

Terms of Use

PURPOSE OF AGREEMENT

The Nimble online services (the “Services”) are made available to you by Nimble Software, LLC (“Nimble”) and are subject to the following Terms of Service (the “Terms”). Nimble Software may also offer other services under different terms of service.

DESCRIPTION OF SERVICE

Nimble provides users with access to an array of contact management, task management, CRM, social networking and unified messaging Nimble services to manage and enhance internal and external business relationships (the “Service” and “Services”). You may connect to the Services using any Internet browser. You are responsible for obtaining access to the Internet and the equipment necessary to use the Services.

MODIFICATION OF TERMS OF SERVICE

Nimble may modify the Terms upon notice to you at any time. These modifications may include, without limitation, payment terms for the Services. We shall notify you in this event. You will be provided the option to terminate your use of the Services if Nimble modifies the Terms in a manner that substantially affects your rights in connection with use of the Services. Your continued use of the Service after notice of any change to the Terms will be deemed to be your agreement to the amended Terms.

SUBSCRIBER REGISTRATION OBLIGATIONS

In consideration of your use of the Services, you agree to: (a) provide true, accurate, current and complete information about yourself as prompted by the Registration Process “Registration Data”) to sign up for a user account (the “Nimble Account”); and (b) maintain and promptly update your Registration Data to keep it true, accurate, current, and complete. If you provide any information that is untrue, inaccurate, outdated, or incomplete, or if Nimble has reasonable grounds to suspect that such information is untrue, inaccurate, outdated, or incomplete, Nimble has the right to suspend or terminate your Nimble Account and refuse current or future use of any or all of the Services. You may not register for or access the Services if you are a competitor of Nimble, except with Nimble’s express prior written consent. You may not use another person, entity, customer, Subscriber, company, or organization’s account without the express prior written permission of that party. You are solely responsible for maintaining the confidentiality of your Nimble Account and password and for restricting access to your computer, and you agree to accept responsibility for all activities that occur under your Nimble Account or password. If you have reason to believe that your Nimble Account is no longer secure, you agree to immediately notify Nimble. You may be liable for the losses incurred by Nimble or others due to any unauthorized use of your Nimble Account. In addition, you may not access the Service for purposes of monitoring its performance or functionality, or for any other competitive purposes.

SUBSCRIBER RESPONSIBILITIES

You are responsible for all activities occurring under your Nimble Account and shall abide by all applicable local, state, national and foreign laws, treaties and regulations in connection with your use of the Services, including those related to data privacy, international communications and the transmission of technical or personal data. You are solely responsible for your interactions with other subscribers to the Services (“Subscribers”). Nimble reserves the right, but has no obligation, to monitor disputes between you and other Subscribers. Nimble shall have no liability for your interactions with other Subscribers, or for any other Subscriber’s action or inaction.

PERSONAL INFORMATION AND PRIVACY

Personal information you provide to Nimble through the Service is governed by the Nimble Privacy Policy and applicable laws related to personal information. Your election to use the Services each time you log on to your Nimble Account indicates your acceptance of the terms of the then-current Nimble Privacy Policy. You are responsible for maintaining the confidentiality of your username, password and all other sensitive, confidential or

proprietary information relating to or used in connection with your Nimble Account. You are responsible for all activities that occur in your Nimble Account and you agree to notify Nimble immediately of any unauthorized use of your Nimble Account. Nimble is in no way responsible for any loss or damage to you or to any third party incurred as a result of any unauthorized access and/or use of your Nimble Account, or otherwise. You hereby represent and warrant to Nimble that you own or have all necessary right, title and interest in and to the use of all information which you use in connection with your Nimble Account and in the manner in which such information is being used by you.

COMMUNICATIONS FROM Nimble

The Service will include certain communications from Nimble, such as service announcements, administrative messages and e-newsletters. You understand that these communications sent to you and your colleagues who have been registered to Nimble by you or someone in your organization shall be considered part of using the Services. As part of our policy to provide you total privacy, we also provide you the option of opting out from receiving newsletter mails and from us. However, this may prevent us from providing effective Services to you.

FEES, PAYMENTS, AND TAXES

Nimble reserves the right at any time to modify fees for access to portions or whole of any or all of the Services. Currently we offer a limited free plan. However, such modified fees shall not be charged unless your agreement to pay such charges is obtained. Thus, if at any time Nimble requires a different fee for any of the Services, you will be given reasonable advance notice of such fees and the opportunity to cancel your membership before such charges are due to be imposed. If you elect not to pay such modified fees, Nimble shall have the right to cease providing some or all of such Service to you.

CANCELING AND TERMINATING THE NIMBLE SERVICES

You are solely responsible for properly canceling your Account with Nimble. A letter, email, or telephone request to cancel your Nimble account is not considered a cancellation of your account with Nimble. You can cancel your Nimble Service simply by clicking on the "Account tab" and then click the "Cancel my Account" link. All of your content will be instantly deleted from the Service upon cancellation. This information can not be recovered once your Account is canceled.

RESTRICTION OF USE

In addition to all other terms and conditions of these Terms, you shall not: (a) license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available to any third party the Services in any way; (b) copy, distribute, or disclose any part of the Services in any medium; (c) alter or modify the Services in any way without the prior written consent of Nimble; (d) reverse engineer, reverse assemble, reverse compile or otherwise attempt to create the source code from the Services, or interfere with, or compromise the system integrity or security of, or decipher any transmissions to or from the servers running the Services; (e) take any action that imposes, or may impose at our sole discretion an unreasonable or disproportionately large load on our infrastructure; (f) upload invalid data, viruses, worms, Trojan horses, or other harmful or disruptive codes, components, devices, or software agents through the Services; (g) impersonate another person or otherwise misrepresent your affiliation with a person or entity, conducts fraud, hide or attempt to hide your identity, or misrepresent the source or content of information transmitted through the Services; (h) use the Services in any unlawful manner or in any other manner that could damage, disable, overburden or impair the Nimble website or all or any portion of the Services; (i) bypass the measures Nimble may use to prevent or restrict access to the Services; (j) use any robot, spider, scraper, script, or other comparable automated technology to access the Services for any purpose without Nimble's express written permission; (k) gain unauthorized access to the Services, its user accounts, computer systems or networks through unauthorized means such as hacking or password mining; (l) collect or harvest any personally identifiable information, including account names, from the Services without first obtaining the express prior written permission of such party to use any such personally identifiable information; (m) use third party links to sites without agreeing to their website terms & conditions; and

(n) post links to third party sites or use their logo, company name, etc. in connection with the Services without first obtaining their express prior written permission. You shall: (A) notify Nimble immediately of any unauthorized use of any password or Nimble Account or any other known or suspected breach of security; (B) report to Nimble immediately and use reasonable efforts to stop immediately any copying or distribution of content that is known or suspected by you or other Subscribers to violate these Terms or the intellectual property rights of third parties; and (C) not impersonate another Subscriber or provide false identity information to gain access to or use the Services.

SPAMMING AND ILLEGAL ACTIVITIES

You agree to be solely responsible for the contents of your transmissions through the Services. You agree not to use the Services for illegal purposes or for the transmission of material that is unlawful, harassing, libelous, invasive of another person's privacy, abusive, threatening, harmful, vulgar, pornographic, obscene, or otherwise objectionable, contains viruses, or infringes or may infringe the intellectual property or other proprietary rights of another person. You agree not to use the Services for the transmission of "junk mail", "spam", "chain letters", or other unsolicited mass distribution of email or other unauthorized or unsolicited activity. Nimble reserves the right to terminate your access to the Services if Nimble believes that you have used the Services for any illegal or unauthorized activity.

DATA OWNERSHIP

We respect your right to exclusive ownership of your published and stored content in the Services, including but not limited to contact names, tasks, events, messages in the Services and posted to social networks, and related content created or stored by you and any type of data that identifies you or any specific customer or program, including but not limited to information about usage, account information, internal team members, or merchants in conjunction with you or your customers (the "Confidential Information"). Unless specifically permitted by you, your use of the Services does not grant Nimble the license to use, reproduce, adapt, modify, publish or distribute the Confidential Information content created by you or stored in your Nimble Account for Nimble's commercial, marketing or any similar purpose. You expressly grant Nimble the right to use and analyze aggregate system activity data associated with use of the Services by you and other subscribers for the purposes of optimizing, improving or enhancing the way the Services operate, and to create new features and functionality in connection with the Services in the sole discretion of Nimble.

USER-GENERATED CONTENT

You may transmit or publish content created by you using any of the Services or otherwise. However, you shall be solely responsible for such content and the consequences of its transmission or publication. Any content that you may receive from other users of the Services, is provided to you AS-IS for your information and personal use only and you agree not to use, copy, reproduce, distribute, transmit, broadcast, display, sell, license or otherwise exploit such content for any purpose, without the express written consent of the person who owns the rights to such content. In the course of using any of the Services, if you come across any content with copyright notice(s) or any copy protection feature(s), you agree not to remove such copyright notice(s) or disable such copy protection feature(s) as the case may be. By making any copyrighted/copyrightable content available on any of the Services you affirm that you have the consent, authorization or permission, as the case may be from every person who may claim any rights in such content to make such content available in such manner. Further, by making any content available in the manner described above, you expressly agree that Nimble shall have the right to immediately block access to or remove such content made available by you, if Nimble receives complaints concerning any illegality or infringement of third party rights in such content. By using the any of the Services and transmitting or publishing any content using the Services, you hereby expressly and irrevocably consent to determination of questions of illegality or infringement of third party rights in such content by the agent designated by Nimble for this purpose.

INTELLECTUAL PROPERTY RIGHTS

Nimble, both the word and mark, and the logos are trademarks of Nimble. You agree not to display or use, in any manner, the Nimble trademarks, without Nimble's express prior written consent. You acknowledge and agree that Nimble is and shall remain the exclusive owner of all right, title and interest in and to the Services, including without limitation all patent, copyright, trade secret, trademark and other intellectual property rights therein, including any optimizations, enhancements, modifications or additional features added from time to time by Nimble, whether in connection with your use or feedback or otherwise. Except for the right to use the Services strictly in accordance with these Terms, as amended or modified from time to time, no license or conveyance of any such proprietary rights to you is granted or implied under these Terms.

THIRD PARTY INTERACTIONS

During your use of the Services, you may enter into correspondence with, purchase goods and/or services from, or participate in promotions of third parties displaying their goods and/or services through the Services. Any such activity, and any terms, conditions, warranties or representations associated with such activity, is solely between you and the applicable third-party. Nimble and its licensors shall have no liability, obligation or responsibility for any such correspondence, purchase or promotion between you and any such third-party. Nimble and its licensors shall not be responsible for interruptions in service or performance from third parties, or any interruptions in the Services caused by such third party services. Nimble expressly does not endorse any sites on the Internet that are linked through the Services, and in no event shall Nimble or its licensors be responsible for any content, products, or other materials on or available from such third-party sites. Nimble provides the Services to you pursuant to the terms and conditions of these Terms. You recognize, however, that certain third-party providers of ancillary software, hardware or services may require your agreement to additional or different license or other terms prior to your use of or access to such software, hardware or services.

SUBSCRIBER ACCESS

By agreeing to these Terms, you will be provided access to the Services on the terms and conditioned outlined herein from time to time. Nimble reserves the right to deny Subscribers access to the Services from time to time in order to permit Nimble to perform routine or emergency maintenance, bug fixes or upgrades. Nimble shall use commercially reasonable efforts to notify Subscribers of anticipated material disruptions in the Services and shall make commercially reasonable efforts to schedule such activities at non-peak user hours. In addition, Nimble reserves the right, in its sole discretion, to reassign or rename your domain/profile URL. Nimble is not responsible for outages or service degradations where systems, programs, data, or processes that are controlled, supplied or operated by you are contributing factors to the outage or service degradation. In addition, where the Services are Internet-based, you acknowledge and agree that Nimble cannot control the flow of data between its servers, other portions of the Internet and your connections and computers. Such flow depends in large part on the performance of Internet services provided or controlled by third parties. At times, actions or inactions caused by these third parties can impair your connections to the Internet. Although Nimble will use its commercially reasonable efforts to take actions it deems appropriate to remedy and avoid such events, it cannot guarantee that they will not occur.

DISCLAIMER OF WARRANTIES

YOU EXPRESSLY UNDERSTAND, ACKNOWLEDGE AND AGREE THAT THE USE OF THE SERVICES IS AT YOUR SOLE RISK AND LIABILITY. THE SERVICES ARE PROVIDED ON AN AS-IS-AND-AS-AVAILABLE BASIS. Nimble EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. NIMBLE MAKES NO WARRANTY THAT THE SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE, OR VIRUS FREE. USE OF ANY MATERIALS DOWNLOADED OR OBTAINED THROUGH THE USE OF THE SERVICES SHALL BE AT YOUR OWN DISCRETION AND RISK AND YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM, MOBILE TELEPHONE, WIRELESS DEVICE OR DATA THAT RESULTS FROM

THE USE OF THE SERVICES OR THE DOWNLOAD OF ANY SUCH MATERIALS. NO ADVICE OR INFORMATION, WHETHER WRITTEN OR ORAL, OBTAINED BY YOU FROM NIMBLE, ITS EMPLOYEES OR REPRESENTATIVES SHALL CREATE ANY WARRANTY NOT OTHERWISE EXPRESSLY STATED IN THESE TERMS.

LIMITATION OF LIABILITY

YOU AGREE THAT NIMBLE SHALL, IN NO EVENT, BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE, OR OTHER LOSS OR DAMAGE WHATSOEVER OR FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, COMPUTER FAILURE, LOSS OF BUSINESS INFORMATION, OR OTHER LOSS ARISING OUT OF OR CAUSED BY YOUR USE OF OR INABILITY TO USE THE SERVICES, EVEN IF NIMBLE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. YOUR SOLE AND EXCLUSIVE REMEDY FOR ANY DISPUTE WITH NIMBLE RELATED TO ANY OF THE SERVICES SHALL BE TERMINATION OF SUCH SERVICES. IN NO EVENT SHALL NIMBLE'S LIABILITY TO YOU, WHETHER DIRECT OR INDIRECT, EXCEED THE FEES ACTUALLY PAID BY YOU TO NIMBLE FOR SUCH SERVICES IN THE SIX (6) MONTHS IMMEDIATELY PRECEDING THE EVENTS GIVING RISE TO THE CLAIM. YOU AGREE THAT THE FOREGOING IS AN AGREED ALLOCATION OF RISK AND IS A REFLECTION OF THE RIGHTS AND OBLIGATIONS AGREED UPON BY YOU AND NIMBLE IN THESE TERMS.

INDEMNIFICATION

You agree to indemnify and hold harmless Nimble, its officers, directors, employees, suppliers, and affiliates, from and against any losses, damages, fines and expenses (including attorney's fees and costs) arising out of or relating to any claims that you have used the Services in violation of another party's rights, in violation of any law, in violation of any provisions of the Terms, or in connection with any other claim related to your use of the Services.

ARBITRATION

Any controversy or claim arising out of or relating to the Terms shall be settled by binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association. Any such controversy or claim shall be arbitrated on an individual basis, and shall not be consolidated in any arbitration with any claim or controversy of any other party. The decision of the arbitrator shall be final and may not be appealed. The arbitration shall be conducted in California and judgment on the arbitration award may be entered into any court having jurisdiction thereof. Notwithstanding anything to the contrary, Nimble may at any time seek injunctions or other forms of equitable relief from any court of competent jurisdiction.

TERMINATION

You agree that Nimble may terminate your Nimble Account and access to the Services for reasons including, but not be limited to, breaches or violations of these Terms or the Nimble Privacy Policy, a request by you to terminate your Nimble Account, discontinuance or material modification to the Services, unexpected technical issues or problems, extended periods of inactivity and/or requests by law enforcement or other government agencies. Termination of your Nimble Account includes elimination of access to the Service, deletion of your Nimble Account information such as your e-mail, ID and password and the deletion of data in your Nimble Account as permitted or required by law.