

CLIMB CLOUD SERVICES GENERAL TERMS OF SERVICE

Last Modified: 5/21/2021

THESE GENERAL TERMS OF SERVICE (the “**Terms of Service**” or “Agreement”) are entered into effective as of the date on which You accept this Agreement (the “**Effective Date**”), by and between Climb Channel Solutions, a New Jersey corporation (“**Climb Channel Solutions**”, “Climb”, “We”, “we”, “Us” or “us”), and you and/or the entity you represent as signed below (“**You**”, “**Your**”). Climb and You may be individually referred to herein as a “**Party**” and collectively referred to as the “**Parties**.”

This Agreement includes the terms and conditions surrounding Your use of Climb's Cloud Marketplace website (the “**Site**”), including any use or ordering of the products and services purchased or accessed through the Site (collectively the “**Services**”). Services include any software contained within or used in connection with the Services. BY USING THE SITE, INCLUDING ORDERING, RESELLING, OR USING ANY OF THE SERVICES, YOU ACKNOWLEDGE AND AGREE TO THIS AGREEMENT, AND YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BE LEGALLY BOUND BY THIS AGREEMENT AND TO LEGALLY BIND YOUR COMPANY TO THIS AGREEMENT. THE TERMS “YOU” AND “YOUR” SHALL REFER TO YOUR COMPANY AND TO YOU IN CONNECTION WITH YOUR USE AS A USER ON BEHALF OF YOUR COMPANY. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, NEITHER YOU NOR YOUR COMPANY MAY USE THE SITE OR ANY SERVICE.

BY USING THE SITE INCLUDING ORDERING, RESELLING, OR USING ANY OF THE SERVICES, YOU ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTAND, AND INTEND TO BE BOUND BY ALL OF THE TERMS, CONDITIONS, AND NOTICES CONTAINED HEREIN, AS WELL AS THE TERMS, CONDITIONS, AND NOTICES CONTAINED IN THE POLICIES POSTED ON THE SITE (THE “CLIMB POLICIES”), JUST AS IF YOU HAD SIGNED THIS AGREEMENT. If You do not accept this Agreement or the Climb Policies, are not licensed or otherwise permitted to use the Services, then You may not use the Site.

These terms are in addition to any terms and conditions that apply to particular Services or the Site, including any other Climb or Third Party Vendor Service Level Agreements, terms of service and use agreements and other policies such as the Acceptable Use Policy (“**AUP**”), that are incorporated by reference in this Agreement and available on the applicable Third Party Vendor site.

Climb may at any time modify the terms and conditions of this Agreement, or any part thereof, or may impose new conditions to use of the Services. Except as otherwise stated herein, any modification to this Agreement shall be effective immediately after it initially is posted on the Site. Use of the Service after any such modification will be conclusively deemed acceptance of such modification. If any modification is unacceptable, You may terminate this Agreement, subject to the terms and conditions contained herein. The Agreement may not otherwise be amended except in a writing signed by You and by a representative of Climb.

For clarity, You agree that the terms of use for any Third Party Services shall exclusively be as set forth by the applicable Third Party Vendor. While Climb may facilitate resolution of disputes between You and Third-Party Vendors, You agree that Climb Channel Solutions is not responsible nor liable for any Services provided by Third Party Vendors.

If Climb Channel Solutions determines, in its sole and absolute discretion, that You may have violated this Agreement, Climb may in its discretion temporarily or permanently prevent You from using the Site and Services, cancel the Services without a refund and, if appropriate, pursue legal action against you. In addition, You may be subject to civil or criminal penalties and/or injunctive relief.

1. DEFINITIONS

“**Climb**” refers to Climb Channel Solutions, Inc., a New Jersey corporation.

“**Services**” refers to the two categories of Services available on the Site: (a) Services that are developed by and licensed to end users by Climb (“**Climb Service**”); and (b) Services that are developed and licensed to end users by a third-party vendor (such vendors are referred to in this Agreement as a “**Third Party Vendor**” and their Services are referred to as “**Third Party Vendor Services**”).

“**Service Level Agreement**” means all service level agreements that we offer with respect to the Services and posted on the Site, as they may be updated by us from time to time. The service level agreements we currently offer with respect to the Services are located [here](#).

“**Terms**” refers to the terms of this Agreement as well as the additional terms, conditions and policies related to the Services posted on [online on our website](#) or a third-party vendor’s website.

“**User**” or “**customer**” refers to end users of the Services who purchase such Services through a Climb Channel Solutions Reseller.

“**You**” or “**Your**” in this Agreement refers to any individual or entity who accepts this Agreement, has access to Your account, uses the Services or the Site, or orders the Services, and includes both end users of the Services as well as Climb Resellers (defined below).

2. CLIMB CHANNEL SOLUTIONS RESELLERS

If You are an authorized reseller customer of Climb Channel Solutions or one of Climb's affiliates (“**Climb Reseller**”), and unless otherwise agreed to in a separate written agreement between us in respect of Services, You agree that Climb's sales terms and conditions set forth at www.ClimbCS.com, as modified by this Agreement, govern Your purchase of Services for resale by You to Your customers as well as use of the Site by You or Your customers.

Please note that while Your reseller account may have been set up with a Climb local affiliate, when You purchase Services on the Site, these sales occur through the Climb Channel Solutions entity described in the definitions section above.

As a Climb Reseller, You acknowledge that You are responsible for the acts or omissions of Your customers that use the Site or the Services and confirm that You have disclosed and that Your customers have agreed to their responsibilities and obligations under this Agreement. If You become aware that any customer is violating its obligations under this Agreement, You will immediately notify Climb Channel Solutions. You agree that the financial arrangement between You and Climb Channel Solutions is NOT a paid when paid arrangement i.e. failure of Your customers to pay for Services purchased will not relieve You of Your obligation to timely pay Climb for the Services ordered by or through you. You are responsible for providing Service support to Your customers.

3. SERVICE END USERS

If You are an end user of the Services, You acknowledge and agree that You must first contact Your Climb Reseller or its designated representative with regard to any Service issues, including any issues with support or payment.

4. AUTHORITY

The Site and the Services are only available to users who are authorized to form legally binding contracts under applicable laws in the jurisdictions in which the Services are offered.

5. USE, FEES, PAYMENT TERMS AND TAXES

(a) **USE OF SERVICE(S).** Climb Channel Solutions will specify the term of authorized use of the Service(s), the fees and other charges for the Service(s), any special payment terms, the scope of use, and the numbers, types and identifiers of permitted users, applications, servers, devices, capacity and locations at or through which You are permitted to use the Service(s) in Your order. You may not use or otherwise access the Service(s) in a manner that exceeds Your authorized use. If You exceed Your authorized i.e. permitted, use of the Service(s), then, You will promptly notify Climb and immediately: (i) disable or correct impermissible use; or (ii) purchase additional Service(s) to correspond to actual use. You agree that Climb may review Your use of the Service(s), and You will provide any reasonable assistance to verify Your compliance with this Agreement. Climb may suspend or terminate Your use of the Service(s) immediately upon written notice of non-compliance identified in such review, in addition to exercising any other rights or remedies Climb Channel Solutions may have.

(b) FEES AND PAYMENT TERMS.

- 1) **Climb Resellers:** If You are a Climb Reseller, You agree to the following terms set forth in this section. Payment may be accepted by methods made available by Climb from time to time, including credit card, wire transfer, PayPal or ACH. You agree to pay the fees and charges for the Services as outlined in the registration process and that appear on the Site, as may be amended from time to time. You acknowledge that fees and charges for Services You purchase may, as a result of foreign currency exchange fluctuation, be adjusted during the term of Your subscription, at Climb's sole discretion. Therefore, the amount You pay for the Services may vary from time to time during the term of your Subscription, even though You may purchase Services in advance for a fixed term. Fees and charges for Services are non-refundable. Charges may include, but are not limited to: (i) subscription fees for the relevant service; (ii) domain registration and renewal fees; (iii) SSL certificate fees; (iv) additional features fees; (v) disk space or bandwidth fees; (vi) additional e-mail accounts fees; (vii) internet access subscription fees; (viii) any applicable internet access roaming charges; and (ix) any applicable taxes. Climb will notify You of any such changes by updating the Site or sending notice by e-mail or regular mail.

You must pay in advance for Your customer's use of the Services, unless otherwise agreed to by Climb. You authorize Climb to charge any amounts payable by You, in connection with Your customer's use of the Services, automatically using the payment method you selected during the registration process or such payment information that You provide thereafter, regardless of the status of Your account with Climb and subject only to the terms and conditions of the agreement between You and Your payment processing provider. Your right to order the Services is subject to any limits established by Your credit card or other payment processing issuer. For any and all credit card chargebacks, Climb may charge You an administration fee equivalent to the greater of 5% of the chargeback or \$25 USD. In respect of all valid credit cards that You provide Climb for the purpose of payment, if You do not notify Climb prior to the expiration date of such credit card, Climb will automatically update the expiration date of the credit card on Climb's own internal system to the next year in order to prevent any undesired interruption of Services.

If Climb waives the requirement for You to pay in advance, You must pay within 30 days of the date of the invoice issued by Climb, or within such other time as indicated on the invoice, and You must pay via wire transfer, ACH or such other electronic payment method deemed acceptable by Climb. Climb may charge You 1.5% per month for late payments. In no event will Climb extend more than \$5,000 to you, unless otherwise agreed to in writing. Climb may require You to provide credit card information as backup for payment in case You do not pay within the time indicated on the invoice and in such case, Climb may automatically charge Your credit card for such outstanding amounts and may charge You a one-time processing fee of 3.5%.

Climb may, in its sole discretion, charge amounts payable by You in USD or in in Your local currency.

If You fail to make timely payment You agree that Climb may, in addition to all other rights and remedies provided to Climb hereunder or at law, terminate or suspend the affected Service(s).

Climb will charge You a reactivation fee of \$19.95 USD for each cancelled customer account. Climb will assess You a \$99.95 USD fee if Climb is required to restore Your data files to Your reactivated account(s). Wire transfers should include any additional processing fees that may apply, particularly international wire transfers. You are responsible to ensure these additional fees, if any, are added to the wire transfer submitted to us. An account split fee of \$19.95 USD will apply if You split existing accounts into new accounts. Climb will apply this fee to the new account(s) created.

You are responsible for billing and collecting any payments for Services from Your customers. To the extent Climb provides You with payment frequency options, You agree that You will extend the payment frequency option that You choose to Your customers.

If at any time Your fees are more than ninety (90) days in arrears, Climb, in its sole and absolute discretion, may deem that You have abandoned the Service and Your customers and Climb reserves the right to terminate Your customer accounts with cause and assume ownership of Your customers directly, without any financial consideration, penalty, damages or relief to You whatsoever. Climb may immediately assume the billing and support relationship with Your Service customers directly. Climb may also establish a direct relationship with Your customers in the event You or Climb terminates Your Climb Reseller account and without any financial consideration, penalty, damages or relief to You whatsoever.

Quoted prices, including discount structure, are subject to change without notice.

2) End Users: If You are an end user of the Services purchasing the Services from a Climb Channel Solutions Reseller, Your Climb Reseller will invoice Your Service fees to You and Your obligations with respect to payment will continue to apply as if such payment were being made directly to Climb. If You are an end user of the Services purchasing the Services directly from Climb Channel Solutions, Climb will invoice Your Service fees to You and You shall make payment directly to Climb.

(c) **TAXES.** All payments are exclusive of Federal, state, provincial, local or foreign taxes, duties, tariffs, levies and similar assessments. You agree to bear and be responsible for the payment of all taxes, duties, tariffs, levies, fees and charges of any kind, including sales, use, excise or value added taxes, and all other similar charges (collectively, "**Taxes**") that are imposed on transactions by or under the authority of any government body, excluding Taxes based solely upon Climb's net income. If You are a tax-exempt entity or claim exemption from any Taxes hereunder, You will provide a certificate of exemption upon commencement of Service and, after receipt of valid evidence of exemption, Climb will not charge You any Taxes for which You are exempt.

6. GRANT OF USE RIGHTS; OWNERSHIP; CUSTOMER RESTRICTIONS

(a) **CLIMB CHANNEL SOLUTIONS SERVICES.** Climb hereby grants to You, conditioned upon payment of applicable fees, a non-exclusive, non-assignable, non-transferable, worldwide right during the term of the subscription to access and use Climb Channel Solutions Services that Climb represents to You as being licensable by Climb Channel Solutions to You under this Agreement.

(b) **CLOUD MARKETPLACE.** Climb hereby grants to you, conditioned upon payment of applicable fees, a non-exclusive, non-assignable, non-transferable, worldwide right during the term of Your subscription to access and use the Climb Cloud Marketplace in furtherance of its access and use of Climb Channel Solutions Services. Climb Cloud Marketplace will include any and all third-party licenses in furtherance of the creation and maintenance of Climb Cloud Marketplace.

(c) **DOCUMENTATION.** Climb hereby grants to You a non-exclusive, non-assignable, non-

transferable, worldwide right during the term of Your subscription to access and use only in association with the Service, if any, user documentation relating to the operation and use of the Climb Channel Solutions Service(s) that may be provided by Climb to you, as updated by Climb from time to time ("**Documentation**").

(d) **CUSTOMER DATA.** You hereby grant Climb and applicable Third Party Vendors a non-exclusive, non-transferable, royalty-free, worldwide right to use the electronic data specifically pertaining to You and/or Your users that is processed using the Service(s) (collectively "**Customer Data**") strictly for the limited purpose of providing the Service(s) to You or an end user.

(e) **OWNERSHIP.** You acknowledge and agree that the Site and any and all related software used in connection with the Services contain proprietary and confidential information of Climb or Third Party Vendors or other third parties that is protected by applicable intellectual property rights and other laws. As between Climb and You, all rights, title, and interest in and to all intellectual property rights in the Climb Service(s) and Documentation are owned exclusively by Climb. Except as expressly provided herein, Climb does not grant You (and Climb expressly reserves for ourselves and any of our licensors) any rights, express or implied, or ownership in the Climb Service(s) and Documentation. Climb shall have a royalty-free, worldwide, non-exclusive, transferable, sub-licensable, irrevocable, perpetual right to make, use, sell, offer for sale, import, or otherwise incorporate into Climb Service(s) and Documentation, any suggestions, enhancements, recommendations, or other feedback provided by You relating to the Service(s) and Documentation.

(f) **RESTRICTIONS.** You shall not (and shall not permit others to): (i) license, sub-license, sell, re-sell, rent, lease, loan, transfer, distribute, time share or grant a security interest in the Service(s) or Documentation or any portion of the Site, or make any of them available for access by third parties, including without limitation, in the manner of a service bureau or hosted application (provided that there is no restriction for a Climb Channel Solutions Reseller reselling the Services as permitted under this Agreement); (ii) create derivative works based on or otherwise modify the Service(s) or Documentation; (iii) disassemble, reverse engineer or decompile the Service(s); (iv) access the Service(s) or Documentation in order to develop a competing product or service; (v) use the Service(s) to provide a service for others; (vi) use Climb Cloud Marketplace to operate more or different type of applications than permitted by Climb; (vii) use or send viruses or other harmful computer code; (viii) interfere with the integrity of the Service(s) in any manner; (ix) remove or modify a copyright or other proprietary rights notice on or in the Service(s) or Documentation; (x) use the Service(s) to reproduce, distribute, display, transmit or use material protected by copyright or other intellectual property right (including the rights of publicity or privacy) without first obtaining the permission of the owner; (xi) use a computer or computer network to cause physical injury to the property of another; (xii) violate any law or regulation of the United States or Canada, any state thereof or other government authority, including any applicable laws or regulations outside the United States or Canada based on use and access by Your Affiliate; (xiii) disable, hack or otherwise interfere with any security, digital signing, digital rights management, verification or authentication mechanisms implemented in or by the Service(s); (xiv) include, send, store or run software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs from the Service(s); (xv) disrupt the integrity of the Service(s); (xvi) temporarily or permanently remove, copy, add, modify, halt or disable any computer data, computer programs or computer software from a computer or computer network without authorization; (xvii) cause a computer to malfunction, regardless of how long the malfunction persists; (xviii) alter, disable, or erase any computer data, computer programs or computer software without authorization or use them to obtain unauthorized access to the Services or Site; or (xix) access the Site or Services by any means other than through the interface provided by Climb to access the Site or Services.

(g) **CUSTOMER CONDUCT.** You agree that You are responsible for, without limitation, the following: (i) Your implementation of the Service(s); (ii) protecting the names and passwords of the users of the Service(s) and Site and preventing and notifying Climb of unauthorized use of the Service(s) or Site; (iii) appointing key designated support contacts for purposes of contacting Climb with regard to support questions and/or technical issues and ensuring that such contact information is current with Climb; (iv) the lawfulness of each user's acts and omissions; (v) using the Service(s) and Site encryption feature, if and when made available to You, for any of Your data containing sensitive information; (vi) using the Service(s)

and Site within the permitted scope and only in accordance with the numbers, types and identifiers of permitted users, applications, servers, devices, capacity and locations at or through which You are permitted to use the Service(s) and Site as set forth in the Terms; and (vii) using the Service(s) and Site only in accordance with applicable documentation.

(h) **THIRD PARTY SERVICES.** Notwithstanding anything to the contrary in this Agreement, Your license to use any Third Party Vendor Services is provided by the Third Party Vendor and not Climb, and is subject to any terms and conditions of services as made available by the Third Party Vendor, including, but not limited to, warranties (if any), ownership of intellectual property and permitted uses.

(i) **THIRD PARTY SUPPLIERS AND SOFTWARE.** As part of the Climb Services, You may be allowed to use certain software (including related documentation) provided by third party licensors. This software is neither sold nor distributed to You and You may use it solely as part of the Services and subject to any terms of service as made available by the third party, including, but not limited to, warranties (if any), ownership of intellectual property and permitted uses. You may not transfer such Software outside the Climb Services without specific authorization by Climb to do so.

7. PRODUCT SPECIFIC TERMS

(a) CLIMB WEB HOSTING.

1) Climb's Web Hosting Service is a shared service, which means multiple web sites are hosted on the same server utilizing the same server resources. Climb's service is architected to meet the typical needs of home-based offices and small business website customers. It is NOT intended to support the demands of large enterprises, international businesses, or non-typical applications, all of which are better suited to the Climb Virtual Private Server Service.

2) Unless You purchase Services with unlimited features, Climb Web Hosting Services are provided with set limitations, as defined by the service plan(s) subscribed to, as they may change from time-to-time.

3) If You purchase Climb Web Hosting Services that are provided with unlimited features (e.g., bandwidth and disk space), the following terms apply: Climb does not set any pre-defined limits on the amount of resources You may consume as part of the subscribed Services. However, Climb reserves the sole and exclusive right to decide what constitutes reasonable consumption based on its provision to You of all the disk space and file transfer resources necessary to operate Your web site. Climb does not set any limits on the amount of disk space You may use for Your website, nor does Climb charge additional fees based on an increased amount of storage used, provided Your use of storage complies with this Agreement. You acknowledge and agree that these resource allocations are optimized and dedicated towards serving web documents, email services and are not intended for online storage, backups, or archiving of electronic files, documents, log files, etc., and any such prohibited use of the Services will result in the termination of Your account, with or without notice.

(b) SSL CERTIFICATES. Climb SSL Certificates are subject to these additional terms and conditions:

1) Climb provides all SSL and EV SSL Certificates to You for exclusive use with other Services You purchase from Climb. You may not use any SSL or EV SSL Certificates You purchase from Climb with other services provided by any third parties.

2) You may not resell or otherwise redistribute for profit any SSL or EV SSL Certificates Climb provides without Climb's express written permission.

3) All SSL and EV Certificates Climb provides to You are provided by way Comodo CA Ltd. Comodo may, contact You to validate the information provided for such SSL or EV SSL Certificates and Your eligibility for the certificates. Comodo is solely responsible for determining eligibility for all SSL or EV SSL Certificates.

4) You agree that you will be solely responsible for addressing any claims to Comodo directly as they pertain to any and all SSL and EV SSL Certificates purchased through Climb, and all such legal issues related to SSL and/or EV SSL Certificates between You and Comodo will only be interpreted and construed under the laws of the United Kingdom without regard to its conflicts of law principles.

8. SERVICE LEVEL AGREEMENTS

Service Level Agreements may apply to certain Services. Climb may, at its sole discretion, change, discontinue or add Service Level Agreements from time to time.

9. INTELLECTUAL PROPERTY

(a) By submitting media and/or information such as text, photos, audio or videos, or any other content to the Site or through the Services (collectively, "**Content**"), You represent and warrant that such Content does not infringe upon any third party intellectual property right or personal rights, including, but not limited to, patent, copyright, trademark, trade secret, privacy or other intellectual or proprietary right.

(b) If Climb becomes aware of any Content posted by You in connection with the Services that could be infringing on a third party's intellectual property rights, Climb shall be authorized to initiate an investigation. If Climb receives a claim from a third party complainant with the applicable copyright or trademark registration number, a copy of the underlying copyrighted work along with Your materials and/or a good faith declaration, signed under penalty of perjury, that (i) the material is the property of the complainant, or (ii) the work has been copied and that use of the material is not defensible, then Climb, in its sole and absolute discretion, may, at any time, restrict Your access to the challenged material.

(c) Climb will notify You of the copyright infringement allegation and will allow You to respond to the allegation(s). You agree that Climb shall have no liability, directly or indirectly, to third parties for any of Your infringing materials nor to You for any cautionary measures taken by Climb as described herein.

(d) **DMCA Notice.** Climb responds to notices of alleged copyright infringement in accordance with the U.S. Digital Millennium Copyright Act (DMCA). If You believe that Your work has been exploited in a way that constitutes copyright infringement, You may contact Climb through the contact information provided below.

(e) You will not use the name, trademarks or logos of Climb, its affiliates or any Third Party Vendors without the prior written approval of the respective party. All content included on the Site and in the Services, such as text, graphics, logos, button icons, images, audio clips, digital downloads, data compilations, and software, is the property of Climb or its content suppliers and protected by United States and international copyright laws. The compilation of all content on the Site is the exclusive property of Climb and protected by U.S. and international copyright laws. All software used on the Site is the property of Climb or its software suppliers and protected by United States and international copyright laws.

10. WARRANTY DISCLAIMER

(a) TO THE EXTENT PERMITTED BY LAW, THE SITE AND ALL SERVICES PROVIDED BY CLIMB ARE PROVIDED TO YOU "AS IS" AND "AS AVAILABLE" WITHOUT WARRANTY OR CONDITION OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE,

QUIET ENJOYMENT, OR NON-INFRINGEMENT.

(b) EXCEPT FOR THE WARRANTIES EXPRESSLY STATED HEREIN, CLIMB DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THOSE REGARDING MERCHANTABILITY, NON-INFRINGEMENT, TITLE, AND FITNESS FOR A PARTICULAR PURPOSE. THIRD PARTY SERVICES ARE PROVIDED AS-IS, WITHOUT WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED; ANY WARRANTY FOR THIRD PARTY SERVICES IS PROVIDED, IF AT ALL, BY THE THIRD PARTY VENDOR FOR SUCH SERVICES. CLIMB MAKES NO OTHER REPRESENTATIONS, PROMISES, WARRANTIES OR UNDERSTANDINGS OF ANY KIND RELATING TO THE SITE, SERVICES, INCLUDING THIRD PARTY SERVICES, OR CONTENT UNDER THIS AGREEMENT. FOR CLARITY, CLIMB MAKES NO REPRESENTATIONS OR WARRANTIES THAT YOUR USE OF THE SERVICES WILL COMPLY WITH APPLICABLE LAWS, INCLUDING BUT NOT LIMITED TO THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 ("HIPAA") AND HEALTH INFORMATION TECHNOLOGY FOR ECONOMIC AND CLINICAL HEALTH ("HITECH"), AS THEY MAY BE AMENDED FROM TIME TO TIME, AND ANY REGULATIONS ISSUED THEREUNDER. CLIMB SHALL NOT BE LIABLE TO YOU, YOUR CUSTOMERS OR ANY THIRD PARTY FOR ANY CLAIM OR LIABILITY ARISING FROM OR RELATING TO YOUR USE OF THE INTELLECTUAL PROPERTY, THE SERVICES, INCLUDING THIRD PARTY SERVICES, THE SITE, OR FROM THE MANUFACTURE, USE, IMPORTATION OR SALE OF THE SERVICES, OR FOR ANY CLAIM FOR LOSS OF PROFITS, LOSS OR INTERRUPTION OF BUSINESS, OR FOR INDIRECT, SPECIAL, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND.

(c) You represent and warrant that You are a (i) party doing business, (ii) located in a jurisdiction, and (iii) engaged in activities, such that Climb is not required to obtain any export license, permit or other approval under applicable laws and regulations including but not limited to export control and/or sanctions regulations of any jurisdiction the laws of which may be implicated by the Terms. Furthermore, You acknowledge and agree that Climb has the exclusive authority to monitor such status on a regular basis and, if it should be determined by Climb that You, at any point in time, are in violation of any of these representations and warranties, Climb has the exclusive authority to immediately terminate any and all Service(s) to You (and any accounts You have with Climb) without prior written notice, and You will forfeit any remaining balance on Your account.

(d) Unless otherwise specified in writing by Climb, Climb does not intend uses of the Services to create obligations under HIPAA and makes no representations that the Services satisfy HIPAA requirements. If You or your customer are (or become) a Covered Entity or Business Associate, as defined in HIPAA, You will not and ensure your customer does not use the Services for any purpose or in any manner involving Protected Health Information (as defined in HIPAA) unless you have received prior written consent to such use from Climb.

11. INDEMNIFICATION

You agree to defend, indemnify and hold harmless Climb, its affiliates, and their respective directors, officers, shareholders, employees, agents, licensors and advisors ("**Indemnified Parties**"), from and against any claim, demand, liability, damage, losses, judgments, suit, action, or cause of action, costs and expenses (including, without limitation, reasonable legal fees) arising directly or indirectly out of Your use of the Services or the Site, including, but not limited to (a) Your breach or violation of any provision of the Terms including reasonable attorneys and associated advisor fees and costs, (b) your use of any Service or the Site, including Your publication or use of Content that infringes the intellectual property rights of any third party, including, but not limited to, patent, copyright, and trade secret rights, (c) any action taken by Climb in investigating a suspected violation of the Terms or as result or finding that a violation has occurred, and (d) costs associated with document production, depositions, interrogatories and related demands arising out of private third party, governmental or regulatory claims in connection with the Services or Site to the extent Climb is not a target. For purposes of this indemnity provision, if You are a Climb Channel Solutions Reseller, references to "your" includes You and Your customer(s).

12. LIMITATION OF LIABILITY

(a) YOU EXPRESSLY UNDERSTAND AND AGREE THAT IN NO EVENT SHALL THE INDEMNIFIED PARTIES BE LIABLE TO YOU FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS OR INCOME, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES (EVEN IF THE INDEMNIFIED PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES UNDER CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER THEORY), RESULTING FROM: (i) THE DISRUPTION, USE OR THE INABILITY TO USE THE SERVICE(S), THE SITE OR ANY CONTENT FOR ANY REASON; (ii) ANY THIRD PARTY CLAIMS THAT THE USE BY YOU OF THE SITE, SERVICE OR THE CONTENT VIOLATES ANY INTELLECTUAL PROPERTY RIGHT; (iii) ANY ACTION TAKEN BY THE INDEMNIFIED PARTIES AS PART OF AN INVESTIGATION INTO A SUSPECTED VIOLATION OF THE TERMS OR AS A RESULT OF ITS CONCLUSION THAT YOU HAVE VIOLATED, OR (iv) ANY OTHER MATTERS RELATING TO THE SERVICE(S), THE SITE OR THE CONTENT.

(b) YOU SPECIFICALLY ACKNOWLEDGE THAT THE INDEMNIFIED PARTIES ARE NOT LIABLE FOR THE DEFAMATORY, OFFENSIVE OR ILLEGAL CONDUCT OF THIRD PARTIES AND THAT THE RISK OF INJURY FROM THE FOREGOING RESTS ENTIRELY WITH YOU. FURTHER, THE INDEMNIFIED PARTIES SHALL HAVE NO LIABILITY TO YOU FOR ANY CONTENT DOWNLOADED FROM THE SERVICE(S). YOU AGREE THAT THE AGGREGATE LIABILITY OF THE INDEMNIFIED PARTIES TO YOU FOR ANY AND ALL CLAIMS UNDER CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY, OR OTHER THEORY ARISING UNDER THESE TERMS OR FROM ANY OF CLIMB OR AFFILIATE POLICIES OR THE USE OF THE SITE, THE CONTENT, OR THE SERVICES IS LIMITED TO USD\$100.

13. TERM AND TERMINATION

(a) TERM AND TERMINATION. This Agreement shall commence upon Your initial visit to the Site and will remain in force until Your use of the Site and all of Your subscription to Services end i.e. terminate or expire. The initial Term of any subscription for Services will be the Term specified during the registration process for such Service with Climb through the Site. Unless expressly terminated as set forth herein, the subscription to any Service will automatically renew for additional Terms at a period equal to the initial term for such Service. You may terminate the subscription to any Service by providing Climb written notice of such termination at least thirty (30) days prior to the end of the then-current Term for such Service.

(b) EFFECT OF TERMINATION OF SERVICE. Upon expiration or other termination of the Service(s) for any reason as permitted in this Agreement, You must stop using, and Climb will stop providing, the terminated Service(s). In the event of such termination, Climb will not nor be obligated to refund any prepaid fees for such Service and You will be responsible for all subscription fees until the end of the subscribed to Term. Climb may terminate this Agreement and any Service subscription at any time for any reason, or no reason, without providing any advance notice to You.

(c) SURVIVAL. Upon termination of Service(s) for any reason, You agree that You will immediately pay all amounts owed to Climb for Service(s). Any provision required by its construction or required for rights and obligations enforcement, shall survive termination, including, but not limited to, the indemnity provisions, limitations of liability and the survival terms and this Section 13 (Term and Termination).

14. PRIVACY

By using the Services, You agree that Climb may use such data in accordance with Climb's Privacy Policy, available at [here](#). Your use of Third Party Vendor Services may also be subject to the privacy policies of the Third Party Vendor.

If You are a Climb Channel Solutions Reseller, You agree that You have received proper consent from

Your customers to provide their information to Climb for use in connection with Services.

15. GENERAL PROVISIONS

(a) ASSIGNMENT. You may not assign Your rights or obligations, whether by operation of law or otherwise without Climb's prior written consent, and any such act by You will be void.

(b) NOTICE. Except as otherwise provided herein, all notices shall be in writing and deemed given upon: (i) personal delivery; (ii) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (iii) the second business day after mailing; or (iv) the first business day after sending by email, except that email shall not be sufficient for notices of termination or regarding a claim. Notices to You will be sent to Your email address that Climb has on file. It is important that You address is up to date. Notices to Climb must be sent to:

Email: Charles@ClimbCS.com
Address: Climb Legal Department
ATTN: Charles Bass
4 Industrial Way West, Suite 300
Eatontown, NJ 07724

(c) FORCE MAJEURE. Climb will not be liable or responsible to you, nor be deemed to have defaulted under or breached this Agreement, and will be excused from performance in the event of any failure or delay in fulfilling or performing any term of this Agreement or its performance of the Services, when and to the extent such failure or delay is caused by or results from acts beyond Climb's reasonable control, including without limitation: domain name server or instant messaging issues, strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), trespassing, sabotage, theft or other criminal acts, by requirement of law, regulation, order or other governmental action, failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, explosions, collapse of building structures, fires, floods, storms, earthquakes, epidemics or similar events, natural disasters or extreme adverse weather conditions.

(d) NO WAIVER AND AMENDMENT. Climb will not be considered to have waived any of its rights or remedies described in the Terms of Service unless such waiver is in writing and signed by an authorized representative of Climb. No delay or omission by Climb in exercising Climb rights or remedies will impair or be construed as a waiver. Any single or partial exercise of a right or remedy by Climb will not preclude further exercise of any other right or remedy. Climb failure to enforce the strict performance of any provision of the terms and conditions in the Terms of Service will not constitute a waiver of Climb right to subsequently enforce such terms and conditions.

(e) RELATIONSHIP OF THE PARTIES. You and Climb are independent contractors to each other. Nothing in the Agreement will be interpreted to create a partnership, joint venture, agency, fiduciary or trustee relationship. You will not have any right or authority to assume or create any obligation of any kind expressed or implied in the name of or on behalf of Climb. Climb may at any time subcontract any or all of Climb obligations hereunder to any third party.

(f) GOVERNING LAW; VENUE; TIME FOR BRINGING ACTION. This Agreement will be governed by, subject to, and interpreted in accordance with the laws of the State of New York USA, without regard to conflict of laws principles. You hereby irrevocably consent to the nonexclusive jurisdiction of, and venue in, any federal or state court of competent jurisdiction located in New York, New York, for the purposes of adjudicating any action or proceeding to enforce the Agreement. To the extent permitted by law, choice of law rules and the United Nations Convention on Contracts for the International Sale of Goods will not apply. No cause of action arising under or relating to this Agreement may be brought by You more than one (1) year after it first occurs.

(g) CONSTRUCTION. The Services shall be provided in the English language unless agreed otherwise. The parties confirm that they have requested that the Terms and all related documents be drafted in English at the express wishes of the parties. Section headings are for convenience only and are not to be used in interpreting the Terms of Service.

(h) ENTIRETY. This Agreement, together with any referenced terms, conditions and policies, are the final and entire agreement between You and Climb and supersede all prior or contemporaneous oral or written agreements, representations, understandings, undertakings and negotiations. In the event of any conflict between this Agreement and any referenced and/or attached documents these Terms of Service shall govern unless such referenced and/or attached document is signed or electronically agreed to by both authorized representatives of each party and manifests a clear intent to override this Agreement.