

LeadSmart Subscription Terms and Conditions

Last updated: Feb 2019

LeadSmart has been developed using the Salesforce Lightning Platform. In addition to the LeadSmart functionality Customer will have access to utilize all functionality and features that are included with the Salesforce Platform.

Use of the Salesforce Platform is subject to the terms and conditions included in the **Salesforce.com Service Terms of Use** and is not governed by this Terms of Service agreement.

PLEASE READ THIS AGREEMENT CAREFULLY.

Capitalized terms shall have the meanings set forth in Section 9 below or in the Section in which they first appear in these Terms of Service. Capitalized terms used but not defined herein shall have the meanings set forth in the Subscription Fees and Terms page.

1. SERVICES.

1.1 – Access and Use. Subject to and conditioned upon Customer's compliance with the terms and conditions of the Agreement, (a) Customer may access and use LeadSmart during the Subscription Period solely for purposes of Customer's internal business operations, and (b) Customer may allow its Users to access and use LeadSmart for the purposes set forth above, provided that Customer shall ensure its Users' compliance with the terms and conditions of the Agreement that apply to Customer, and Customer shall be responsible and liable for any User's non-compliance with the terms and conditions of the Agreement that apply to Customer. The foregoing authorizations granted to Customer are non-exclusive and non-transferable.

1.2 – Updates. LeadSmart Tech may, from time to time at its sole discretion, develop and provide LeadSmart updates, which may include upgrades, bug fixes, patches and other error corrections and/or new features (collectively, "**Updates**"). Updates may also modify or delete in their entirety certain features and functionality of LeadSmart. Customer acknowledges and agrees that LeadSmart Tech has no obligation to provide any Updates or to continue to provide or enable any particular features or functionality of LeadSmart.

1.3 – Limitations and Restrictions. Customer shall not, and shall not permit any User or other person or entity to, access or use LeadSmart except as expressly permitted in the Agreement. Without limiting the foregoing, Customer shall not, except as expressly permitted in the Agreement: (a) copy, modify, or create derivative works or improvements of LeadSmart; (b) rent, lease, lend, sell, sublicense, assign, distribute, publish, or transfer LeadSmart to any person or entity, including in connection with 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 LeadSmart, in whole or in part; (d) bypass or breach any security device or protection used by LeadSmart or access or use LeadSmart other than through the use of then valid access credentials; (e) input, upload, transmit, or otherwise provide to or through LeadSmart any Customer Data or other information or materials that (i) contain, transmit, or activate any Harmful Code, or (ii) are unlawful, abusive, malicious, harassing, tortious, defamatory, vulgar, obscene, libelous, invasive of another’s privacy right or right of publicity, or racially or ethnically objectionable, or (iii) infringe upon or violate the Intellectual Property Rights of any third party; (g) damage, destroy, disrupt, disable, impair, interfere with, or otherwise impede or harm in any manner LeadSmart, LeadSmart Tech’s provision of services to any third party, in whole or in part; (h) remove, delete, alter, or obscure any Intellectual Property Rights notices from any LeadSmart; (i) access or use LeadSmart in any manner or for any purpose that infringes, misappropriates, or otherwise violates any Intellectual Property Right or other right of any third party, or that violates any applicable law; (j) access or use LeadSmart for purposes of competitive analysis of the LeadSmart, the development, provision, or use of a competing service or product, or any other purpose that is to LeadSmart Tech’s detriment or commercial disadvantage; or (k) otherwise access or use LeadSmart beyond the scope of the rights granted under Section 1.1 above.

1.4 – LeadSmart IP. LeadSmart Tech is and shall remain the sole and exclusive owner of all right, title, and interest in and to LeadSmart, including all Intellectual Property Rights therein and thereto. Other than the limited rights and licenses granted to Customer pursuant to Section 1.1 above, nothing in the Agreement grants Customer any right, title, or interest in or to LeadSmart, including any Intellectual Property Rights therein or relating thereto, whether expressly, by implication, estoppel, or otherwise, and all such rights are reserved to LeadSmart Tech. LeadSmart Tech retains all right, title, and interest in and to LeadSmart,

including without limitation all software used to provide LeadSmart and all graphics, user interfaces, logos, and trademarks reproduced through LeadSmart. This Agreement does not grant Customer any intellectual property license or rights in or to LeadSmart or any of its components. Customer recognizes that LeadSmart and the Salesforce Platform are protected by copyright and other laws.

1.5 – Suspension of Access. LeadSmart Tech may suspend Customer’s and/or any of its Users’ access to or use of all or any part of LeadSmart without incurring any resulting obligation or liability, if: (a) LeadSmart Tech receives a judicial or other governmental demand or order, subpoena, or law enforcement request that expressly or by reasonable implication requires LeadSmart Tech to do so; (b) LeadSmart Tech believes, in its good faith and reasonable discretion, that Customer or any of its Users have violated the provisions of Section 1.3 (Limitations and Restrictions) or Section 2 (Customer Data); or (c) Customer fails to pay any amount when due under the Agreement. Any such suspension shall not excuse Customer from its obligation to make the payment(s) contemplated under the Agreement to LeadSmart Tech. If LeadSmart Tech suspends LeadSmart, LeadSmart Tech shall promptly restore Customer’s (or the applicable User’s) access to and use of LeadSmart after the event giving rise to the suspension has been resolved to LeadSmart Tech’s satisfaction.

1.6 – Work Product. Without limiting Section 1.4 above, LeadSmart Tech is and shall remain the sole and exclusive owner of all right, title, and interest in and to all developments, inventions, technology, materials, and other work product made or conceived or actually or constructively reduced to practice by or on behalf of LeadSmart Tech in the course of performing any **Professional Services** (collectively, the “**Work Product**”), including all Intellectual Property Rights therein and thereto. For clarity, Work Product does not include Customer Data. In the event Customer is a deemed owner of any right, title, or interest in or to any part of the Work Product, Customer agrees to assign, and hereby irrevocably assigns, to LeadSmart Tech all of its right, title, and interest in and to the Work Product, including all Intellectual Property Rights therein and thereto. Customer agrees to give LeadSmart Tech, and any person designated by LeadSmart Tech, reasonable assistance, at LeadSmart Tech’s expense, in perfecting and/or evidencing LeadSmart Tech’s rights in and to the Work Product, including by executing and delivering all documents reasonably requested by LeadSmart Tech for such purposes. LeadSmart Tech hereby grants to CleanSpace a limited, non-exclusive, non-transferable, non-sub licensable, revocable license to use Work Product provided in connection with the

Professional Services solely for Customer's internal business operations and subject to all applicable terms and conditions of the Agreement.

2. CUSTOMER DATA AND PRIVACY.

2.1- Customer Data. Customer represents, warrants, and covenants to LeadSmart Tech that CleanSpace owns or otherwise has the necessary rights and consents in and relating to Customer Data, so that LeadSmart Tech's receipt and use of Customer Data in accordance with the Agreement does not and will not infringe, misappropriate, or otherwise violate any Intellectual Property Rights or other rights of any User or other person or entity, or any applicable law.

2.2 – Use of Customer Data. Unless it receives Customer's prior written consent, LeadSmart Tech: (a) will not access, process, or otherwise use Customer Data other than as necessary to facilitate the use of LeadSmart; and (b) will not intentionally grant any third party access to Customer Data, including without limitation LeadSmart Tech's other customers, except subcontractors that are subject to a reasonable nondisclosure/confidentiality agreement. Notwithstanding the foregoing, LeadSmart Tech may disclose Customer Data as required by applicable law or by proper legal or governmental authority. LeadSmart Tech will give Customer prompt notice of any such legal or governmental demand and reasonably cooperate with Customer in any effort to seek a protective order or otherwise to contest such required disclosure, at Customers expense.

2.3 – Risk of Exposure. Customer recognizes and agrees that hosting data online involves risks of unauthorized disclosure or exposure and that, in accessing and using LeadSmart, Customer assumes such risks. LeadSmart Tech offers no representation, warranty, or guarantee that Customer Data will not be exposed or disclosed through errors or the actions of third parties such as the Salesforce Platform.

2.4 – Data Accuracy. LeadSmart Tech will have no responsibility or liability for the accuracy of data uploaded to LeadSmart by Customer, including without limitation Customer Data and any other data uploaded by Users.

2.6 – Aggregate & Anonymized Data. Notwithstanding the provisions above of this Section 2, LeadSmart Tech may use, reproduce, sell, publicize, or otherwise exploit Aggregate Data in any way, at its sole discretion.

3.0 CUSTOMER'S RESPONSIBILITIES & RESTRICTIONS

3.1 – Acceptable Use. Customer will not: (a) use LeadSmart for service bureau or time-sharing purposes or in any other way allow third parties to exploit LeadSmart other than through the use of the standard LeadSmart functionality designed specifically for 3rd parties; (b) provide LeadSmart passwords or other log-in information to any third party; (c) share non-public LeadSmart features or content with any third party; or (d) access LeadSmart in order to build a competitive product or service, to build a product using similar ideas, features, functions or graphics of the LeadSmart, or to copy any ideas, features, functions or graphics of LeadSmart. In the event that it suspects any breach of the requirements of this Section 3, including without limitation by Users, LeadSmart Tech may suspend Customer's access to LeadSmart without advanced notice, in addition to such other remedies as LeadSmart Tech may have. This Agreement does not require that LeadSmart Tech take any action against Customer or any User or other third party for violating this Section 3, or this Agreement, but LeadSmart Tech is free to take any such action it sees fit.

3.2 – Unauthorized Access. Customer will take reasonable steps to prevent unauthorized access to LeadSmart, including without limitation by protecting its passwords and other log-in information. Customer will notify LeadSmart Tech immediately of any known or suspected unauthorized use of LeadSmart or breach of its security and will use best efforts to stop said breach.

3.3 – Compliance with Laws. In its use of LeadSmart, Customer will comply with all applicable laws, including without limitation laws governing the protection of personally identifiable information and other laws applicable to the protection of Customer Data.

3.4 – Users & LeadSmart Access. Customer is responsible and liable for: (a) Users' use of LeadSmart, including without limitation unauthorized User conduct and any User conduct that would violate the requirements of this Agreement applicable to Customer; and (b) any use of the LeadSmart through Customer's account, whether authorized or unauthorized.

4.0 INDEMNIFICATION

4.1 – Indemnification of LeadSmart tech. Customer will indemnify, defend, and hold harmless LeadSmart Tech, its affiliates, and its and their respective officers, directors, employees, and agents from and against all losses, damages, judgments, assessments, fines, costs, and expenses (including court costs and reasonable attorneys' fees) arising out of or in connection with any third party

claim, action, suit, or proceeding arising out of or related to: (a) Customer Data, including any Processing of Customer Data by or on behalf of LeadSmart Tech in accordance with this Agreement; (b) LeadSmart Tech's compliance with any specifications or directions provided by or on behalf of Customer; or (c) any breach or violation of this Agreement or applicable law by Customer, any User, or any other person accessing and/or using any of LeadSmart directly or indirectly by or through the Customer Systems or Customer's Access Credentials, with or without Customer's knowledge or consent.

4.2 – Indemnification Procedure. Upon receiving notice of a claim for which LeadSmart Tech is entitled to indemnification by Customer, LeadSmart Tech shall provide Customer with written notification and the opportunity to assume sole control over the defense or settlement of such claim and reasonable assistance to settle and/or defend such claim at Customer's sole expense; provided, however, that: (a) any settlement which would impose a non-monetary obligation on and/or admission or finding of liability or wrongdoing by LeadSmart Tech will require LeadSmart Tech's prior written consent; (b) the failure to provide timely notice, control, or assistance shall not relieve Customer of its indemnification obligations hereunder; and (c) LeadSmart Tech may have its own counsel present at and participating in all proceedings or negotiations relating to a claim, at LeadSmart Tech's own expense, unless Customer fails or refuses to secure legal counsel to defend any claim in a timely manner, in which case Customer shall pay all expenses related to LeadSmart Tech's use of such counsel.

5.0 REPRESENTATIONS & WARRANTIES

5.1 – From LeadSmart Tech. LeadSmart Tech represents and warrants that it is the owner of LeadSmart and of each and every component thereof, or the recipient of a valid license thereto, and that it has and will maintain the full power and authority to grant the rights granted in this Agreement without the further consent of any third party. LeadSmart Tech's representations and warranties in the preceding sentence do not apply to use of the LeadSmart in combination with the Salesforce Platform or hardware or software not provided by LeadSmart Tech. In the event of a breach of the warranty in this Section 4, LeadSmart Tech, at its own expense, will promptly take the following actions: (a) secure for Customer the right to continue using the LeadSmart; (b) replace or modify LeadSmart to make it non-infringing; or (c) terminate the infringing features of the Service and refund to Customer any prepaid fees for such features, in proportion to the portion of the Term left after such termination. In conjunction with Customer's right to terminate for breach where applicable, the

preceding sentence states LeadSmart Tech's sole obligation and liability, and Customer's sole remedy, for breach of the warranty in this Section 5.1 and for potential or actual intellectual property infringement by the LeadSmart.

5.2 – From Customer. Customer represents and warrants that: (a) it has the full right and authority to enter into, execute, and perform its obligations under this Agreement and that no pending or threatened claim or litigation known to it would have a material adverse impact on its ability to perform as required by this Agreement; (b) it has accurately identified itself and it has not provided any inaccurate information about itself to or through LeadSmart; and (c) it is a corporation, the sole proprietorship of an individual 18 years or older, or another entity authorized to do business pursuant to applicable law.

5.3 – Warranty Disclaimers. Except to the extent set forth in this Section 4, CUSTOMER ACCEPTS LEADSMART "AS IS" AND AS AVAILABLE, WITH NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS, OR ANY IMPLIED WARRANTY ARISING FROM STATUTE, COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING: (a) LEADSMART TECH HAS NO OBLIGATION TO INDEMNIFY OR DEFEND CUSTOMER OR USERS AGAINST CLAIMS RELATED TO INFRINGEMENT OF INTELLECTUAL PROPERTY; (b) LEADSMART TECH DOES NOT REPRESENT OR WARRANT THAT LEADSMART OR THE SALESFORCE PLATFORM WILL PERFORM WITHOUT INTERRUPTION OR ERROR; AND (c) LEADSMART TECH DOES NOT REPRESENT OR WARRANT THAT LEADSMART IS SECURE FROM HACKING OR OTHER UNAUTHORIZED INTRUSION OR THAT CUSTOMER DATA WILL REMAIN PRIVATE OR SECURE.

6.0 LIMITATION OF LIABILITY

6.1 – Exclusion of Certain Damages. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL LEADSMART TECH, ITS AFFILIATES, OR ITS OR THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, LICENSORS, OR SERVICE PROVIDERS BE LIABLE UNDER OR IN CONNECTION WITH THE AGREEMENT OR ITS SUBJECT MATTER UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES (INCLUDING LOST PROFITS, DAMAGE OR LOSS OF USE OF DATA, BUSINESS

INTERRUPTIONS, AND LOST BUSINESS OPPORTUNITY), REGARDLESS OF WHETHER SUCH PERSONS WERE ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR SUCH DAMAGES WERE OTHERWISE FORESEEABLE. WITHOUT LIMITING THE FOREGOING, IN NO EVENT SHALL LEADSMART TECH, ITS AFFILIATES, OR ITS OR THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, LICENSORS, OR SERVICE PROVIDERS BE LIABLE FOR ANY DAMAGES ARISING OUT OF OR IN CONNECTION WITH: (a) CUSTOMER'S USE, OR INABILITY TO USE LEADSMART; (b) ANY CUSTOMER DATA, INCLUDING ANY UNAUTHORIZED ACCESS TO OR USE OF ANY CUSTOMER DATA; (c) INTERRUPTION OR CESSATION OF TRANSMISSION TO OR FROM LEADSMART; AND/OR (d) ANY HARMFUL CODE WHICH MAY BE TRANSMITTED TO OR THROUGH LEADSMART.

6.2 – Maximum Liability. NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, IN NO EVENT SHALL THE COLLECTIVE AGGREGATE LIABILITY OF LEADSMART TECH, ITS AFFILIATES, AND ITS AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, LICENSORS, OR SERVICE PROVIDERS UNDER OR RELATED IN ANY WAY TO THE AGREEMENT OR ITS SUBJECT MATTER, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER TO LEADSMART TECH UNDER THIS AGREEMENT DURING THE 12-MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

6.3 – Basis of the Bargain. THE LIMITATIONS OF LIABILITY HEREIN ARE A FUNDAMENTAL ELEMENT OF THE BASIS OF THE BARGAIN AND REFLECT A FAIR ALLOCATION OF RISK. LEADSMART WOULD NOT BE PROVIDED WITHOUT SUCH LIMITATIONS, AND CUSTOMER AGREES THAT THE LIMITATIONS OF LIABILITY AND DISCLAIMERS SPECIFIED HEREIN WILL SURVIVE AND APPLY EVEN IF FOUND TO HAVE FAILED OF THEIR ESSENTIAL PURPOSE.

7.0 TERM & TERMINATION

7.1 – Term. The Agreement commences on the Effective Date and will remain in effect for the Subscription Period, unless terminated earlier in accordance with its express provisions. Hereafter, the Term will automatically renew for successive 12-month periods, unless either party refuses such renewal by written notice 30 or more days before the renewal date.

7.2 – Termination by LeadSmart Tech. LeadSmart Tech may terminate the Agreement, effective immediately upon written notice to Customer, if (a) Customer fails to pay any amount when due and such failure continues more

than 15 days after delivery of written notice thereof, or (b) Customer breaches any of Customer's obligations under Section 1.

7.3 – Mutual Right of Termination. Either party may terminate the Agreement, effective upon written notice to the other party, if the other party materially breaches any material provision of this Agreement (except as set forth in Section 7.2 above), and such breach is incapable of cure, or being capable of cure, remains uncured 30 days after the non-breaching party provides the breaching party with written notice of such breach.

7.4 – Effect of Termination. Upon any expiration or termination of the Agreement, all rights and licenses granted to Customer under the Agreement shall immediately terminate, and LeadSmart Tech may disable Customer's and its User's access to LeadSmart and the Salesforce Platform. In addition, Customer shall, and shall instruct its Users to, immediately cease using LeadSmart. The expiration or termination of the Agreement shall not (a) prejudice or affect any right of action or remedy that has accrued or will accrue to either party due to the other party's acts or omissions prior to the effective date of the termination or expiration, or (b) relieve Customer of its obligation to pay any charges that have accrued or have become payable to LeadSmart Tech under the Agreement.

7.5 – Survival. Any right or obligation of the parties in the Agreement that, by its nature, should survive termination or expiration of the Agreement, shall survive any expiration or termination of the Agreement.

8.0 GENERAL

8.1 – Entire Agreement; Amendment. This Agreement constitutes the sole and entire agreement of the parties with respect to the subject matter herein and supersedes all prior and contemporaneous understandings, proposals, agreements, or communications, both written and oral, with respect to such subject matter. Except as otherwise set forth in the Subscription Fees and Terms no amendment to or modification of the Agreement is effective unless it is agreed to by both parties in writing.

8.2 – Notices. Customer agrees that LeadSmart Tech may communicate any notices to Customer under the Agreement through electronic mail or by regular mail. Notices will be deemed effectively given to Customer immediately when sent by electronic mail or two (2) business days after being sent by regular mail. All notices, requests, and other communications to be given to LeadSmart Tech hereunder shall be in writing and sent to LeadSmart Tech by registered or

certified mail, postage prepaid, return receipt requested to the following address: LeadSmart Technologies, 81 David Love Place #116, Santa Barbara, CA 93117 (or to such other address that Grow may designate from time to time in accordance with this Section 8.2). Notices will be deemed effectively given to LeadSmart Tech when received.

8.3 – Governing Law; Jurisdiction and Venue. The Agreement as well as any dispute or claim arising out of or related to the Agreement, its subject matter, or its formation (in each case, including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of the State of California, without giving effect to any choice or conflict of law provision or rule. Any legal suit, action, or proceeding arising out of or related to the Agreement shall be instituted exclusively in the federal or state courts located in Santa Barbara, CA, and Customer further agrees that such courts shall have *in personam* jurisdiction and venue with respect to Customer. Customer hereby submits to the *in personam* jurisdiction and venue of such courts and hereby waives any and all objections to the exercise of jurisdiction over Customer by such courts and to venue in such courts.

8.4 – Limitation on Time to File Claims; Waiver of Jury Trial. ANY CAUSE OF ACTION OR CLAIM CUSTOMER MAY HAVE ARISING OUT OF OR RELATING TO THE AGREEMENT MUST BE COMMENCED WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION OR CLAIM ACCRUES, OTHERWISE, SUCH CAUSE OF ACTION OR CLAIM IS PERMANENTLY BARRED. CUSTOMER HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT, PROCEEDING, CLAIM, OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THE AGREEMENT.

8.5 – Amendment. LeadSmart Tech may amend this Agreement from time to time by posting an amended version on its website and sending Customer written notice thereof. Such amendment will be deemed accepted and become effective 30 days after such notice (the “Proposed Amendment Date”) unless Customer first gives LeadSmart Tech written notice of rejection of the amendment. In the event of such rejection, this Agreement will continue under its original provisions, and the amendment will become effective at the start of Customer’s next Term following the Proposed Amendment Date (unless Customer first terminates this Agreement pursuant to Section 7, *Term & Termination*). Customer’s continued use of LeadSmart following the effective date of an amendment will confirm Customer’s consent thereto. This Agreement may not be amended in any other way except through a written agreement by

authorized representatives of each party. Notwithstanding the foregoing provisions of this Section 8.5, LeadSmart Tech may revise the Privacy Policy and Acceptable Use Policy at any time by posting a new version of either at the website, and such new version will become effective on the date it is posted.

8.6 – Miscellaneous. Customer shall not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance, under the Agreement, in each case whether voluntarily, involuntarily, by operation of law, or otherwise, without LeadSmart Tech’s prior written consent. The Agreement is binding upon and inures to the benefit of the parties hereto and their respective permitted successors and assigns. Any remedy of LeadSmart Tech’s set forth in the Agreement is in addition to any other that may be available to LeadSmart Tech at law, in equity, or otherwise. LeadSmart Tech’s failure to exercise or enforce any right or provision of the Agreement will not constitute a waiver of such right or provision. If any provision of the Agreement is held by a court of competent jurisdiction to be invalid, illegal, or unenforceable for any reason, such provision shall be eliminated or limited to the minimum extent possible, and the remaining provisions of the Agreement will continue in full force and effect. The relationship between the parties is that of independent contractors. Nothing contained in the Agreement shall be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment or fiduciary relationship between the parties. Unless the context otherwise requires, for purposes of this Agreement: (a) the words “include,” “includes,” and “including” are deemed to be followed by the words “without limitation”; (b) the word “or” is not exclusive; (c) the words “herein,” “hereof,” “hereby,” “hereto,” and “hereunder” refer to the Agreement as a whole; (d) words denoting the singular have a comparable meaning when used in the plural, and vice-versa; (e) the headings in the Agreement are for reference only and do not affect the interpretation of this Agreement; and (f) the parties intend this Agreement to be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted.

9.0 DEFINITIONS

The following capitalized terms will have the following meanings whenever used in this Agreement.

1. **“LeadSmart Tech”** refers to LeadSmart Technologies, LLC (a Nevada-based LLC).
2. **“LeadSmart”** refers to the LeadSmart proprietary software applications, features and tools that have been designed and developed by LeadSmart

Tech, and all Updates, new versions, revisions, improvements, and modifications of the foregoing, that LeadSmart Tech provides access to and use of as part of LeadSmart.

3. **“Salesforce Platform”** means the Salesforce Unified Platform Services cloud framework (formerly force.com) that is developed and owned by Salesforce.com.
4. **“Customer Data”** means data in electronic form input or collected through LeadSmart and/or the Salesforce Platform by or from Customer, including without limitation by Customer’s Users.
5. **“User”** means any individual who uses LeadSmart on Customer’s behalf or through Customer’s account or passwords, whether authorized or not.
6. **“Intellectual Property Rights”** means all forms of industrial and intellectual property rights and protections throughout the world, including any: (a) patents (including any patent applications, together with all reissuances, continuations, continuations-in-part, revisions, extensions, and reexaminations thereof); (b) copyrights; (c) Internet domain names, trademarks, service marks, and trade dress, together with all goodwill associated therewith; (d) trade secrets; (e) rights in databases and designs (ornamental or otherwise); (f) moral rights, rights of privacy, rights of publicity, and similar rights; and (g) any other proprietary rights and protections, whether currently existing or hereafter developed or acquired arising under statutory or common law, including all applications, disclosures, and registrations with respect thereto.
7. **“Access Credentials”** means any user name, identification number, password, license or security key, security token, PIN, or other security code, method, technology, or device used, alone or in combination, to verify an individual’s identity and authorization to access and use LeadSmart.
8. **“Harmful Code”** means any software, hardware, or other technology, device, or means, including any virus, worm, malware, or other malicious computer code, the purpose or effect of which is to (a) permit unauthorized access to, or to destroy, disrupt, disable, distort, or otherwise harm or impede in any manner any (i) computer, software, firmware, hardware, system, or network or (ii) any application or function of any of the foregoing or the security, integrity, confidentiality or use of any data Processed thereby, or (b) prevent Customer or any User from accessing or using LeadSmart as intended by this Agreement.
9. **“Process”** means to take any action or perform any operation or set of operations that LeadSmart are capable of taking or performing on any data, information, or other content, including to collect, receive, input, upload, download, record, reproduce, store, organize, compile, combine, log, catalog,

cross-reference, manage, maintain, copy, adapt, alter, translate, or make other derivative works or improvements, process, retrieve, output, consult, use, perform, display, disseminate, transmit, submit, post, transfer, disclose, or otherwise provide or make available, or block, erase, or destroy, and “Processing” and “Processed” have correlative meanings.

10. **“Aggregate Data”** refers to Customer Data with the following removed: personally identifiable information and the names and addresses of customers and any of its Users or compiled statistical and other information related to the performance, operation, and use of LeadSmart, and (b) use data from LeadSmart in aggregated form for security and operations management, to create statistical analyses, and for research and development purposes.