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# Master Subscription and Services Agreement

This Master Subscription and Services Agreement (this “Agreement”) is between SocialClimb, LLC, with a principal place of business at 1633 W Innovation Way #175, Lehi, UT 84043 (“SocialClimb”) and the subscriber identified on the applicable Service Order for SocialClimb’s SaaS Services. However, if SocialClimb and Customer have signed a different form of Master Subscription and Services Agreement, that agreement shall apply rather than this one.

This Agreement is effective as the date the Parties agree to the Service Order for the SaaS Services (the “Effective Date”). SocialClimb and Customer may be referred to herein collectively as “Parties” and individually as a “Party”. Defined terms shall have the meanings provided in Section 10.

SocialClimb may update this Agreement from time to time by posting an amended Agreement to Customer’s SocialClimb Service Dashboard with notice to Customer of this revision by email or in-app notification. The revised version will become effective and binding the next business day after it is posted. If Customer does not agree with a modification to the Agreement, Customer must notify SocialClimb in writing of any reasonable objections within thirty (30) days after SocialClimb sends notice of the revision. If Customer provides such notice, then Customer’s subscription will continue to be governed by the terms and conditions of the

Agreement prior to modification until Customer's next renewal date, after which the updated version will apply.

In consideration of the covenants and agreements contained herein and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, SocialClimb and Customer hereby agree to the terms and conditions contained in this Agreement.

## 1. ACCESS TO THE SERVICES

1.1 Access and Use. Subject to and conditioned on Customer's and its Authorized Users' compliance with the terms and conditions of this Agreement, SocialClimb hereby grants Customer a non-exclusive, non-transferable (except in compliance with Section 11.8) right to access and use the SaaS Services during the Term, solely for use by Authorized Users in accordance with the terms and conditions herein. Such use is limited to Customer's internal business purposes and use. Any rights not expressly granted herein are reserved to SocialClimb.

1.2 Service Orders. SocialClimb will provide the Services as described in each applicable Service Order. Each Service Order and each amendment thereto must be signed by both Parties and must state that it is made pursuant to this Agreement. Each applicable Service Order shall be incorporated and made a part of this Agreement. The provisions of this Agreement shall control over any conflicting provisions in any Service Order, except to the extent that such Service Order indicates the clear intent of the Parties that such conflicting term prevail over a term or condition of this Agreement. Customer may, at any time and from time to time, request in writing that SocialClimb make changes to the Services being provided pursuant to a Service Order. SocialClimb shall promptly provide Customer with an estimate of the impact, including any change in fees payable hereunder, on the Services being provided resulting from the change. No change shall be effective until agreed to in a writing signed by both Parties.

1.3 Documentation. SocialClimb hereby grants to Customer a non-exclusive, non-sublicensable, non-transferable (except in compliance with Section 11.8) right to access and use the Documentation during the Term solely for Customer's internal business purposes in connection with its use of the Services.

1.4 Customer Affiliated Entities. SocialClimb and Customer agree that one or more Affiliated Entities may from time obtain access to the Services under this Agreement by entering into one or more separate Service Orders. Whenever one of Customer's Affiliated Entities enters into a Service Order with SocialClimb, then the term "Customer" as used throughout this Agreement shall also mean the applicable Affiliated Entity that executes the applicable Service Order.

1.5 Subcontractors. SocialClimb shall be Customer's sole point of contact under this Agreement and shall remain primarily liable for the performance of all subcontracted obligations of SocialClimb.

1.6 Updates. Customer acknowledges and agrees SocialClimb may make and implement Updates to the SaaS Services and other materials, including changes to any third-party services or materials provided as part of the Services, from time to time in SocialClimb's reasonable discretion.

1.7 Suspension of Services. Notwithstanding anything to the contrary in this Agreement, SocialClimb may temporarily suspend Customer's and any Authorized User's access to all or any portion of the Services if: (a) SocialClimb reasonably determines that (i) there is a threat or attack on any of the Services; (ii) Customer's or such Authorized User's use of the Services disrupts or poses a security risk to the Services or to any other customer or vendor of SocialClimb; (iii) Customer or such Authorized User is using the Services for fraudulent or illegal activities; or (iv) SocialClimb's provision of the Services to Customer or such Authorized User is prohibited by applicable law; or (b) in accordance with Section 2.2(c) (any such suspension described in (a) or (b), a "Service Suspension").

SocialClimb shall use commercially reasonable efforts to provide written notice of any Service Suspension to Customer and to provide updates regarding resumption of access to the Services following any Service Suspension. SocialClimb shall use commercially reasonable efforts to resume providing access to the Services as soon as reasonably possible after the event giving rise to the Service Suspension is cured. SocialClimb will have no liability for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that Customer or any Authorized User may incur as a result of a Service Suspension.

1.8 Aggregated Statistics. Notwithstanding anything to the contrary in this Agreement, SocialClimb may monitor Customer's and its Authorized Users' use of the Services and collect and compile Aggregated Statistics. As between SocialClimb and Customer, all right, title, and interest in Aggregated Statistics, and all intellectual property rights therein, belong to and are retained solely by SocialClimb. Customer acknowledges that SocialClimb may compile Aggregated Statistics based on Customer Data. Customer agrees that SocialClimb may (a) make Aggregated Statistics publicly available in compliance with applicable law, and (b) use Aggregated Statistics to the extent and in the manner permitted under applicable law, including for internal evaluation purposes and external benchmarking, advertising and other marketing purposes.

1.9 Data Analytics. SocialClimb may use Customer Data in connection with performing predictive analytics functions and creating predictive data models. SocialClimb may use Customer Data for SocialClimb's internal use in providing Services to Customer and improving SocialClimb's products and services generally. SocialClimb may commercialize and distribute the predictive data models created by it, provided that such data models do not include Customer Data (including personal health information or other personal data).

1.10 Third-Party Software. Any open source components of the SaaS Services are subject to the applicable third-party license or subscription terms; SocialClimb will use reasonable efforts to provide such terms to Customer upon request. Other third-party software that may be embedded in the Software, or is provided by SocialClimb as an integrated part of the SaaS Services, is provided by SocialClimb to Customer pursuant to the applicable terms of this Agreement, unless a separate third-party license or subscription agreement for such third-party software is provided to Customer in advance. Third-party software is authorized only for use in connection with the SaaS Services, except as otherwise permitted under an open source license.

## 2. PRICE AND PAYMENT

2.1 Fees. Customer will pay to SocialClimb the fees as set forth in each applicable Service Order without offset or deduction. Except as otherwise provided herein or in an applicable Service Order, all payments under this Agreement are non-refundable.

2.2 Invoice and Payment. SocialClimb shall issue an invoice for the Services in accordance with the applicable Service Order. Unless otherwise provided in the applicable Service Order, each invoice shall be payable by Customer in US dollars within thirty (30) days of the date of the applicable invoice. Customer acknowledges that invoices from SocialClimb will be sent electronically, and that SocialClimb may commence invoicing Customer under this Agreement and each Service Order entered into pursuant to this Agreement upon execution of this Agreement. If Customer fails to make any payment when due, without limiting SocialClimb's other rights and remedies: (a) SocialClimb may charge interest on the past due amount at the rate of 1.5% per month or, if lower, the highest rate permitted under applicable law; (b) Customer shall reimburse SocialClimb for all costs incurred by SocialClimb in collecting any late payments or interest, including attorneys' fees, court costs, and

collection agency fees; and (c) if such failure continues for 30 days or more, SocialClimb may suspend Customer's and its Authorized Users' access to any portion or all of the Services until such amounts are paid in full and/or terminate this Agreement under Section 8.2.

2.3 Reimbursement for Expenses. Customer shall reimburse SocialClimb for all reasonable expenses incurred by SocialClimb in the provision of the Services that are specified in each applicable Service Order or otherwise authorized in writing by Customer.

2.4 Disputed Amounts. Customer will not withhold any undisputed portion of any amounts payable hereunder but may withhold disputed amounts upon written notice of a dispute. Unless Customer provides SocialClimb such notice, including the basis for such dispute, regarding the amounts due hereunder within sixty (60) days after the date of the invoice on which such amounts appear, the invoice will be deemed approved by Customer and the right to dispute any such amounts invoiced will be deemed waived.

2.5 Taxes. Customer shall pay to SocialClimb all applicable taxes, fees, assessments or similar liabilities assessed by a governmental authority related to the provision of the Services. Should SocialClimb be required to pay any such taxes, fees, assessments or similar liabilities, Customer will promptly reimburse SocialClimb for such payments upon receipt of an invoice therefor. The foregoing will not apply to taxes based upon the net income, employment or property of SocialClimb.

### 3. REPRESENTATIONS AND WARRANTIES

3.1 Mutual Warranties. Each Party represents and warrants to the other that:

- (a) it shall at all times comply with all applicable laws and regulations in the performance of this Agreement;
- (b) it is duly organized and existing and is in good standing and is qualified to do business under the laws of any jurisdiction where the

ownership of assets or conduct of its business require it to be so qualified, and will maintain all licenses and permits required by applicable law or regulation in connection with this Agreement; and

(c) its execution, delivery and performance of this Agreement has been duly authorized by all appropriate corporate or organizational action and that this Agreement constitutes a valid, binding and enforceable obligation of such Party.

3.2 Customer Warranties. Customer represents and warrants to SocialClimb that:

(a) Customer Data will not violate any person's right of privacy or copyright, trademark, or other intellectual property rights, and Customer and its Authorized Users will not transmit any infringing, unauthorized or illegal materials to SocialClimb. Customer warrants that it has all necessary rights and consents required to upload all Customer Data, including PHI and other personal data, into the SaaS Services or otherwise provide such Customer Data to SocialClimb.

(b) Customer and its Authorized Users will use the SaaS Services only as permitted by applicable laws and regulations. Customer acknowledges that the SaaS Services as provided by SocialClimb are capable of complying with HIPAA and other applicable laws, but that it is Customer's sole responsibility to ensure that Customer and its Authorized Users are using the SaaS Services in a manner that does not violate any law or regulation.

3.3 SocialClimb Warranties.

(a) SocialClimb represents and warrants to Customer that:

(i) it will perform the Services in a good and workmanlike manner and in accordance with industry standards for such Services.

(ii) it will use commercially reasonable, industry-standard efforts and means to keep the SaaS Services free of any virus, trojan horse, worm, trap door, back door, timer, clock, counter or other malicious

software functionality that would intentionally erase or render the SaaS Services unusable or intentionally interfere with the use of the SaaS Services or an Authorized User's computer system or software;

(b) Exclusions. SocialClimb's warranties exclude issues that result from (i) modification of the SaaS Services by Customer or any person or entity other than SocialClimb and its personnel; (ii) defects or problems that are outside the reasonable control of SocialClimb, including defects or damage resulting from use of the SaaS Services in other than their normal and authorized manner; or (iii) Customer's or its Authorized Users' failure to comply with due standards of care.

(c) Remedies. In the event of a breach of a warranty in this Section 3.3, Customer shall contact SocialClimb's designated support personnel within thirty (30) days of Customer's discovery of the warranty breach.

Customer's sole and exclusive remedies and SocialClimb's entire liability for breach of SocialClimb's warranties will be: (i) at SocialClimb's option, to reperform the Services or otherwise cure the warranty breach; or (b) if SocialClimb is unable or fails to cure the breach within a reasonable time, SocialClimb or Customer may terminate this Agreement upon fifteen (15) days' prior written notice. Any such termination by Customer must occur within three months of the initial occurrence of the warranty breach.

(d) Limitation of Warranties. EXCEPT AS EXPRESSLY SET FORTH HEREIN OR AGREED IN WRITING BY AN AUTHORIZED OFFICIAL OF SOCIALCLIMB, ALL SERVICES, PRODUCTS AND MATERIALS ARE PROVIDED BY SOCIALCLIMB "AS IS". SOCIALCLIMB MAKES NO OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, AND DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT OR FITNESS FOR ANY PARTICULAR PURPOSE OR USE, WHETHER ARISING BY LAW, BY REASON OF CUSTOM OR USAGE OF TRADE, OR BY COURSE OF DEALING. SOCIALCLIMB DOES NOT WARRANT THAT ITS SERVICES ARE ERROR-FREE OR THAT THE SAAS SERVICES WILL FUNCTION WITHOUT



INTERRUPTION. OPEN SOURCE COPYRIGHT HOLDERS HAVE NO LIABILITY TO CUSTOMER FOR ANY REASON.

#### 4. OBLIGATIONS OF THE PARTIES

4.1 Customer's Obligations and Covenants. As a condition to receiving access to the Services, Customer shall perform the following obligations:

(a) Use Restrictions. Customer shall not use the Services for any purposes beyond the scope of the access granted in this Agreement. Customer shall not at any time, directly or indirectly, and shall not permit any Authorized Users to: (a) copy, modify, or create Derivative Works of the Services or Documentation, in whole or in part, or otherwise use them to build any competitive product or service; (b) rent, lease, lend, sell, license, sublicense, assign, distribute, publish, transfer, or otherwise make available the Services or Documentation; (c) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to any software component of the Services, in whole or in part; (d) alter or remove any proprietary notices from the Services or Documentation; or (e) use the Services or Documentation in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person, or that violates any applicable law.

(b) Access Credentials. Customer is responsible and liable for all uses of the Services and Documentation resulting from access provided by or through Customer, directly or indirectly, whether such access or use is permitted by or in violation of this Agreement. Without limiting the generality of the foregoing, Customer is responsible for all acts and omissions of Authorized Users, and any act or omission by an Authorized User that would constitute a breach of this Agreement if taken by Customer will be deemed a breach of this Agreement by Customer. Customer shall use reasonable efforts to make all Authorized Users aware of this Agreement's provisions as applicable to such Authorized User's use

of the Services, and shall cause Authorized Users to comply with such provisions. If there is unauthorized use by anyone who obtained access to the Services directly or indirectly through Customer or any of its Authorized Users, Customer shall take all steps reasonably necessary to terminate the unauthorized use. Customer will cooperate and assist with any actions taken by SocialClimb to prevent or terminate such unauthorized use. Customer will indemnify, defend and hold SocialClimb harmless from any and all liability, loss, damage, expense or other costs resulting from such access.

(c) Authorized User Terms of Service. Customer acknowledges that each Authorized User will be required to enter into SocialClimb's end-user Terms of Service (the "TOS") upon accessing the Services, which shall govern such Authorized User's use of the Services. Customer will promptly notify SocialClimb of any breach of the TOS by any Authorized User. Notwithstanding the foregoing, Customer acknowledges and agrees that it shall be responsible and liable for all acts and omissions of its Authorized Users, including without limitation any breach or violation of this Agreement or the TOS. SocialClimb reserves the right to modify and update the TOS in its business discretion from time to time.

(d) Compliance with Laws. Customer will comply with all applicable laws, including all export and import control laws and regulations, and obtain at its expense all necessary licenses, permits and regulatory approvals required by any and all governmental authorities in its use of the Services and, in particular, Customer will not export or re-export the Services without SocialClimb's prior written consent, and, if such consent is granted, without SocialClimb first obtaining all required United States and foreign government licenses. Customer will also be responsible for ensuring that Customer's and each Authorized User's use of the Services, complies with all other applicable laws, including but not limited to the rules, policies and regulations of the Federal Communications

Commission (FCC); the Telephone Consumer Protection Act of 1991 (TCPA); the Junk Fax Prevention Act of 2005; the Controlling the Assault of Non-Solicited Pornography And Marketing (CAN-SPAM) Act of 2003; the Health Insurance Portability and Accountability Act of 1996 (HIPAA); and all other federal, state, local and foreign laws relating to Do-Not-Call provisions; unsolicited marketing; unsolicited telephone calls, facsimiles, SMS or other messages; the use of automated telephone equipment to place certain calls; the placing of commercial messages; telemarketing; faxing; email marketing; spamming or phishing; data security or privacy; international communications; account or debt collection; recording of calls or conversations; export of technical or personal data; end user, end-use, and destination restrictions imposed by the United States and any foreign government; consumer protection; pornography; trade practices; false advertising; unfair competition; anti-discrimination; harassment; defamation; intellectual property; or securities. Customer represents, warrants and covenants that all content, communications, files, information, data, and other content provided for transmission through the Services will be provided solely for lawful purposes, and in no event shall any communications or any content thereof be in violation of any of the foregoing laws. Customer further represents, warrants and covenants that it will (i) obtain prior express written consent from each customer, client or patient to whom communications are transmitted using the Services to receive pre-recorded/artificial voice messages calls and/or use of an automatic dialing device, text messages and/or emails from the Authorized User, Customer, SocialClimb and any of its subcontractors at any telephone number or email address provided by such customer, client or patient to Customer, and (ii) immediately notify SocialClimb of any revocation of such consent. Notwithstanding anything to the contrary set forth herein, SocialClimb, at its sole option and discretion and without notice, may suspend Customer's or any Authorized

User's use of the Services if it determines that Customer or any Authorized User is in violation of any of the foregoing provisions. To the extent permitted by applicable law, Customer will defend, indemnify, and hold harmless SocialClimb and its affiliates, directors, officers, managers, members, employees, contractors, 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 any violation of such laws or regulations by Customer, any Authorized User, or any of their respective officers, directors, managers, members, employees, agents or representatives.

4.2 SocialClimb's Obligations and Covenants. In connection with providing the Services, SocialClimb shall perform the following obligations:

(a) Data Security. SocialClimb shall maintain an information security program designed for the protection of Customer Data, including commercially reasonable administrative, physical, and technical measures designed to (i) protect the confidentiality, availability and integrity of Customer Data, (ii) restore the availability of Customer Data in the event of a physical or technical incident, and (iii) ensure the proper disposal and destruction of Customer Data. SocialClimb will notify Customer of any breach of security that has resulted in unauthorized access to Customer Data, consistent with legal requirements and with any measures reasonably necessary to determine the scope of the breach and to restore the integrity of the Services.

(b) HIPAA Compliance. If Customer is a covered entity under HIPAA (or if Customer is a business associate of a third-party covered entity) and Customer is providing personal health information ("PHI") to SocialClimb as part of the Customer Data, SocialClimb will protect such PHI in accordance with SocialClimb's Business Associate Agreement, a copy of which is located at <https://socialclimb.com/hipaa-business-agreement/>, or

such other business associate agreement as the Parties may agree to in writing.

(c) Availability. SocialClimb will use commercially reasonable efforts to maintain the online availability of the Services for a minimum of 99.9% availability in any given month (excluding published scheduled outages, outages of third-party connections or utilities or other reasons beyond SocialClimb’s control). SOCIALCLIMB’S SOLE LIABILITY AND CUSTOMER’S EXCLUSIVE REMEDY FOR A BREACH OF THIS SECTION 4.2(c) WILL BE FOR SOCIALCLIMB TO PROVIDE A CREDIT EQUAL TO A PERCENTAGE OF THE SUBSCRIPTION FEES PAID BY CUSTOMER FOR THE MONTH IN QUESTION IN ACCORDANCE WITH THE TABLE BELOW. HOWEVER, IN ORDER TO OBTAIN A CREDIT AGAINST SUCH SUBSCRIPTION FEES, CUSTOMER MUST NOTIFY SOCIALCLIMB OF SUCH BREACH WITHIN THIRTY (30) DAYS OF THE END OF THE MONTH IN QUESTION.

Monthly Services Availability	Credit Percentage
Equal to or greater than 99.0% but less than 99.5%	10%
Equal to or greater than 95.0% but less than 99.0%	20%
Less than 95.0%	50%

(d) Insurance Requirements. SocialClimb shall secure and maintain throughout the term of this Agreement the following insurance policies in the following coverage amounts: (a) comprehensive general liability insurance having no less than one million dollars (\$1,000,000) of coverage

on a per incident basis and two million dollars (\$2,000,000) of coverage in the annual aggregate, which policy shall include coverage for liabilities arising out of personal injury, property damage, premises, operation, products, completed operations, personal and advertising injury, and liability assumed under an insured agreement, (b) statutory workers' compensation coverage in the amount required by applicable law and employer's liability insurance in a minimum coverage amount of one million dollars (\$1,000,000) for all of its employees and agents who will be engaged in the provision of Services for Customer under this Agreement, and (c) network risk and privacy liability/cyber liability insurance, including coverage for intellectual property infringement, and privacy infringement, with limits of not less than one million dollars (\$1,000,000) per occurrence and in the aggregate. SocialClimb shall provide certificates evidencing the maintenance of such insurance coverages upon request from Customer. SocialClimb is solely responsible for the payment of all premiums, policy assessments, deductibles and self-insured retentions contained within its insurance program.

(e) Indemnification. SocialClimb shall defend Customer against any claim, demand, suit, or proceeding ("Claim") made or brought against Customer by a third party alleging that the use of the SaaS Services as permitted hereunder infringes a United States patent or a United States registered copyright of such third party, and shall indemnify Customer for any damages finally awarded against, and for reasonable attorneys' fees incurred by, Customer in connection with any such Claim; provided that Customer (a) promptly gives SocialClimb written notice of the Claim, (b) gives SocialClimb sole control of the defense and settlement of the Claim (provided that SocialClimb may not settle or defend any Claim unless it unconditionally releases Customer of all liability), and (c) provides to SocialClimb all reasonable assistance in defending such Claim. SocialClimb shall have no liability for any Claim to the extent it is based on: (i)

modification of the SaaS Services other than by SocialClimb; (ii) any open source or other third-party software or component; (iii) the combination, operation or use of the SaaS Services with any software, hardware or other materials not furnished by SocialClimb; or (iv) any materials that are supplied or uploaded by Customer or its Authorized Users as part of its use of the Services. In the event any SaaS Service is held to, or SocialClimb believes is likely to be held to, infringe the intellectual property rights referenced above, SocialClimb shall have at its option and expense the right to (1) replace or modify the SaaS Service so that it is non-infringing; (2) obtain for Customer a license to continue using the SaaS Service; or (3) if none of the foregoing remedies are commercially feasible, terminate this Agreement and refund any prepaid subscription fees for the portion of the Term after the effective date of termination. THIS SECTION (e) STATES CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND SOCIALCLIMB'S SOLE AND EXCLUSIVE OBLIGATION WITH RESPECT TO THE INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS.

4.3 Trademark License. Each Party grants to the other Party, as licensee, a limited, nonexclusive license to use its name and logos (the "Marks") in connection with this Agreement during the Term, including using the Marks in partner or customer lists and on the licensee's website to describe their relationship. This trademark license is subject to the following terms and conditions: (i) the licensee shall comply with the licensor's guidelines for use of its Marks, as provided to the licensee in written or electronic form; (ii) the licensor retains full ownership and rights to its Marks and all associated goodwill, and the licensee does not acquire any rights, title or interest in such Marks beyond those set forth herein; and (iii) the licensee's use of logo Marks must preserve the original appearance of the logos.

5. SUPPORT

5.1 Support Priorities. SocialClimb will provide Customer with telephone, email and/or web-based technical support and maintenance Services to assist Customer in utilizing the SaaS Services. Support Services will be available during SocialClimb's regular business hours. SocialClimb shall exercise commercially reasonable efforts to correct any Error reported by Customer in accordance with the priority level reasonably assigned to such Error by SocialClimb. The following terms will apply to such prioritization:

(a) "Priority 1 Error" means an Error that (i) renders the SaaS Services inoperative or intermittently inoperative, (ii) causes any material feature of the SaaS Services to be unavailable or (iii) causes a complete failure of the SaaS Services. SocialClimb will respond to Priority 1 Errors within 6 to 24 business hours.

(b) "Priority 2 Error" means an Error that materially degrades the performance of the SaaS Services or materially restricts Customer's use of the SaaS Services. SocialClimb will respond to Priority 2 Errors within 24 to 48 business hours.

(c) "Priority 3 Error" means an Error that causes only a minor impact on Customer's use of the SaaS Services. SocialClimb will respond to Priority 3 Errors within 48 to 72 business hours.

## 6. INTELLECTUAL PROPERTY OWNERSHIP; FEEDBACK.

6.1 SocialClimb IP. Customer acknowledges that, as between Customer and SocialClimb, SocialClimb owns all right, title, and interest, including all Intellectual Property Rights, in and to the SocialClimb IP.

6.2 Customer Data. SocialClimb acknowledges that, as between SocialClimb and Customer, Customer owns all right, title, and interest, including all intellectual property rights, in and to the Customer Data. Customer hereby grants to SocialClimb a non-exclusive, royalty-free, worldwide license to reproduce, distribute, and otherwise use and display the Customer Data and perform all acts with respect to the Customer



Data as may be necessary for SocialClimb to provide the Services to Customer, and a non-exclusive, perpetual, irrevocable, royalty-free, worldwide license to reproduce, distribute, modify, and otherwise use and display Customer Data incorporated within the Aggregated Statistics. Upon request by Customer made within thirty (30) days after any expiration or termination of this Agreement, to the extent SocialClimb has any stored Customer Data, SocialClimb will make such Customer Data available to Customer for download. After such thirty (30) day period, SocialClimb and its hosted service provider shall have no obligation to maintain or provide any Customer Data and may thereafter, unless legally prohibited, delete all Customer Data in its systems or otherwise in its possession or under its control.

6.3 Content. Customer is responsible for all content loaded into the Services by its and its employees or customers (regardless of whether provided by Customer and/or by third parties) ("Content"), including without limitation for any damages that may result from errors or omissions, false or defamatory material, and/or material that is offensive, indecent, objectionable, infringing, and/or illegal. Under no circumstances will SocialClimb, its agents or its suppliers be liable in any way for Content or for any loss or damage of any kind incurred by Customer or any third party as a result of the use or publication of any Content posted, delivered, streamed, or otherwise transmitted via in or connection with the Services. Without limiting the foregoing, Customer acknowledge that neither SocialClimb nor its agents or suppliers will be responsible for preventing or identifying infringement of intellectual property rights or other violations associations with the Content, and that SocialClimb, its agents and its suppliers assume no responsibility to edit, review, or oversee Content submitted, uploaded, distributed, retrieved, or viewed in connection with use of the Services, and shall not be responsible for screening or monitoring for possible (i) infringement or enforcing

Customer's rights or third-party rights with respect to Content, (ii) unlawful, inappropriate or unpermitted use, (iii) libel, falsehoods, errors or omissions contained in Content, or (iv) noncompliance with applicable laws and/or regulations. For any infringement or suspected infringement of intellectual property rights, Customer must immediately remove the applicable Content from the Services.

6.4 Feedback. If Customer or any of its employees, contractors or Authorized Users sends or transmits any communications or materials to SocialClimb by mail, email, telephone, or otherwise, suggesting or recommending changes to the SocialClimb IP, including without limitation, new features or functionality relating thereto, or any comments, questions, suggestions, or the like ("Feedback"), SocialClimb is free to use such Feedback without any obligation to Client. Customer hereby assigns to SocialClimb on Customer's behalf, and on behalf of its employees, contractors, Authorized Users and/or agents, all right, title, and interest in Feedback, and SocialClimb is free to use, without any attribution or compensation to any party, any ideas, know-how, concepts, techniques, or other intellectual property rights contained in the Feedback, for any purpose whatsoever, although SocialClimb is not required to use any Feedback. SocialClimb shall not be prohibited or enjoined at any time by Customer from utilizing any skills or knowledge of a general nature acquired during the course of performing any services or implementing any product specified hereunder, including, without limitation, information publicly known or the type of information that could reasonably be acquired in the conduct of similar work performed for another customer.

## 7. CONFIDENTIALITY

7.1 Confidential Information. During the Term, a Party (the "Receiving Party") may acquire Confidential Information of the other Party (the "Disclosing Party"). Each Party agrees to hold the Confidential Information

of the other Party in strict confidence, to use such information solely in the course of performing its obligations or exercising its rights hereunder, and to make no disclosure of such information except in accordance with the terms of this Agreement. The Receiving Party shall give Confidential Information at least the same level of protection as it gives its own information of similar sensitivity, but not less than a reasonable level of protection. A Party may disclose Confidential Information only to its personnel who need to know such Confidential Information in order to fulfill its obligations or exercise its rights hereunder and who have previously executed a written confidentiality agreement imposing confidentiality obligations no less restrictive than those applicable hereunder, or are bound by equivalent professional obligations of confidentiality. Each Party shall be primarily responsible and liable for any confidentiality breaches by its personnel. Each Party shall immediately advise the other Party of any violation of the terms of this Section 7.1, and shall reasonably cooperate with the disclosing Party in relation thereto. Notwithstanding the foregoing, a Receiving Party may disclose Confidential Information if disclosure is required pursuant to subpoena, court order, or government authority, provided that, if legally permissible, the Receiving Party has provided the Disclosing Party with sufficient prior written notice of such requirement to enable the Disclosing Party to seek to prevent such disclosure.

7.2 Exceptions. Confidential Information shall not include information that the Receiving Party can demonstrate (a) was, at the time of its disclosure, or thereafter becomes part of the public domain through no fault of the Receiving Party or its personnel, (b) was known to the Receiving Party at the time of its disclosure from a source other than the Disclosing Party, (c) is subsequently learned from a third party not known to the Receiving Party to be under a confidentiality obligation to the Disclosing Party with regard to such Confidential Information, or (d) is

independently developed without the use of any Confidential Information of the Disclosing Party.

7.3 Continuing Obligations. Each Party's obligation to maintain the confidentiality of Confidential Information shall remain in force until the later of (a) the termination of the entire Agreement, or (b) the third (3rd) anniversary of the disclosure to such Party of the relevant Confidential Information, provided, however, that for Confidential Information that is a trade secret under applicable law, such obligations shall survive until such Confidential Information is no longer a trade secret.

7.4 Return or Destruction. Promptly upon expiration or termination of this Agreement or at any time upon a Disclosing Party's request, the Receiving Party shall promptly, at the Disclosing Party's option, either return or destroy all (or, if the Disclosing Party so requests, any part) of the Confidential Information, and all copies thereof and other materials containing such Confidential Information, including deletion from such Party's files and systems and the Receiving Party shall certify in writing its compliance with the foregoing. Notwithstanding the foregoing, the Receiving Party may retain Confidential Information on its back-up servers that are not generally accessible, in the ordinary course of business, as well as one copy in a secure location for archival purposes, provided that such Confidential Information shall remain subject to the provisions of this Agreement.

7.5 Injunctive Relief. Each Party acknowledges that in the event of a breach of this Section 7 damages may not be an adequate remedy and the Disclosing Party may be entitled to, in addition to any other rights and remedies available under the Agreement or at law or in equity, injunctive relief to restrain any such breach.

## 8. TERM AND TERMINATION

8.1 Term of Agreement. This Agreement commences on the Effective Date and remains in effect for a period of one (1) year (the "Initial Term")

unless earlier terminated in accordance with this Article 8. This Agreement shall be automatically renewed for consecutive one (1) year terms unless either Party provides written notice to the other of its intention not to renew at least ninety (90) days prior to the expiration of the term then in effect. The Initial Term and any renewals thereof shall be collectively referred to as the "Term." Each Service Order will terminate automatically upon termination of this Agreement. The terms of this Section 8.1 may be superseded by the terms of an applicable Service Order.

8.2 Termination. This Agreement and each Service Order may be terminated (a) by either Party immediately if the other Party has committed a material breach of this Agreement and has failed to cure such material breach within thirty (30) days following written notice from the non-breaching Party or failed to commence a cure of such material breach within such thirty (30) day notice period if such breach is reasonably unable to be cured within such period and (b) by either Party immediately upon the occurrence of any of the following events with respect to the other Party: (i) the other Party becomes insolvent, generally unable to pay its debts as they become due, or makes an assignment for the benefit of its creditors or seeks relief under any bankruptcy, insolvency or debtor's relief law; (ii) proceedings are commenced against the other Party under any bankruptcy, insolvency or debtor's relief law, and such proceedings have not been vacated or set aside within ninety (90) days from the date of commencement thereof; (iii) a receiver is appointed for the other Party or its material assets; or (iv) the other Party is liquidated, dissolved or ceases operations. Additionally, if the Parties have entered into a BAA that is required under HIPAA, termination of the BAA for any reason will automatically result in termination of this Agreement.

8.3 Effect of Termination/Expiration; Survival. Termination or expiration of this Agreement shall not limit either Party from pursuing any other

remedies available to it, including injunctive relief, nor will termination relieve Customer of its obligation to pay all charges accrued prior to such termination. Except as expressly provided herein or in each applicable Service Order, all payments under this Agreement are non-refundable. Sections 1.8, 1.9, 2, 3.3(d), 6, 7, 8.3, 9 and 11 shall survive the expiration or termination of this Agreement, together with such other sections or terms as by their meaning or intent should survive termination.

## 9. LIMITATION OF LIABILITY

9.1 IN NO EVENT WILL SOCIALCLIMB, ITS SUPPLIERS, MEMBERS, 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, BUSINESS OR GOODWILL, ARISING OUT OF THIS AGREEMENT OR THE USE OF OR RELIANCE UPON THE SERVICES, 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 SERVICES, EXCEPT IN THE CASE OF SOCIALCLIMB'S GROSS NEGLIGENCE WITH RESPECT TO SUCH USE OR MISUSE.

9.2 UNDER NO CIRCUMSTANCES WILL SOCIALCLIMB'S TOTAL LIABILITY OF ANY KIND ARISING OUT OF OR RELATED TO THIS AGREEMENT, 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 CUSTOMER 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.

9.3 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.

## 10. DEFINED TERMS; INTERPRETATION

10.1 Definitions. Capitalized terms used herein shall have the meanings in this Section 10.

(a) "Affiliated Entities" means and includes any and all of Customer's subsidiaries, affiliates, corporations, limited liability companies, partnerships, firms, associations, businesses, organizations, and/or other entities that directly or indirectly (either presently or in the future and/or through one or more intermediaries) control, are controlled by, or are under common control with Customer.

(b) "Affiliates" means any entity controlling or controlled by or under common control with a Party, at the time of determination.

(c) "Aggregated Statistics" means data and information related to Customer's and Authorized User's use of the Services in an aggregate and anonymized manner, including compiled statistical and performance information related to the provision, operation and use of the Services.

(d) "Authorized User(s)" means Customer's employees, consultants, contractors, and agents (i) who are authorized by Customer to access and use the Services under the rights granted to Customer pursuant to this Agreement and (ii) for whom access to the Services has been purchased hereunder.

(e) "Claim" has the meaning set forth in Section 4.2(e).

(f) "Customer" has the meaning set forth in the Preamble to this Agreement.

(g) "Customer Data" means the data and other information uploaded by or on behalf of Customer to the Services or otherwise collected and stored

by SocialClimb in connection with Customer's use of the Services, excluding SocialClimb IP.

(h) "Confidential Information" means information of either Party that is not generally known to the public, whether of a technical, business or other nature (including, but not necessarily limited to: trade secrets, know how, nonpublic software and technology, computer program source codes, information supplied by third parties to the disclosing Party under obligation of confidentiality, and information relating to the customers, business plans, promotional and marketing activities, finances and other business affairs of such Party); provided that the same is conspicuously marked or otherwise identified as confidential or proprietary information prior to, upon or promptly after receipt by the other Party, or the receiving Party reasonably should understand such information to be confidential.

(i) "Documentation" means any manuals, instructions, or other documents or materials that SocialClimb provides or makes available to Customer in any form or medium and which describe the functionality, components, features, or requirements of the Services.

(j) "Derivative Works" means any modification, revision, enhancement, translation, abridgment, condensation or expansion of any SaaS Service or any form in which any SaaS Service may be recast, transferred, or adapted.

(k) "Disclosing Party" has the meaning set forth in Section 7.1.

(l) "Effective Date" has the meaning set forth in the Preamble to this Agreement.

(m) "Error" means any reproducible defect or condition inherent in the SaaS Services that causes the SaaS Services to fail to perform in all material respects in accordance with the applicable Service Order.

(n) "Initial Term" has the meaning set forth in Section 8.1.

(o) "Intellectual Property Rights" means any and all registered and unregistered rights granted, applied for, or otherwise now or hereafter in



existence under or related to any patent, copyright, trademark, trade secret, database protection, or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.

(p) "Receiving Party" has the meaning set forth in Section 7.1.

(q) "SaaS Services" means the hosted SocialClimb platform described in the applicable Service Order(s), including its Documentation, and associated software, user interfaces, databases, and any related applications or technology provided by SocialClimb to Customer as part of such SaaS Services, and any Updates to the foregoing.

(r) "Services" means the SaaS Services and/or other services, including support and maintenance services and professional services, made available by SocialClimb to Customer hereunder, and all Updates thereto, as further described in each applicable Service Order.

(s) "Service Order" means a written description of the Services to be provided by SocialClimb under this Agreement, as provided by SocialClimb and agreed to by Customer.

(t) "SocialClimb" has the meaning set forth in the Preamble to this Agreement.

(u) "SocialClimb IP" means the Services, the Documentation, and any and all intellectual property provided to Customer or any Authorized User in connection with the foregoing. For the avoidance of doubt, SocialClimb IP includes Feedback, Aggregated Statistics, de-identified and anonymized data, predictive data models, and any other information, data, or other content (excluding Customer Data) derived from SocialClimb's monitoring of Customer's access to or use of the Services.

(v) "Term" has the meaning set forth in Section 8.1.

(w) "Updates" means, as applicable, any update, correction, modification, enhancement, upgrade or new releases of the SaaS Services that SocialClimb makes generally available to its Customers.

10.2 Interpretation. Terms other than those defined herein shall be given their plain English meaning, and those terms known in the information technology industry shall be interpreted in accordance with their generally known meanings. The definitions contained in this Agreement shall apply to each applicable Service Order. The use of the terms “including,” “include” or “includes” shall in all cases be deemed to be modified by “without limitation.” Unless the context otherwise requires, words importing the singular include the plural and vice-versa. Words importing the masculine include the feminine and vice versa where the context so requires.

## 11. MISCELLANEOUS

11.1 Notices. All notices or other communications required or permitted under this Agreement shall be in writing and will be deemed given (i) when personally delivered; (ii) five (5) days after being deposited with the United States Postal Service, if sent by registered mail, return receipt requested; (iii) upon receipt after being sent by commercial overnight courier service with tracking capabilities; or (iv) received by email (with non-automated confirmation of delivery) to the email address of the Party set forth on the signature page of this Agreement. A Party may change its physical or email address by written notice in accordance with this Section 11.1.

11.2 Entire Agreement; Amendments; Waiver. This Agreement and all Service Orders constitute the entire understanding of the Parties with respect to the Services, and shall not be amended or modified except by written agreement duly executed by each of the Parties. All previous agreements and understandings between the Parties regarding the subject matter hereof, whether written or oral, are superseded by this Agreement. No failure of either Party to exercise any right granted hereunder to insist upon strict compliance with any obligation hereunder shall constitute a waiver of the rights of such Party to demand full and exact compliance with the terms of this Agreement. No waiver of any

provision or right hereunder will be valid unless it is in writing and signed by the Party giving it.

11.3 Dispute Resolution. Before resorting to other remedies available to them, the Parties shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement or any Service Order promptly by negotiation between executives who have authority to settle the controversy. Any Party may give the other Party written notice of any dispute not resolved in the normal course of business. Within ten (10) business days after delivery of the notice, the receiving Party shall submit to the other a written response. The notice and the response shall include (a) a statement of each Party's position and a summary of arguments supporting that position, and (b) the name and title of the executive who will represent that Party and of any other person who will accompany the executive. Within five (5) business days after delivery of the disputing Party's notice, the executives of both Parties shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to attempt to resolve the dispute. All reasonable requests for information made by one Party to the other will be honored.

11.4 Governing Law; Exclusive Jurisdiction. This Agreement shall be construed according to the substantive and procedural laws of the State of Utah, without application of conflict of law principles. Any legal action or proceeding relating to this Agreement shall be instituted only in any state or federal court in Salt Lake County, Utah. The Parties agree to submit to the jurisdiction of, and agree that the venue is proper in, the aforesaid courts in any such legal action or proceeding.

11.5 Attorney Fees. In case of any legal 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.

11.6 Remedies. Customer agrees that the obligations of Customer provided herein are necessary and reasonable in order to protect SocialClimb and its business interests, and Customer expressly agrees that monetary damages alone may be inadequate to compensate SocialClimb for any breach by Customer of its covenants and agreements set forth herein. Customer acknowledges that the unauthorized use, transfer, or disclosure of the Services will (a) substantially diminish the value to SocialClimb of the proprietary interests and Intellectual Property Rights 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. Therefore, if Customer breaches or threatens to breach any of its obligations under this Agreement, 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, to the extent permitted by law, in addition to any other remedies that may be available, in law, in equity or otherwise.

11.7 Titles and Subtitles. The titles and subtitles used in the Agreement are used for convenience only and are not to be considered in construing or interpreting the Agreement.

11.8 Assignment. Neither Party may assign its rights or obligations under the Agreement to any third Party without the prior written consent of the other Party; however, either Party may assign this Agreement to any Affiliate or in the case of a merger or acquisition of all or substantially all of such Party's assets without the consent of the other Party. The Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns.

11.9 Force Majeure. A Party shall be excused from delays or failure to perform its duties (other than payment obligations) to the extent such delays or failures result from acts of nature, riots, war, acts of public

enemies, fires, epidemics, labor disputes, Service interruptions or unavailability that occur due to issues with third-party hosting, data or service suppliers, or any other causes beyond its reasonable control. The affected Party will promptly inform the other Party if there is a force majeure event that may materially affect or delay its performance of its obligations under this Agreement. The affected Party shall resume performance as soon as is reasonably feasible.

11.10 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. Neither Party shall have power or authority to obligate or bind the other Party in any manner whatsoever, except as specifically provided herein. Each Party is responsible for the supervision, management and direction of its own employees. Each Party is responsible for the payment of compensation to its employees and for any injury to them occurring in the course of their employment for which their employer is responsible and neither Party shall be responsible for the supervision, management and direction of the employees of the other Party.

11.11 No Third Party Beneficiaries. This Agreement shall not benefit, or create any right or cause of action in or on behalf of, any person or entity other than Customer or SocialClimb.

11.12 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which will together constitute a single agreement. Facsimile and electronic copies of signatures shall have the same effect as originals. If a Party elects to sign this Agreement electronically, it expressly acknowledges and agrees that such electronic signature is the legal equivalent of, and has the same force and effect as, a manual signature.

11.13 Severability. If one or more provisions of this Agreement are held to be unenforceable under applicable law, the Parties hereto agree to

renegotiate such provision(s) in good faith. In the event that the Parties cannot reach a mutually agreeable and enforceable replacement for such provision(s), then: such provision(s) shall be excluded from this Agreement; the balance of this Agreement shall be interpreted as if such provision(s) were so excluded; and the balance of this Agreement shall be enforceable in accordance with its terms.

11.14 No Primary Drafter. The Parties agree that they have mutually negotiated the terms and conditions of this Agreement and that any provision contained herein with respect to which an issue of interpretation or construction arises shall not be construed to the detriment of the drafter on the basis that such Party or its professional advisor was the drafter, but shall be construed according to the intent of the Parties as evidenced by the entire Agreement.

11.15 Indemnification. In addition to any other indemnification obligations contained herein, Customer shall indemnify, defend and hold harmless SocialClimb and its affiliates, directors, officers, managers, members, employees, contractors, 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 Customer of any representation, warranty or covenant of Customer contained in this Agreement and (b) Customer's or any Authorized User's use of the Services. SocialClimb will: (a) give Customer prompt written notice of the claim; (b) grant Customer full and complete control over the defense and settlement of the claim; (c) assist Customer with the defense and settlement of the claim as Customer may reasonably request and at Customer's expense; and (d) comply with any settlement or court order made in connection with the claim.