

Posted/Revised: December 9, 2015

## TERMS OF SERVICE

**PLEASE READ THESE TERMS OF SERVICE CAREFULLY. BY CLICKING “ACCEPTED AND AGREED TO,” CUSTOMER AGREES TO THESE TERMS AND CONDITIONS.**

These Terms of Service constitute an agreement (this “Agreement”) by and between One Chimp Technology, LLC, a Washington limited liability company (“Provider”) and the corporation, LLC, partnership, sole proprietorship, or other business entity executing this Agreement (“Customer”). This Agreement is effective as of the date Customer clicks “Accepted and Agreed To” (the “Effective Date”). Customer’s use of and Provider’s provision of Provider’s System (as defined below in Section 1.6) are governed by this Agreement.

EACH PARTY ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS, AND THAT THE PERSON SIGNING ON ITS BEHALF HAS BEEN AUTHORIZED TO DO SO. THE PERSON EXECUTING THIS AGREEMENT ON CUSTOMER’S BEHALF REPRESENTS THAT HE OR SHE HAS THE AUTHORITY TO BIND CUSTOMER TO THESE TERMS AND CONDITIONS.

1. **DEFINITIONS.** The following capitalized terms shall have the following meanings whenever used in this Agreement.
  - 1.1. “AUP” means Provider’s acceptable use policy, currently posted at its Website ([www.OneChimp.com](http://www.OneChimp.com)).
  - 1.2. “Customer Data” means data in electronic form input or collected through the System by or from Customer, including without limitation by Customer’s Users.
  - 1.3. “Documentation” means Provider's standard manual and other documentation related to use of the System, as applicable.
  - 1.4. “Order” means an order for access to the System.
  - 1.5. “Privacy Policy” means Provider’s privacy policy, currently posted at its Website ([www.OneChimp.com](http://www.OneChimp.com)).
  - 1.6. “System” means Provider’s cloud-based software services for real estate professionals and related services.
  - 1.7. “Term” is defined in Section 11.1 below.

1.8. “User” means any individual who uses the System on Customer’s behalf or through Customer’s account or passwords, whether authorized or not.

## **2. THE SYSTEM.**

- 2.1. Use of the System. During the Term, Customer may access and use the System pursuant to: (a) the terms of any outstanding Order, including such features and functions as the Order requires; and (b) Provider's policies posted on its Website, as such policies may be updated from time to time.
- 2.2. Service Levels. In the event of any significant service failure, Provider will issue Customer such credits as reasonably determined by Provider in good faith. Any credits issued will apply to outstanding or future payments only and are forfeited upon termination of this Agreement. Provider is not required to issue refunds or to make payments against such credits under any circumstances, including without limitation termination of this Agreement. Credits issued are Customer's sole remedy for the significant service failure in question.
- 2.3. Documentation: Customer may reproduce and use the Documentation solely as necessary to support Users' use of the System.
- 2.4. System Revisions. Provider may revise System features and functions at any time, including without limitation by removing such features and functions or reducing service levels. If any such revision to the System materially reduces features or functionality provided pursuant to an Order, Customer may within 30 days of notice of the revision terminate such Order, without cause, or terminate this Agreement without cause if such Order is the only one outstanding.
3. **SYSTEM FEES.** Customer shall pay Provider the fee set forth in each Order (the "Subscription Fee") for each Term. Provider will not be required to refund the Subscription Fee under any circumstances. Premium features may be available for additional Subscription Fees. Upon 30 days' notice, we may increase Subscription Fees.

## **4. CUSTOMER DATA & PRIVACY.**

- 4.1. Use of Customer Name and Logo for Promotional Activities. Despite any provision in this Agreement to the contrary, Customer hereby grants to Provider the right to use Customer's name and logo on Provider's Website and on Provider's email campaigns, flyers and other promotional items and media. Customer agrees that such use by Provider does not infringe upon Customer's trademark, copyright, moral or other rights and that Customer will not assert such rights in respect to such use. If Customer does not wish to have Customer's name and/or logo published in any of these manners for Provider's marketing and promotional purposes, then Customer must provide notice to Provider via e-mail at the following address: support@[OneChimp.com](mailto:support@OneChimp.com). After receipt of such notice from Customer, Provider will remove Customer's name and logo from Provider's promotional items and media within a commercially reasonable time period. This does not require Provider to cease such use on items or media that have already been substantially prepared or published on the date of Provider's receipt of such notice.

- 4.2. Other Use of Customer Data. Subject to the foregoing, unless it receives Customer's prior written consent, Provider: (a) shall not access, process, or otherwise use any other Customer Data other than as necessary to facilitate the System; and (b) shall not intentionally grant any third party access to any other Customer Data, including without limitation Provider's other customers, except subcontractors that are subject to a reasonable nondisclosure agreement. Notwithstanding the foregoing, Provider may disclose Customer Data as required by applicable law or by proper legal or governmental authority. Provider shall give Customer prompt notice of any such legal or governmental demand and reasonably cooperate with Customer in any effort to seek a protective order or otherwise to contest such required disclosure, at Customer's expense.
- 4.3. Privacy Policy. The Privacy Policy applies only to the System and does not apply to any third party website or service linked to the System or recommended or referred to through the System or by Provider's staff.
- 4.4. Risk of Exposure. Customer recognizes and agrees that hosting data online involves risks of unauthorized disclosure or exposure and that, in accessing and using the System, Customer assumes such risks. Provider offers no representation, warranty, or guarantee that Customer Data will not be exposed or disclosed through errors or the actions of third parties.
- 4.5. Data Accuracy. Provider shall have no responsibility or liability for the accuracy of data uploaded to the System by Customer, including without limitation Customer Data and any other data uploaded by Users.
- 4.6. Data Deletion. Provider may permanently erase Customer Data if Customer's account is delinquent, suspended, or terminated for 90 days or more. Provider has no obligation to retain documentation or Customer Data beyond those 90 days. Customer, not Provider, is solely responsible for compliance with applicable laws regarding document retention.
- 4.7. Excluded Data. Customer represents and warrants that Customer Data does not and will not include, and Customer has not and shall not upload or transmit to Provider's computers or other media, any data ("Excluded Data") regulated pursuant to relevant excluded data laws. CUSTOMER RECOGNIZES AND AGREES THAT: (a) PROVIDER HAS NO LIABILITY FOR ANY FAILURE TO PROVIDE PROTECTIONS SET FORTH IN THE EXCLUDED DATA LAWS OR OTHERWISE TO PROTECT EXCLUDED DATA; AND (b) PROVIDER'S SYSTEMS ARE NOT INTENDED FOR MANAGEMENT OR PROTECTION OF EXCLUDED DATA AND MAY NOT PROVIDE ADEQUATE OR LEGALLY REQUIRED SECURITY FOR EXCLUDED DATA.
- 4.8. Aggregate & Anonymized Data. Notwithstanding the provisions above of this Article 4, Provider may use, reproduce, sell, publicize, or otherwise exploit Aggregate Data in any way, in its sole discretion. ("Aggregate Data" refers to Customer Data with the following removed: personally identifiable information and the names and addresses of Customer and any of its Users or customers.)

## **5. CUSTOMER'S RESPONSIBILITIES & RESTRICTIONS.**

- 5.1. Acceptable Use. Customer shall comply with the AUP. Customer shall not: (a) use the System for service bureau or time-sharing purposes or in any other way allow third parties to exploit the System; (b) provide System passwords or other log-in information to any third party; (c) share non-public System features or content with any third party; or (d) access the System in order to build a competitive product or service, to build a product using similar ideas, features, functions or graphics of the System, or to copy any ideas, features, functions or graphics of the System. In the event that it suspects any breach of the requirements of this Section 5.1, including without limitation by Users, Provider may suspend Customer's access to the System without advanced notice, in addition to such other remedies as Provider may have. Neither this Agreement nor the AUP requires that Provider take any action against Customer or any User or other third party for violating the AUP, this Section 5.1, or this Agreement, but Provider is free to take any such action it sees fit.
- 5.2. Unauthorized Access. Customer shall take reasonable steps to prevent unauthorized access to the System, including without limitation by protecting its passwords and other log-in information. Customer shall notify Provider immediately of any known or suspected unauthorized use of the System or breach of its security and shall use best efforts to stop said breach.
- 5.3. Compliance with Laws. In its use of the System, Customer shall comply with all applicable laws, including without limitation laws governing the protection of personally identifiable information and other laws applicable to the protection of Customer Data.
- 5.4. Users & System Access. Customer is responsible and liable for: (a) Users' use of the System, including without limitation unauthorized User conduct and any User conduct that would violate the AUP or the requirements of this Agreement applicable to Customer; and (b) any use of the System through Customer's account, whether authorized or unauthorized.

## **6. IP & FEEDBACK.**

- 6.1. IP Rights to the System. Provider retains all right, title, and interest in and to the System, including without limitation all software used to provide the System and all graphics, user interfaces, logos, and trademarks reproduced through the System. This Agreement does not grant Customer any intellectual property license or rights in or to the System or any of its components. Customer recognizes that the System and its components are protected by copyright and other laws.
- 6.2. Feedback. Provider has not agreed to and does not agree to treat as confidential any Feedback (as defined below) Customer or Users provide to Provider, and nothing in this Agreement or in the parties' dealings arising out of or related to this Agreement will restrict Provider's right to use, profit from, disclose, publish, keep secret, or otherwise exploit Feedback, without compensating or crediting Customer or the User in question.

(“Feedback” refers to any suggestion or idea for improving or otherwise modifying any of Provider’s products or services.)

7. **CONFIDENTIAL INFORMATION.** “Confidential Information” refers to the following items Provider discloses to Customer: (a) any document Provider marks “Confidential”; (b) any information Provider orally designates as “Confidential” at the time of disclosure, provided Provider confirms such designation in writing within 15 business days; (c) the Documentation, whether or not marked or designated confidential; and (d) any other nonpublic, sensitive information disclosed by Provider, whether or not marked or designated “Confidential.” Notwithstanding the foregoing, Confidential Information does not include information that: (i) is in Customer’s possession at the time of disclosure; (ii) is independently developed by Customer without use of or reference to Confidential Information; (iii) becomes known publicly, before or after disclosure, other than as a result of Customer’s improper action or inaction; or (iv) is approved for release in writing by Customer.

7.1. Nondisclosure. Customer shall not use Confidential Information for any purpose other than to accomplish the express purposes of this Agreement (the “Purpose”). Customer: (a) shall not disclose Confidential Information to any employee or contractor of Customer unless such person needs access in order to facilitate the Purpose and executes a nondisclosure agreement with Customer with terms no less restrictive than those of this Article 7; and (b) shall not disclose Confidential Information to any other third party without Provider’s prior written consent. Without limiting the generality of the foregoing, Customer shall protect Confidential Information with the same degree of care it uses to protect its own confidential information of similar nature and importance, but with no less than reasonable care. Customer shall promptly notify Provider of any misuse or misappropriation of Confidential Information that comes to Customer’s attention. Notwithstanding the foregoing, Customer may disclose Confidential Information as required by applicable law or by proper legal or governmental authority. Customer shall give Provider prompt notice of any such legal or governmental demand and reasonably cooperate with Provider in any effort to seek a protective order or otherwise to contest such required disclosure, at Provider’s expense.

7.2. Injunction. Customer agrees that breach of this Article 7 would cause Provider irreparable injury, for which monetary damages would not provide adequate compensation, and that in addition to any other remedy, Provider will be entitled to injunctive relief against such breach or threatened breach, without proving actual damage or posting a bond or other security.

7.3. Termination & Return. With respect to each item of Confidential Information, the obligations of Section 7.1 above (*Nondisclosure*) shall continue for as long as Customer possesses Confidential Information in any form. Upon termination of this Agreement, Customer shall return all copies of Confidential Information to Provider or certify, in writing, the destruction thereof.

7.4. Retention of Rights. This Agreement does not transfer ownership of Confidential

Information or grant a license thereto. Provider will retain all right, title, and interest in and to all Confidential Information.

## **8. REPRESENTATIONS & WARRANTIES.**

- 8.1. From Provider. Provider represents and warrants that it is the owner of the System and of each and every component thereof, or the recipient of a valid license thereto, and that it has and will maintain the full power and authority to grant the rights granted in this Agreement without the further consent of any third party. Provider's representations and warranties in the preceding sentence do not apply to use of the System in combination with hardware or software not provided by Provider. In the event of a breach of the warranty in this Section 8.1, Provider, at its own expense, will promptly take the following actions: (a) secure for Customer the right to continue using the System; (b) replace or modify the System to make it noninfringing; or (c) terminate the infringing features of the Service and refund to Customer any prepaid fees for such features, in proportion to the portion of the Term left after such termination. In conjunction with Customer's right to terminate for breach where applicable, the preceding sentence states Provider's sole obligation and liability, and Customer's sole remedy, for breach of the warranty in this Section 8.1 and for potential or actual intellectual property infringement by the System.
- 8.2. From Customer. Customer represents and warrants that: (a) it has the full right and authority to enter into, execute, and perform its obligations under this Agreement and that no pending or threatened claim or litigation known to it would have a material adverse impact on its ability to perform as required by this Agreement; (b) it has accurately identified itself and it has not provided any inaccurate information about itself to or through the System; and (c) it is a corporation, the sole proprietorship of an individual 18 years or older, or another entity authorized to do business pursuant to applicable law.
- 8.3. Warranty Disclaimers. CUSTOMER ACCEPTS THE SYSTEM "AS IS" AND AS AVAILABLE, WITH NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS, OR ANY IMPLIED WARRANTY ARISING FROM STATUTE, COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING: (a) PROVIDER HAS NO OBLIGATION TO INDEMNIFY OR DEFEND CUSTOMER OR USERS AGAINST CLAIMS RELATED TO INFRINGEMENT OF INTELLECTUAL PROPERTY; (b) PROVIDER DOES NOT REPRESENT OR WARRANT THAT THE SYSTEM WILL PERFORM WITHOUT INTERRUPTION OR ERROR; AND (c) PROVIDER DOES NOT REPRESENT OR WARRANT THAT THE SYSTEM IS SECURE FROM HACKING OR OTHER UNAUTHORIZED INTRUSION OR THAT CUSTOMER DATA WILL REMAIN PRIVATE OR SECURE.

9. **INDEMNIFICATION.** Customer shall defend, indemnify, and hold harmless Provider and the Provider Associates (as defined below) against any “Indemnified Claim,” meaning any third party claim, suit, or proceeding arising out of or related to Customer's alleged or actual use of, misuse of, or failure to use the System, including without limitation: (a) claims by Users or by Customer's employees, as well as by Customer's own customers; (b) claims related to unauthorized disclosure or exposure of personally identifiable information or other private information, including Customer Data; (c) claims related to infringement or violation of a copyright, trademark, trade secret, or privacy or confidentiality right by written material, images, logos or other content uploaded to the System through Customer's account, including without limitation by Customer Data; (d) claims related to loss, deletion or destruction of Customer Data or documentation; and (e) claims that use of the System through Customer's account harasses, defames, or defrauds a third party or violates the CAN-Spam Act of 2003 or any other law or restriction on electronic advertising. Indemnified Claims include, without limitation, claims arising out of or related to Provider's negligence. Customer's obligations set forth in this Article 9 include retention and payment of attorneys and payment of court costs, as well as settlement at Customer's expense and payment of judgments. Provider will have the right, not to be exercised unreasonably, to reject any settlement or compromise that requires that it admit wrongdoing or liability or subjects it to any ongoing affirmative obligations. (The “Provider Associates” are Provider's officers, directors, shareholders, parents, subsidiaries, agents, successors, and assigns.)

10. **LIMITATION OF LIABILITY.**

10.1. Dollar Cap. PROVIDER'S TOTAL LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT OR ANY POLICIES REFERENCED IN THIS AGREEMENT (SUCH AS THE PRIVACY POLICY AND ACCEPTABLE USE POLICY) WILL NOT EXCEED \$1,000.

10.2. Exclusion of Consequential Damages. IN NO EVENT WILL PROVIDER BE LIABLE TO CUSTOMER FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT.

10.3. Clarifications & Disclaimers. THE LIABILITIES LIMITED BY THIS ARTICLE 10 APPLY: (a) TO LIABILITY FOR NEGLIGENCE; (b) REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, STRICT PRODUCT LIABILITY, OR OTHERWISE; (c) EVEN IF PROVIDER IS ADVISED IN ADVANCE OF THE POSSIBILITY OF THE DAMAGES IN QUESTION AND EVEN IF SUCH DAMAGES WERE FORESEEABLE; AND (d) EVEN IF CUSTOMER'S REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE. If applicable law limits the application of the provisions of this Article 10, Provider's liability will be limited to the maximum extent permissible. For the avoidance of doubt, Provider's liability limits and other rights set forth in this Article 10 apply likewise to Provider's affiliates, licensors, suppliers, advertisers, agents, sponsors, directors, officers, employees, consultants, and other representatives.

## 11. Term & Termination.

- 11.1. Term. The term of this Agreement (the “Term”) shall commence on the Effective Date and continue for the period set forth in the Order or, if none, for 30 days. Thereafter, the Term will renew for successive 30-day periods, unless Provider refuses such renewal by written notice 15 or more days before the renewal date. Customer may cancel the subscription via the System at any time.
- 11.2. Termination for Cause. Provider may terminate this Agreement for the Customer’s material breach of this Agreement (or any policies referenced in this Agreement, such as the AUP) and such termination shall be immediately effective upon written notice to Customer.
- 11.3. Effects of Termination. Upon termination of this Agreement, Customer shall cease all use of the System and delete, destroy, or return all copies of the Documentation in its possession or control. Upon termination of this Agreement for any reason, Customer shall pay Subscription Fees through the end of the then-current 30-day subscription term and shall not receive a refund of Subscription Fees paid. The following provisions will survive termination or expiration of this Agreement: (a) any obligation of Customer to pay fees incurred before termination; (b) Articles and Sections 6 (*IP & Feedback*), 7 (*Confidential Information*), 8.3 (*Warranty Disclaimers*), 9 (*Indemnification*), and 10 (*Limitation of Liability*); and (c) any other provision of this Agreement that must survive to fulfill its essential purpose.

## 12. MISCELLANEOUS.

- 12.1. Independent Contractors. The parties are independent contractors and will so represent themselves in all regards. Neither party is the agent of the other, and neither may make commitments on the other’s behalf. The parties agree that no Provider employee or contractor will be an employee of Customer.
- 12.2. Notices. Provider may send notices pursuant to this Agreement to Customer’s email contact points provided by Customer, and such notices will be deemed received 24 hours after they are sent. Customer may send notices pursuant to this Agreement to Provider at the following email address support@OneChimp.com, and such notices will be deemed received 72 hours after they are sent.
- 12.3. Force Majeure. No delay, failure, or default, other than a failure to pay fees when due, will constitute a breach of this Agreement to the extent caused by acts of war, terrorism, hurricanes, earthquakes, other acts of God or of nature, strikes or other labor disputes, riots or other acts of civil disorder, embargoes, or other causes beyond the performing party’s reasonable control.
- 12.4. Assignment & Successors. Customer may not assign this Agreement or any of its rights or obligations hereunder without Provider’s express written consent. Except to the extent

forbidden in this Section 12.4, this Agreement will be binding upon and inure to the benefit of the parties' respective successors and assigns.

12.5.Severability. To the extent permitted by applicable law, the parties hereby waive any provision of law that would render any clause of this Agreement invalid or otherwise unenforceable in any respect. In the event that a provision of this Agreement is held to be invalid or otherwise unenforceable, such provision will be interpreted to fulfill its intended purpose to the maximum extent permitted by applicable law, and the remaining provisions of this Agreement will continue in full force and effect.

12.6.No Waiver. Neither party will be deemed to have waived any of its rights under this Agreement by lapse of time or by any statement or representation other than by an authorized representative in an explicit written waiver. No waiver of a breach of this Agreement will constitute a waiver of any other breach of this Agreement.

12.7.Choice of Law & Jurisdiction: This Agreement will be governed solely by the internal laws of the State of Washington, without reference to: (a) any conflicts of law principle that would apply the substantive laws of another jurisdiction to the parties' rights or duties; (b) the 1980 United Nations Convention on Contracts for the International Sale of Goods; or (c) other international laws. The parties consent to the personal and exclusive jurisdiction of the federal and state courts of King County, Washington.

12.8.Conflicts. In the event of any conflict between this Agreement and any Provider policy posted online, including without limitation the AUP or Privacy Policy, the terms of this Agreement will govern.

12.9.Construction. The parties agree that the terms of this Agreement result from negotiations between them. This Agreement will not be construed in favor of or against either party by reason of authorship.

12.10.Technology Export. Customer shall not: (a) permit any third party to access or use the System in violation of any U.S. law or regulation; or (b) export any software provided by Provider or otherwise remove it from the United States except in compliance with all applicable U.S. laws and regulations. Without limiting the generality of the foregoing, Customer shall not permit any third party to access or use the System in, or export such software to, a country subject to a United States embargo (as of the Effective Date, Cuba, Iran, North Korea, Sudan, and Syria).

12.11.Entire Agreement. This Agreement sets forth the entire agreement of the parties and supersedes all prior or contemporaneous writings, negotiations, and discussions with respect to its subject matter. Neither party has relied upon any such prior or contemporaneous communications.

12.12.Amendment. Provider may amend this Agreement from time to time by posting an

amended version at its Website and sending Customer written notice thereof. Such amendment will be deemed accepted and become effective 30 days after such notice (the “Proposed Amendment Date”) unless Customer first gives Provider written notice of rejection of the amendment. In the event of such rejection, this Agreement will continue under its original provisions, and the amendment will become effective at the start of Customer’s next Term following the Proposed Amendment Date (unless Customer first terminates this Agreement pursuant to Article 11, *Term & Termination*). Customer’s continued use of the Service following the effective date of an amendment will confirm Customer’s consent thereto. This Agreement may not be amended in any other way except through a written agreement by authorized representatives of each party. Notwithstanding the foregoing provisions of this Section 12.12, Provider may revise the Privacy Policy and Acceptable Use Policy at any time by posting a new version of either at the Website, and such new version will become effective on the date it is posted.

12.13. Affiliate Disclosure. Provider (One Chimp Technology, LLC) is under common control and ownership with The Force Realty, LLC (“Affiliate”). Affiliate owns and operates real estate brokerages and provides related products and services. Affiliate may participate in business activities that compete with Customer’s business activities. Customer acknowledges and consents to the same. Customer hereby waives and agrees not to assert legal rights based on such relationship or competition. This provision shall not affect Provider’s obligations in its Privacy Policy. Provider is not required to sell the System to a competitor of Provider or Affiliate. Provider may terminate this Agreement and cease providing the System to a competitor of Provider or Affiliate upon 15 days’ advance written notice.