



## Terms of Service

EFFECTIVE DATE: November 14, 2019

These Terms of Service along with Nimble's [Privacy Policy](#), incorporated herein, constitute an agreement ("Agreement") by and between Nimble, Inc. ("us", "we", "our", "Nimble", or "Company") and you, a registering customer ("you", "your", "user(s)", "Customer(s)") of any services, applications, widgets, mobile applications and software made available by Nimble, Inc.

### **PURPOSE OF AGREEMENT**

The Nimble Services are made available to Customer by Nimble and are subject to the following Terms of Service (the "Terms") and [Privacy Policy](#) ("Privacy Policy"). Nimble may also offer other services under different terms of service.

### **DESCRIPTION OF SERVICE(S)**

Nimble provides Customer with access to an array of contact management, task management, CRM, social networking and unified messaging services, available both via electronic internet access and mobile access via the Nimble iOS and Android applications, to manage and enhance internal and external business relationships ("Service(s)"). Customer may connect to the Services using any Internet browser or utilizing the Nimble iOS or Android mobile applications. Customer is responsible for obtaining access to the Internet and the equipment necessary to use the Services. Customer is responsible for any fees, data charges or surcharges that may be assessed by Customer's individual mobile data carrier incurred in connection with Customer's use of the Services.

### **LIMITED LICENSE GRANT**

Nimble hereby grants to Customer a nonexclusive, nonassignable, nonsublicensable limited license, for Customer's use only, for the term of this Agreement, to access and use the Services and any user's guides, specifications, and other related documentation available online (the "Documentation"), subject to the terms and conditions of this Agreement. The licenses granted herein are conditioned upon timely payment in full, monthly or annually, for the Services in advance of Customer's access to, continued use of or receipt of the Services.

### **MODIFICATION OF TERMS OF SERVICE**

Nimble may update, amend, modify, or supplement the Terms at any time ("Updated Terms"). Updated Terms will be posted on Nimble's website and Nimble will use reasonable efforts to notify Customer of any Updated Terms. Customer will be provided the option to terminate Customer's use of the Services if Nimble updates the Terms in a manner that substantially affect Customer's rights in connection with use of the Services. Customer's continued use of the Services after posting of the Updated Terms on Nimble's website will be deemed to be Customer's agreement to the updated Terms.

### **CUSTOMER REGISTRATION OBLIGATIONS**

In consideration of Customer's use of the Services, Customer agrees to: (i) provide true, accurate, current and complete information about Customer's self, including but not limited to contact information, as prompted by the Registration Process ("Registration Data") to sign up for a user account (the "Nimble Account"), which may be either a single user Individual Account or a multi user Team Account; and (ii) maintain and promptly update Customer's Registration Data to keep it true, accurate, current and complete. If Customer provides 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 Customer's Nimble Account and refuse current or future use of any or all of the Services. Customer may not use another person's, entity's, customer's, subscriber's, company's, or organization's account without the express prior written permission of that party. Customer is solely responsible for maintaining the confidentiality of Customer's Nimble Account and password and for restricting access to Customer's computer and/or mobile device, and Customer agrees to accept responsibility for all activities that occur under Customer's Nimble Account username or password. If Customer has reason to believe that Customer's Nimble Account is no longer secure, Customer agrees to immediately notify Nimble. Customer may be liable for the losses incurred by Nimble or others due to any unauthorized use of Customer's Nimble Account.

## **PROHIBITED ACTS & CUSTOMER RESPONSIBILITIES**

Customer is responsible for all activities occurring under Customer's Nimble Account and shall abide by all applicable local, state, national and foreign laws, treaties and regulations in connection with Customer's use of the Services, including those related to data privacy, international communications and the transmission of technical or personal data. Customer is solely responsible for Customer's interactions with other subscribers to the Services ("Subscribers"). Customer will not use Nimble in a manner or in connection with activity that violates a third party's rights or intellectual property. Nimble reserves the right, but has no obligation, to monitor disputes between Customer and other Subscribers. Nimble reserves the right to remove any Customer or Subscriber from the Service without a refund who violates these Terms of Service, in the sole discretion of Nimble. If Customer resides in a country embargoed by the United States, Customer agrees Customer will not engage in commercial activities or operate or develop an application in connection with or using the Services. If Customer resides outside of the United States, Customer agrees and consents to transmitting their data, content, Registration Data, Contact Information, and Confidential Information to the United States and consents and agrees to such data, content, Registration Data, Contact Information, and Confidential Information to be stored in the United States. Customer will not upload or use in connection with Services malicious code, malware, viruses, spyware, adware or bots. Customer will not use, associate or link the Services in connection with a website or content including any of the following: (i) racial, ethnic, gender, age, religious, political, or sexual orientation discrimination; (ii) investment or business opportunities or advice prohibited by law; (iii) obscenity, profanity, or pornography; (iv) defamatory, abusive or threatening language, images or content; (v) promotion of illegal substances or narcotics, gambling, or other criminal conduct; (vi) pirating software or media (vii) hacking, spoofing, phishing or phreaking. In addition, Customer may not access the Services for purposes of monitoring its performance or functionality, or for any other competitive purposes. Nimble shall have no liability for Customer's interactions with other Subscribers, or for any other Subscriber's action or inaction.

## **API TERMS**

Customer may access their data from the Services, via use of the Application Program Interface (API). Any use of the Nimble API, including but not limited to access of the API via a third party application is specifically bound and subject to the terms and conditions herein. Without limiting the foregoing, Customer specifically agrees to be bound to the following terms regarding Nimble API use:

- a) **CUSTOMER EXPRESSLY AGREES THE NIMBLE API WILL BE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS;**
- b) **CUSTOMER EXPRESSLY AGREES 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, LOSS OF DATA, MISAPPROPRIATION OF DATA, BREACH OF DATA SECURITY, BUSINESS INTERRUPTION, COMPUTER FAILURE, LOSS OF BUSINESS INFORMATION, OR OTHER LOSS ARISING OUT OF OR CAUSED BY CUSTOMER'S USE OF THE NIMBLE API, EITHER DIRECTLY OR VIA A THIRD-PARTY APPLICATION.**



- c) **NIMBLE EXPRESSLY RESERVES THE RIGHT AT ANY TIME, IN ITS SOLE DISCRETION, TO REVOKE PERMISSION, MODIFY OR DISCONTINUE THE AVAILABILITY OF THE NIMBLE API, IN WHOLE OR IN PART, TO ANY CUSTOMER, WITH OR WITHOUT NOTICE.**
- d) **ANY ABUSE OF THE NIMBLE API OR EXCESSIVE USE OF THE API BANDWIDTH (TO BE DETERMINED IN THE SOLE DISCRETION OF NIMBLE) WILL RESULT IN THE IMMEDIATE SUSPENSION OF CUSTOMER'S ACCOUNT WITHOUT NOTICE.**

## **TEAM ACCOUNTS**

A Team Account shall be defined as two or more Customers accessing the same Nimble Account. Team Accounts may be purchased by a company or an individual for the purpose of adding numerous Customers together under one common Nimble Team Account. Customer acknowledges and agrees that all data linked or uploaded by each Customer to a Team Account is accessible by all Customers who have access to the same Team Account. Customer acknowledges and agrees that by updating data, importing data or linking third party sites or applications to a Team Account, Customer grants access and visibility to such data to each Customer of such Team Account. Customer acknowledges and agrees that all contact information, data or content uploaded, including but not limited to customer lists, email addresses, phone numbers, physical addresses of Customer or others, imported, or otherwise linked to a Nimble Account ("Contact Information"), is shared with all Customers of such Nimble Account, which may be a Team Account. Customer acknowledges and agrees that linking third party sites, applications or contact information or data, may share otherwise private communications with other Customers of such Team Account. If the registered owner ("Administrator") of the Team Account deletes a Customer from the common Team Account, the Team Account database is altered and all communication associated with such deleted Customer will be removed, however Customer agrees that imported or linked Contact Information will not be removed from the common Team Account.

## **PERSONAL INFORMATION AND PRIVACY**

Personal information, including Registration Data, Customer provides to Nimble through the Services is governed by the [Privacy Policy](#) and applicable laws related to personal information. Customer acknowledges and agrees that Nimble aggregates all Contact Information provided by Customer. Such Contact Information is downloadable by Customer into a single file. Customer understands and agrees that within a Team Account all Contact Information linked to or uploaded to a Team Account is visible and downloadable by any Customer of the Team Account. Customer's election to use the Services each time Customer logs on to Customer's Nimble Account functions as Customer's acceptance of the terms of the then-current [Privacy Policy](#). Customer acknowledges and Customer agrees that Customer is responsible for maintaining the confidentiality of Customer's username, password and all other sensitive, confidential or proprietary information relating to or used in connection with Customer's Nimble Account. Customer agrees that Customer is responsible for all activities that occur in Customer's Nimble Account and Customer agrees to notify Nimble immediately of any unauthorized use of Customer's Nimble Account. Nimble is in no way responsible for any loss or damage to Customer or to any third party incurred as a result of any unauthorized access and/or use of Customer's Nimble Account, or otherwise. Customer hereby represents and warrants to Nimble that Customer owns or has all necessary right, title and interest in and to the use of all information which Customer uses in connection with Customer's Nimble Account and in the manner in which such information is being used by Customer, including but not limited to all Contact Information.

If Customer uploads, sends, transmits any Contact Information through the Services and Customer's use of the Services involves transferring such information outside the European Economic Area or Switzerland ("Transferred Information") to any country not deemed by the European Commission as providing an adequate level of protection for personal data, the terms of the [Data Processing Addendum](#) available at <https://www.nimble.com/company/terms-of-service/data-processing-addendum/> shall apply to such Transferred Information and are incorporated into the Terms. Customer's Transferred Information



shall be hosted and stored by Nimble or its third-party service providers in the United States. In providing the Services, Nimble may engage sub-processors to process Transferred Information, including, without limitation, any associated Personal Information pursuant to this Agreement within the European Economic Area, the United States and in other countries and territories. Under no circumstances will Nimble be deemed a data controller with respect to Transferred Information under the General Data Protection Regulation (EU) 2016/679 (GDPR) or any relevant or replacement law or regulation of any Member State as defined therein. "Personal Information" means any Contact Information processed by Nimble pursuant to the Agreement, relating to an identified or identifiable natural person; where an "identifiable natural person" means an individual who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to the individual's physical, physiological, mental, economic, cultural or social identity.

## **COMMUNICATIONS FROM NIMBLE**

The Services will include certain communications from Nimble, such as service announcements, administrative messages and e-newsletters. Customer understands that these communications sent to Customer shall be considered part of using the Services. As part of our commitment to Customer's privacy, Customer may choose to not receive certain promotional communications from Nimble by updating notifications preferences within Customer's Nimble Account.

## **TRIALS, FEES, PAYMENTS, AND TAXES**

**Trials.** Customer may register for a free trial of the Services and Nimble will make the Services available on a trial basis at no cost until the earlier of: (i) the end of the trial period; or (ii) upon purchase of any Premium Services by Customer. Customer may use the Services offered for a free trial without any obligation to purchase Premium Services. Customer may cancel Customer's Nimble Account at any time during the trial period by following the steps described in more detail in paragraph Canceling and Terminating Nimble Services. If Customer does not purchase Premium Services or cancel the Nimble Account by the end of the trial period, Customer's Nimble Account will be suspended and will be marked for deletion from Nimble servers. Customer may restore a suspended Nimble Account within sixty (60) calendar days of suspension by purchasing Premium Services. If Customer's Nimble Account remains in suspended status for sixty (60) calendar days, all of Customer's content and data, including but not limited to Contact Information, will be deleted from Nimble servers. This information cannot be recovered once deleted.

**Premium Services.** Nimble reserves the right at any time to assess fees for access, to portions of or in its entirety, any or all of the Services and to modify such fees. Customer may review Nimble's current pricing for Premium Services at the following link <https://www.nimble.com/pricing/>. Such fees shall not be charged unless Customer's agreement to pay such fees is obtained. If Customer purchases a premium Nimble Account that is offered by Nimble for a fee or adds additional services which are not part of the Nimble Account ("Premium Services") and such transaction is confirmed by Customer, Customer agrees to pay the applicable fees for the Premium Services (including, without limitation, periodic fees for upgrades and changes) as they become due plus all related taxes, if applicable, and hereby authorizes Nimble to assess a monthly or annual recurring automatic payment transaction which will be assessed to the payment form provided by Customer at the time of Premium Service registration. Team Accounts will be billed for all Customers invited to join the Team Account regardless of the response to such invitation, acceptance or denial. If Customer elects not to pay such fees, Nimble shall have the right to cease providing some or all of such Service to Customer. Customer agrees and acknowledges that Nimble's payment processor, an independent contractor, stores Customer's payment information.

**NO REFUNDS.** Nimble employs a NO REFUNDS policy, regardless of use of the Services. ALL SALES ARE FINAL. Customer agrees and acknowledges that Customer's obligation to pay fees continues through



the end of the billing period, monthly or annual, during which Customer cancels Customer's Premium Services.

**Past Due.** If Customer's Nimble Account is in past due status due to non-payment, Nimble will notify Customer or Administrator of Team Accounts in writing of account's past due status. If payment is not received by Nimble within ten (10) calendar days, Customer's access to Customer's Nimble Account will be restricted. If Customer's Nimble Account remains in past due status for a period of thirty (30) calendar days, Customer's Nimble Account will be suspended and will be marked for deletion from Nimble servers. Customer may restore a suspended Nimble Account within sixty (60) calendar days of suspension by paying for the past due balance on the Nimble Account. If Customer's Nimble Account remains in suspended status for sixty (60) calendar days, all of Customer's content and data, including but not limited to Contact Information, will be deleted from Nimble servers. This information cannot be recovered once deleted.

**Payment Disputes.** All payment disputes must be submitted in writing to Nimble at [billing@nimble.com](mailto:billing@nimble.com), within thirty (30) days of the occurrence of such disputed charge. CUSTOMER WAIVES ALL CLAIMS ARISING IN CONNECTION TO PAYMENTS CHARGED TO CUSTOMER'S ACCOUNT IF CUSTOMER FAILS TO FILE A CLAIM WITH NIMBLE IN WRITING TO [BILLING@NIMBLE.COM](mailto:BILLING@NIMBLE.COM) WITHIN THIRTY (30) DAYS OF THE OCCURRENCE OF SUCH DISPUTED CHARGE.

## **CANCELING AND TERMINATING NIMBLE SERVICES**

Customer is solely responsible for properly canceling Customer's Nimble Account with Nimble. A letter, email, or telephone request to cancel Customer's Nimble Account is not considered a cancellation of Customer's account with Nimble. Customer can cancel Customer's Nimble Account at any time simply by clicking on the Settings >> My Account and select "Delete Account" within Customer's Nimble Account. Upon cancellation of a Nimble Account, all of Customer's content and data, including but not limited to Contact Information, will be deleted from Nimble servers. This information cannot be recovered once deleted.

## **RESTRICTION OF USE**

In addition to all other terms and conditions of these Terms, Customer shall not: (i) license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available to any third party the Services in any way; (ii) copy, distribute, or disclose any part of the Services in any medium; (iii) alter or modify the Services in any way without the prior written consent of Nimble; (iv) 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; (v) take any action that imposes, or may impose at our sole discretion an unreasonable or disproportionately large load on our infrastructure; (vi) upload invalid data, viruses, worms, Trojan horses, or other harmful or disruptive codes, components, devices, or software agents through the Services; (vii) impersonate another person or otherwise misrepresent Customer's affiliation with a person or entity, conducts fraud, hide or attempt to hide Customer's identity, or misrepresent the source or content of information transmitted through the Services; (viii) 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; (ix) bypass the measures Nimble may use to prevent or restrict access to the Services; (x) use any robot, spider, scraper, script, or other comparable automated technology to access the Services for any purpose without Nimble's express written permission; (xi) gain unauthorized access to the Services, its user accounts, computer systems or networks through unauthorized means such as hacking or password mining; (xii) 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; (xiii) use third party links to sites without agreeing to their website terms & conditions; and (xiv) 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. Customer shall: (i) notify Nimble immediately of any unauthorized use of any password or Nimble Account or any other known or



suspected breach of security; (ii) report to Nimble immediately and use reasonable efforts to stop immediately any copying or distribution of content that is known or suspected by Customer or other Subscribers to violate these Terms or the intellectual property rights of third parties; and (iii) not impersonate another Subscriber or provide false identity information to gain access to or use the Services.

## **SPAMMING AND ILLEGAL ACTIVITIES**

Customer agrees Customer is solely responsible for the contents of Customer's transmissions through the Services. Customer agrees 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. Customer agrees 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 Customer's access to the Services if Nimble believes that Customer has used the Services for any illegal or unauthorized activity.

## **DATA OWNERSHIP**

We respect Customer's right to exclusive ownership of Customer's published and stored content in the Nimble Account, including but not limited to contact names, tasks, events, messages in the Nimble Account and posted to social networks, and related content created or stored by Customer and any type of data that identifies Customer or any specific customer or program, including but not limited to information about usage, account information, internal team members, or merchants in conjunction with Customer or Customer's customers, Contact Information (the "Confidential Information"). Unless specifically permitted by Customer, Customer's use of the Services does not grant Nimble the license to use, reproduce, adapt, modify, publish or distribute the Confidential Information content created by Customer or stored in Customer's Nimble Account for Nimble's commercial, marketing or any similar purpose. Customer expressly grants Nimble the right to use and analyze aggregate system activity data associated with use of the Services by Customer 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.

## **SUBSCRIBER-GENERATED CONTENT**

Customer may transmit or publish content created by Customer using any of the Services or otherwise. However, Customer shall be solely responsible for such content and the consequences of its transmission or publication. **ANY CONTENT THAT CUSTOMER MAY RECEIVE FROM OTHER SUBSCRIBERS OF THE SERVICES, IS PROVIDED TO CUSTOMER AS-IS FOR CUSTOMER'S INFORMATION AND PERSONAL USE ONLY AND CUSTOMER AGREES 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 Customer comes across any content with copyright notice(s) or any copy protection feature(s), Customer agrees 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 Customer affirms that Customer has 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, Customer expressly agrees that Nimble shall have the right to immediately block access to or remove such content made available by Customer, 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, Customer hereby expressly and irrevocably consents 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. Customer agrees not to display or use, in any manner, the Nimble trademarks, without Nimble's express prior written consent. Customer acknowledges and agrees 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 Customer's 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 Customer is granted or implied under these Terms.

## **THIRD PARTY INTERACTIONS**

During Customer's use of the Services, Customer 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 Customer and the applicable third-party and is governed by any terms, rules, regulations and policies of such third party. Nimble and its licensors shall have no liability, obligation or responsibility for any such correspondence, purchase or promotion between Customer 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 Customer pursuant to the terms and conditions of these Terms. Customer recognizes, however, that certain third-party providers of ancillary software, hardware or services may require Customer's agreement to additional or different license or other terms prior to Customer's use of or access to such software, hardware or services.

## **CUSTOMER ACCESS**

By agreeing to these Terms, Customer will be provided access to the Services on the terms and conditions outlined herein from time to time. If necessary, Nimble reserves the right to deny Customer's access to the Services from time to time in order to permit Nimble to perform routine or emergency maintenance, bug fixes or upgrades, in which event, Customer authorizes Nimble to access Customer's Nimble Account. Nimble shall use commercially reasonable efforts to notify Customer 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 Customer's 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 Customer are contributing factors to the outage or service degradation. In addition, where the Services are Internet-based, Customer acknowledges and agrees that Nimble cannot control the flow of data between its servers, other portions of the Internet and Customer's 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 Customer's 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**

**CUSTOMER EXPRESSLY UNDERSTANDS, ACKNOWLEDGES AND AGREES THAT THE USE OF THE SERVICES IS AT CUSTOMER'S 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 CUSTOMER'S OWN DISCRETION AND RISK AND CUSTOMER WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO CUSTOMER'S 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 CUSTOMER FROM NIMBLE, ITS EMPLOYEES OR REPRESENTATIVES SHALL CREATE ANY WARRANTY NOT OTHERWISE EXPRESSLY STATED IN THESE TERMS.**

#### **LIMITATION OF LIABILITY**

**CUSTOMER AGREES 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 CUSTOMER'S USE OF OR INABILITY TO USE THE SERVICES, EVEN IF NIMBLE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. CUSTOMER'S 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 CUSTOMER, WHETHER DIRECT OR INDIRECT, EXCEED THE FEES ACTUALLY PAID BY CUSTOMER TO NIMBLE FOR SUCH SERVICES IN THE SIX (6) MONTHS IMMEDIATELY PRECEDING THE EVENTS GIVING RISE TO THE CLAIM. CUSTOMER AGREES THAT THE FOREGOING IS AN AGREED ALLOCATION OF RISK AND IS A REFLECTION OF THE RIGHTS AND OBLIGATIONS AGREED UPON BY CUSTOMER AND NIMBLE IN THESE TERMS.**

#### **INDEMNIFICATION**

Customer agrees 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 Customer has 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 Customer's 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**

Customer agrees that Nimble may terminate Customer's Nimble Account and access to the Services for reasons including, but not be limited to, breaches or violations of these Terms or the [Privacy Policy](#), a request by Customer to terminate Customer's 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, and for non-payment for Premium Services. Termination of Customer's Nimble Account includes elimination of access to the Service, deletion of Customer's Nimble





Account, deletion of all of Customer's content and data, including but not limited to Contact Information, as permitted or required by law.

## MISCELLANEOUS

**Assignability.** Customer may not assign or transfer this Agreement, in whole or in part, by operation of law or otherwise, or its rights or obligations hereunder without Nimble's express prior written consent. Any attempt to assign or transfer this Agreement, without such consent, will be null and of no effect. Subject to the foregoing, this Agreement will bind and inure to the benefit of each party's permitted successors and assigns.

**Governing Law and Jurisdiction.** This Agreement will be governed by and construed in accordance with the laws of the State of California excluding that body of laws known as conflicts of law.

**Severability.** If for any reason a court of competent jurisdiction finds any provision of this Agreement invalid or unenforceable, that provision of the Agreement will be enforced to the maximum extent permissible and the other provisions of this Agreement will remain in full force and effect.

**Waiver.** The failure by either party to enforce any provision of this Agreement will not constitute a waiver of future enforcement of that or any other provision. Except as expressly set forth in this Agreement, the exercise by either party of any of its remedies under this Agreement will be without prejudice to its other remedies under this Agreement or otherwise.

**Notices.** Any notices or other communications provided under this Agreement will be given: (i) via email; or (ii) by posting such notice on Nimble's website or to the Services. For notices given by email, the date of receipt will be deemed the date on which such notice is transmitted.

**Force Majeure.** Neither party will be responsible for any failure or delay in its performance under this Agreement (except for any payment obligations) due to causes beyond its reasonable control, including, but not limited to, labor disputes, strikes, lockouts, shortages of or inability to obtain energy, raw materials or supplies, war, terrorism, riot, or acts of God.

## ACCEPTANCE

BY CLICKING THE "ACCEPT" BUTTON OR CHECKING THE "ACCEPT" BOX OR OTHER MEANS PROVIDED FOR ACCEPTANCE YOU: (i) REPRESENT THAT YOU ARE DULY AUTHORIZED BY CUSTOMER TO ACCESS AND USE THE SERVICES; AND (ii) ACCEPT THESE CUSTOMER TERMS OF SERVICE AND AGREE THAT YOU ARE LEGALLY BOUND BY THEM. IF YOU DO NOT AGREE TO THESE TERMS OF USE, DO NOT CLICK THE "ACCEPT" BUTTON OR CHECK THE "ACCEPT" BOX OR OTHER MEANS PROVIDED FOR ACCEPTANCE AND YOU WILL HAVE NO LICENSE TO, AND MUST NOT ACCESS OR USE, THE SERVICE.