

## SOCIALCLIMB END USER LICENSE AGREEMENT

This End User License Agreement (the "Agreement") governs your use of the proprietary marketing, location management and social postings management software services made available to you by Social Clime, LLC., a Delaware limited liability company ("SocialClimb"), pursuant to and subject to the Terms of Service Agreement (the "TOS Agreement") between SocialClimb and the party who designated you as Authorized User thereunder.

YOU ACCEPT THIS AGREEMENT AND AGREE TO BE BOUND BY ITS TERMS BY YOUR CLICKING THE BOX CONFIRMING THE SAME WHEN YOU FIRST ACCESS OR USE THE LICENSED DELIVERABLES. ADDITIONALLY, YOUR CONTINUED ACCESS TO AND USE OF THE LICENSED DELIVERABLES CONFIRMS YOUR CONTINUING ACCEPTANCE OF THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A LEGAL ENTITY, YOUR ACCEPTANCE OF THIS AGREEMENT IS YOUR REPRESENTATION THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THE TERMS OF THIS AGREEMENT, IN WHICH CASE THE TERMS "YOU" OR "YOUR" SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE LICENSED DELIVERABLES.

You agree not to access the Licensed Deliverables if you are a competitor of SocialClimb. You agree not to provide access to the Licensed Deliverable to any party who is a competitor of SocialClimb or any party who is not an Authorized User under the TOS Agreement. In addition, you may not access the Services for purposes of monitoring their availability, performance or functionality, or for any other benchmarking or competitive purposes.

1. LICENSED DELIVERABLES. For purposes of this Agreement, the term "*Licensed Deliverables*" shall mean any and all of the following:

a. DERIVATIVE WORK. The term "*Derivative Work*" means a revision, enhancement, modification, translation, abridgment, condensation or expansion of any Licensed Deliverable or any form in which any Licensed Deliverable may be recast, transferred, or adapted.

b. INFORMATION. The term "*Information*" means information resulting from the use of any or all of the Licensed Deliverables.

c. LICENSED MATERIALS. The term "*Licensed Materials*" means any and all materials including documentation and support material, including any on-line training materials, in hard copy and electronic format (if available) designed to assist you in the understanding, application, capability, maintenance, or use of the Licensed Deliverables which are

delivered to you by SocialClimb pursuant to and/or during the term of this Agreement.

d. SOFTWARE. The term "*Software*" refers to (i) the proprietary software made available to you pursuant to the terms of this Agreement and the TOS Agreement and (ii) any Updates, upgrades, enhancements, or modifications to the Software, if any.

e. UPDATES. The term "Updates" means, as applicable, any update, correction, modification, enhancement, upgrade or new releases of the Licensed Deliverables that SocialClimb makes generally available to its clients.

2. LICENSE GRANT. SocialClimb hereby grants, and you hereby accept, subject to the terms and conditions of this Agreement and the TOS Agreement, a limited, non-exclusive, non-sublicensable, non-transferable, license during the term of this Agreement to use the Licensed Deliverables as set forth herein (the "License"). You shall not have any rights to the Licensed Deliverables except as expressly granted in this Agreement. SocialClimb reserves to itself all rights to the Licensed Deliverables not expressly granted pursuant to this Agreement. The License granted hereunder shall include all Updates released by SocialClimb from time to time and SocialClimb is authorized to release all such Updates to your account as they are released to others users of the Licensed Deliverables.

3. COPYRIGHT AND TITLE. The Licensed Deliverables and any copy thereof, in whole or in part, and all copyrights, trade secrets and other proprietary rights therein, including any Derivative Work, are and will remain the sole property of SocialClimb, regardless of the use made by you of the same and in any format; and are protected by certain United States and international copyright laws and trademark laws. The License confers no title of ownership in the Licensed Deliverables and is not a sale of any rights in the Licensed Deliverables. You shall treat the Licensed Deliverables with at least the same standard of care as you treat any other material copyrighted and/or trademarked by a third party, in no case less than a reasonable standard of care. You agree not to, and to use best efforts to cause your customers, if any, not to, challenge SocialClimb's ownership in or enforceability of SocialClimb's rights in and to any Licensed Deliverable or any related information technology.

4. USE OF LICENSED DELIVERABLES. The Licensed Deliverables are solely for your personal and noncommercial use. Use of the Licensed Deliverables is subject to the terms of use set forth in Sections 10 and 11 below, and the restrictions set forth in this Section will survive the termination of this Agreement. If there is unauthorized use by anyone who obtained access to the Licensed Deliverables directly or indirectly through you, you shall take all steps reasonably necessary to terminate the unauthorized use. You will

cooperate and assist with any actions taken by SocialClimb to prevent or terminate such unauthorized use. You will cooperate and assist with any actions taken by SocialClimb to prevent or terminate such unauthorized use. You will indemnify, defend and hold SocialClimb harmless from any and all liability, loss, damage, expense or other costs resulting from such access.

5. **TERM.** The License granted by this Agreement shall begin as of the first date on which you access the Licensed Deliverables or any portion thereof and continue until terminated pursuant to Section 12 hereof (which with respect to SocialClimb may occur at any time)

6. **ASSIGNMENT.** You shall not assign or otherwise transfer the License granted hereby or the rights granted hereunder without the prior written consent of SocialClimb, in its absolute, complete and unqualified discretion. Any attempt to assign or otherwise transfer any of the rights, duties or obligations hereunder without compliance with this Section is and shall be void *ab initio*.

7. **NO COPY OF LICENSED DELIVERABLES.** You shall not copy the Licensed Deliverables or any portion thereof without the prior written consent of SocialClimb. You shall maintain and place on any authorized copy of the Licensed Deliverables which it reproduces any notice(s) and/or legend(s) embedded in and/or affixed to the Licensed Deliverables. You shall reproduce and include the copyright notice on any authorized copy. All copies of the Licensed Deliverables, whether provided by SocialClimb or made by you as permitted by this Agreement, shall remain the property of SocialClimb. All other copying is prohibited.

8. **TRADE SECRETS.** The Licensed Deliverables are trade secrets of SocialClimb and contain valuable proprietary products and trade secrets of SocialClimb, embodying substantial creative efforts and confidential information, ideas, and expressions. You shall take appropriate action to protect the confidentiality of the Licensed Deliverables. You shall not modify, translate, disassemble, create Derivative Works based on, reverse-assemble, reverse-compile or otherwise reverse-engineer the Licensed Deliverables in whole or in part, or otherwise use, copy, reproduce or distribute any Licensed Deliverable except as expressly permitted hereunder. The provisions of this Section shall survive the termination of this Agreement.

9. **CONFIDENTIALITY.** All information that you receive from SocialClimb through the Licensed Deliverables (hereinafter "*Confidential Information*") shall be kept confidential, and you agree to treat the Confidential Information as confidential in accordance with the confidentiality requirements and conditions set forth below. You agree, during the term hereof and for a period of five years thereafter, to keep confidential all Confidential Information disclosed to it by SocialClimb in accordance herewith, and to protect the confidentiality thereof with at least the same standard of care with which

you protect the confidentiality of similar information and data of your own (at all times exercising at least a reasonable standard of care in the protection of Confidential Information); provided, however, that you shall not have any such obligation with respect to the use or disclosure to third parties of such Confidential Information as can be established to: (a) have been known publicly; (b) have been known generally in the industry on a non-confidential basis before communication by SocialClimb to the recipient ("Recipient"); (c) have become known publicly; (d) have been known otherwise by the Recipient before communication by SocialClimb; (e) have been received by the Recipient without any obligation of confidentiality from a source (other than SocialClimb) lawfully having possession of such information. Except as prohibited by applicable law or legal process or to the extent part of an examination by a regulatory or self-regulatory body, if the Recipient is requested or required (by deposition, interrogatories, requests for information or documents in legal proceedings, subpoenas, regulatory processes (including those of self-regulatory organizations), or similar process) in connection with any proceeding to disclose or otherwise becomes legally compelled to disclose any Confidential Information, the Recipient shall provide SocialClimb with prompt written notice and, if requested by SocialClimb after receipt of such notice, the Recipient shall provide SocialClimb with reasonable assistance (subject to reimbursement by the SocialClimb of all reasonable and out-of-pocket expenses incurred by the Recipient in providing such assistance) so as to enable SocialClimb to seek a protective order or other appropriate remedy or waive compliance with this Agreement. To the extent this Agreement applies, if such a protective order or other remedy is not obtained or if SocialClimb waives compliance with this Agreement, the Recipient may disclose Confidential Information, but only such Confidential Information as it is legally required to disclose in the reasonable opinion of counsel to the Recipient, and shall exercise reasonable efforts to obtain reliable assurance that confidential treatment will be accorded such Confidential Information disclosed. Your obligations under this paragraph will survive the termination of this Agreement or of any License granted under this Agreement for whatever reason.

10. **OTHER RESTRICTIONS.** You will not rent, loan, license, market, or sell the Licensed Deliverables or copies thereof, in whole or in part, to any party. You hereby agree (i) to notify any of your agents who may have access to the Licensed Deliverables or Information of the restrictions contained in this Agreement and (ii) to ensure their compliance with such restrictions

11. **TERMINATION.** You may terminate this Agreement and the License granted herein by providing SocialClimb 30 days' prior written notice of such termination and ceasing use of the Licensed Deliverables on or prior to the end of such notice period. SocialClimb may terminate this Agreement and the

License granted herein by giving you written notice of termination for any reason. This Agreement and the license granted hereunder shall also terminate automatically upon termination of the TOS Agreement. Upon any termination of this Agreement, you shall cease all use of the Licensed Deliverables and destroy all copies of the Licensed Deliverables then in your possession and take such other actions as SocialClimb may reasonably request in writing to ensure that no copy of the Licensed Deliverables remain in your possession.

12. **COMPLIANCE WITH LAWS.** You will comply with all applicable export and import control laws and regulations and obtain at your expense all necessary licenses, permits and regulatory approvals required by any and all governmental authorities in your use of the Licensed Deliverables and, in particular, you will not export or re-export the Licensed Deliverables without SocialClimb's prior written consent, and, if such consent is granted, without you first obtaining all required United States and foreign government licenses.

13. **DISCLAIMER OF WARRANTY. THE LICENSED DELIVERABLES ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, ORAL, WRITTEN, STATUTORY, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF PERFORMANCE OR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. YOU BEAR ALL RISK RELATING TO QUALITY AND PERFORMANCE OF THE LICENSED MATERIALS AND TO THE ACCURACY AND USE OF THE INFORMATION. WITHOUT LIMITING THE FOREGOING, SOCIALCLIMB DOES NOT WARRANT THAT ALL ERRORS CAN BE CORRECTED, OR THAT OPERATION OF THE LICENSED DELIVERABLES SHALL BE UNINTERRUPTED OR ERROR-FREE.** Because some states may not allow the exclusion of implied warranties, such limitation may not apply in its entirety to you. Any warranties made in this Agreement are for your benefit only.

14. **LIMITATION ON LIABILITY.** IN NO EVENT WILL SOCIALCLIMB, ITS SUPPLIERS, SHAREHOLDERS, OFFICERS, EMPLOYEES OR AGENTS BE LIABLE FOR ANY LOST PROFITS, INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING DAMAGES DUE TO LOSS OF DATA OR GOODWILL, ARISING OUT OF THIS AGREEMENT OR THE USE OF OR RELIANCE UPON THE LICENSED DELIVERABLES OR INFORMATION, EVEN IF SOCIALCLIMB HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL SOCIALCLIMB BE LIABLE FOR PROCUREMENT COSTS OF SUBSTITUTE PRODUCTS OR SERVICES OR ANY UNAUTHORIZED USE OR MISUSE OF ANY LICENSED DELIVERABLES OR INFORMATION. YOU ASSUME RESPONSIBILITY FOR THE INSTALLATION, USE AND RESULTS OBTAINED FROM THE LICENSED DELIVERABLES. UNDER NO CIRCUMSTANCES WILL SOCIALCLIMB'S TOTAL LIABILITY OF ANY KIND ARISING OUT OF OR RELATED TO THIS AGREEMENT (INCLUDING BUT NOT LIMITED TO WARRANTY CLAIMS), REGARDLESS OF THE FORUM AND REGARDLESS OF WHETHER ANY ACTION OR CLAIM IS BASED ON CONTRACT, TORT, OR

OTHERWISE, EXCEED THE TOTAL AMOUNT PAID BY YOU TO SOCIALCLIMB DURING THE IMMEDIATELY PRECEDING TWELVE MONTH PERIOD (DETERMINED AS OF THE DATE OF ANY FINAL JUDGMENT IN AN ACTION). THE PARTIES AGREE THAT THIS SECTION SHALL SURVIVE AND CONTINUE IN FULL FORCE AND EFFECT DESPITE ANY FAILURE OF CONSIDERATION OR OF AN EXCLUSIVE REMEDY. THE PARTIES ACKNOWLEDGE THAT THE PRICES HAVE BEEN SET AND THE AGREEMENT ENTERED INTO IN RELIANCE UPON THESE LIMITATIONS OF LIABILITY AND THAT ALL SUCH LIMITATIONS FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES. BECAUSE SOME STATES MAY NOT ALLOW THE EXCLUSION OR LIMITATION OF CONSEQUENTIAL OR INCIDENTAL DAMAGES, SUCH LIMITATIONS MAY NOT APPLY TO YOU.

15. **GOVERNING LAW.** This Agreement shall be governed by the laws of the State of Texas, U.S.A., without regards to any choice of laws provisions thereof.

16. **REMEDIES.** You agree that your obligations herein are necessary and reasonable in order to protect SocialClimb and its business interests, and you expressly agrees that monetary damages alone may be inadequate to compensate SocialClimb for any breach by you of your covenants and agreements set forth herein. Accordingly, you acknowledge that the unauthorized use, transfer, or disclosure of the Licensed Deliverables, or copies thereof will (a) substantially diminish the value to SocialClimb of the proprietary interest that are the subject of this Agreement; (b) render SocialClimb's remedy at law for such unauthorized use, disclosure or transfer inadequate; and (c) cause irreparable injury in a short period of time. If you breach any of your obligations with respect to the use of the Licensed Deliverables, SocialClimb shall be entitled to equitable relief to protect its interest therein, including but not limited to, preliminary and permanent injunctive relief without requirement of a bond. For such purposes, the parties hereto agree to submit to the exclusive jurisdiction of the federal and state courts found within the State of Texas, and they do agree that venue shall be proper in the County of Travis in the State of Texas. In addition to any other remedies that may be available, in law, in equity or otherwise, SocialClimb shall be entitled to obtain injunctive relief against the threatened breach of this Agreement or the continuation of any such breach by you, without the necessity of proving actual damages.

17. **ARBITRATION.** Any controversy or claim arising out of or relating to this Agreement, including, without limitation, the making, performance, or interpretation of this Agreement, shall be settled by binding arbitration in Travis County, Texas, except any action for injunctive relief that may be brought pursuant to the terms of this Section 18. Unless otherwise agreed, the arbitration shall be conducted in accordance with the then current Commercial Arbitration Rules of the American Arbitration Association. The arbitration shall be held before three arbitrators, one arbitrator chosen by each of the

parties and the third arbitrator chosen by the two arbitrators. Each of the arbitrators shall be chosen from a panel of attorneys knowledgeable in the field of business law in accordance with the then current Commercial Arbitration Rules of the American Arbitration Association. The parties agree that the arbitrators shall have no jurisdiction to consider evidence with respect to or render an award or judgment for punitive damages (or any other amount awarded for the purpose of imposing a penalty) or any other damages inconsistent with the terms and provisions of this Agreement. The parties agree that all facts and other information relating to any arbitration arising under this Agreement shall be kept confidential to the fullest extent permitted by law. Any ruling rendered by the arbitrators shall be final and non-appealable and shall be enforceable in any court of competent jurisdiction.

18. ATTORNEY FEES. In case of arbitration or action to enforce any rights or conditions of this Agreement, or appeal from said proceeding, it is mutually agreed that the losing party in such suit, action, proceeding or appeal shall pay the prevailing party's reasonable attorney fees and costs incurred.

19. ENTIRE AGREEMENT; AMENDMENT. This Agreement is a binding contract and constitutes the entire agreement and understanding of the parties, whether oral or written, relating to the subject matter hereof; is intended as the parties' final expression and complete and exclusive statement of the terms hereof, superseding all prior or contemporaneous agreements, representations, communications, and understandings, whether written or oral; and may be amended or modified only by an instrument in writing by SocialClimb by posting an amended agreement to your SocialClimb Service Dashboard with prior notice of the effectiveness thereof.

20. NON-WAIVER. No waiver of any provision of this Agreement shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. Failure to enforce any provision of this Agreement shall not operate as a waiver of such provision or any other provision or of the right to enforce such provision or any other provision.

21. NO THIRD-PARTY BENEFICIARIES. Nothing in this Agreement, express or implied, is intended to confer on any person, other than the parties to this Agreement, any right or remedy of any nature whatsoever.

22. SEVERABILITY; BINDING EFFECT. If any provision of this Agreement shall be invalid or unenforceable in any respect for any reason, the validity and enforceability of any such provision in any other respect and of the remaining provisions of this Agreement shall not be in any way impaired. This

Agreement shall be binding on and inure to the benefit of the parties and their heirs, personal representatives, successors, and, to the extent permitted by Section 6.

23. FORCE MAJEURE. SocialClimb will not be liable for, or be considered to be in breach of or default under this Agreement on account of, any delay or failure to perform as required by this Agreement as a result of any cause or condition beyond SocialClimb's reasonable control, so long as SocialClimb uses all commercially reasonable efforts to avoid or remove such causes of non-performance.

24. RELATIONSHIP OF PARTIES. Both parties agree that they are independent entities. Nothing in this Agreement shall be construed to create a partnership, joint venture, or agency relationship between the parties.

25. NOTICES. All notices, consents and other communications permitted or required to be given hereunder ("Notice") shall be delivered by electronic mail to SocialClimb at info@SocialClimb.com and to you at the electronic mail address set forth on your SocialClimb Service Dashboard. Any party may change its email address for notification purposes by giving the other party notice of the new email address and the date upon which it will become effective in accordance with the terms of this Section.

26. INDEMNIFICATION. You agree to indemnify, defend and hold harmless SocialClimb and its affiliates, directors, officers, employees, agents and representatives from and against any losses, damages, liabilities, expenses (including reasonable attorneys' fees), judgments and claims that arise out of or relate to (a) any breach by you of this Agreement and (b) your use of the Licensed Deliverables. SocialClimb will: (i) give you prompt written notice of the claim; (b) grant you full and complete control over the defense and settlement of the claim; (c) assist you with the defense and settlement of the claim as you may reasonably request and at your expense; and (d) comply with any settlement or court order made in connection with the claim.

27. MUTUAL WARRANTIES. Each party represents and warrants to the other that: (a) this Agreement has been duly executed and delivered and constitutes a valid and binding agreement enforceable against such party in accordance with its terms; (b) no authorization or approval from any third party is required in connection with such party's execution, delivery, or performance of this Agreement; and (c) the execution, delivery, and performance of this Agreement does not violate the laws of any jurisdiction or the terms or conditions of any other agreement to which it is a party or by which it is otherwise bound.

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