, currency, timeliness, non-infringement, merchantability or fitness for any purpose. The content in any linked web site is not under GrowSumo's control, and if User chooses to access any such web site, User does so entirely at its own risk.

13. Viruses

GrowSumo cannot and does not guarantee or warrant that the Platform is compatible with any computer system or that the Platform, or any links from the Platform, will be free of viruses, worms, trojan horses or disabling devices or other code that manifests contaminating or destructive properties. User is responsible for implementing safeguards to protect the security and integrity of User's computer system, the entire cost of any service, repairs or connections of and to your computer system that may be necessary as a result of User's use of the Platform.

14. Communications Not Confidential

GrowSumo does not guarantee the confidentiality of any communications made by User through the Platform. Although GrowSumo generally adheres to the accepted industry practices in securing the transmission of data to, from and through the Platform, User understands, agrees and acknowledges that GrowSumo cannot and does not guarantee the security of data transmitted over the Internet or public networks in connection with User's use of the Platform.

15. DISCLAIMER

The following limitation reflects the agreed upon allocation of risk between the parties. The limitations specified in this section will survive and apply even if any limited remedy specified in these Terms of Use is found to have failed of its essential purpose.

- (a) GENERAL DISCLAIMER. USE OF THE PLATFORM IS AT USER'S OWN RISK. THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE". TO THE EXTENT PERMITTED BY APPLICABLE LAW, GROWSUMO DISCLAIMS ALL WARRANTIES, REPRESENTATIONS AND CONDITIONS OF ANY KIND WITH RESPECT TO THE PLATFORM WHETHER EXPRESS, IMPLIED, STATUTORY OR COLLATERAL, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY, MERCHANTABLE QUALITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT, QUALITY, ACCURACY, RELIABILITY, COMPLETENESS, CURRENCY, OR TIMELINESS OF THE PLATFORM, OR THAT THE PLATFORM IS OR WILL BE ERROR-FREE OR WILL OPERATE WITHOUT INTERRUPTION.

- (b) COMPANY DISCLAIMER. COMPANIES ARE INDEPENDENT PERSONS AND NOT PARTNERS, AGENTS OR EMPLOYEES OF GROWSUMO. GROWSUMO IS NOT LIABLE FOR THE ACTS, ERRORS, OMISSIONS, REPRESENTATIONS, WARRANTIES, CONDITIONS, BREACHES OR NEGLIGENCE OF ANY COMPANY OR FOR ANY PERSONAL INJURIES, DEATH, PROPERTY DAMAGE, OR OTHER DAMAGES OR

EXPENSES RESULTING THEREFROM AND TAKES NO RESPONSIBILITY WHATSOEVER RELATED TO ANY CHANNEL PROGRAM AGREEMENTS ENTERED INTO BY USER AND ANY COMPANIES (INCLUDING ANY DELAYED OR INCORRECT PAYMENTS OR NON-PAYMENTS UNDER SUCH CHANNEL PROGRAM AGREEMENTS).

16. Limitation of Liability

- (a) **TYPE.** IN NO EVENT WILL GROWSUMO OR ITS OFFICERS, DIRECTORS, AFFILIATES, PARTNERS, EMPLOYEES, SHAREHOLDERS, AGENTS, SUCCESSORS AND ASSIGNS BE LIABLE TO USER, WHETHER BASED ON WARRANTY, CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER LEGAL THEORY, FOR ANY DAMAGES OF ANY KIND (INCLUDING, WITHOUT LIMITATION, DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES, LOST PROFITS, LOSS OF USE OR LOSS OF DATA, PERSONAL INJURY, FINES, FEES, PENALTIES OR OTHER LIABILITIES), WHETHER OR NOT GROWSUMO IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, RESULTING FROM OR RELATED TO THE USE OF, OR THE INABILITY TO MAKE USE OF, THE PLATFORM OR ANY CHANNEL PROGRAM AGREEMENT.
- (b) **AMOUNT.** TO THE EXTENT THE LIMITATION OF LIABILITY IN SECTION 16(a) ABOVE DOES NOT APPLY, IN NO EVENT WILL THE TOTAL AGGREGATE LIABILITY OF GROWSUMO OR ITS OFFICERS, DIRECTORS, AFFILIATES, PARTNERS, EMPLOYEES, SHAREHOLDERS, AGENTS, SUCCESSORS AND ASSIGNS IN CONNECTION WITH OR UNDER THESE TERMS OF USE, ANY CHANNEL PROGRAM AGREEMENT, OR USER'S USE OF, OR INABILITY TO MAKE USE OF, THE PLATFORM, OR FOR ANY OTHER CLAIM RELATED IN ANY WAY TO ANY CHANNEL PROGRAM AGREEMENT EXCEED **[\$100CDN]**. FOR GREATER CERTAINTY, THE EXISTENCE OF ONE OR MORE CLAIMS UNDER THESE TERMS OF USE WILL NOT INCREASE THE MAXIMUM LIABILITY AMOUNT.

17. Indemnification

User will defend, indemnify and hold harmless GrowSumo and all of its officers, directors, affiliates, partners, employees, agents, successors, and assigns from and against any liabilities, claims, demands, recoveries, losses, damages, fines, penalties or other costs or expenses, (including but not limited to reasonable legal and accounting fees), claimed against GrowSumo by third parties relating to:

- (a) User's or individuals with User Account breach of any warranties, conditions, representations or obligations under these Terms of Use or any documents referenced herein;
- (b) User's violation of any applicable law (including privacy laws) or the rights of a third party (including, without limitation, privacy or intellectual property rights);

- (c) User's breach of or failure to perform under any Channel Program Agreement or by any third party acting on User's behalf or with Company's permission;
- (d) any User being Company's employee, including relating to any source deductions for taxes or other amounts related to employment; or
- (e) any misrepresentations made to Companies by User in connection with any Channel Program Agreement.

18. Geographic Application of the Platform

Not all of the Companies and services described on the Platform are available in all jurisdictions. Furthermore, nothing on the Platform constitutes an offer or solicitation to buy or sell any product or service to anyone in any jurisdiction in which such an offer or solicitation is prohibited by applicable law.

19. Governing Law and Jurisdiction

These Terms of Use will be governed by the laws of the Province of Ontario and the federal laws of Canada applicable therein. These laws apply to User's use of the Platform, notwithstanding User's domicile, residency or physical location. The Platform is intended for use only in jurisdictions where they may lawfully be offered for use.

Except as restricted by applicable law, User hereby consents to the exclusive jurisdiction and venue of courts in Toronto, Ontario, Canada in all disputes arising out of or relating to the use of the Platform.

20. General Provisions

- (a) These Terms of Use constitute the entire agreement between GrowSumo and User pertaining to the subject matter hereof and supersede all prior or contemporaneous communications and proposals, whether electronic, oral or written, between User and GrowSumo with respect to the Platform. A printed version of these Terms of Use and of any notice given in electronic form will be admissible in judicial or administrative proceedings based upon or relating to these Terms of Use to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form.
- (b) Either party's failure to insist upon or enforce strict performance of any provision of these Terms of Use will not be construed as a waiver of any provisions or right.
- (c) If any of the provisions contained in these Terms of Use are determined to be void, invalid or otherwise unenforceable by a court of competent jurisdiction, such determination will not affect the remaining provisions contained herein.

- (d) If any of the provisions contained in these Terms of Use conflict with the terms of another agreement between the parties, then these Terms of Use will prevail.
- (e) It is the express wish of the parties that these Terms of Use and all related documents be drawn up in English. C'est la volonté expresse des parties que la présente convention ainsi que les documents qui s'y rattachent soient rédigés en anglais.
- (f) The following Sections, together with any other provision of these Terms of Use which expressly or by its nature survives termination or expiration, or which contemplates performance or observance subsequent to termination or expiration of these Terms of Use, will survive expiration or termination of these Terms of Use for any reason: Sections 4(b)(License Grant), 8 (Commission Deposits; Transaction Costs), 9 (Ownership), 10 (Privacy Policy; Privacy Warranty), 15 (Disclaimer), 16 (Limitation of Liability), 17 (Indemnification), 19 (Governing Law and Jurisdiction), and 20 (General Provisions).