

TERMS OF SERVICE

1) Agreement

- a. These Terms of Service (the “**Agreement**”) are binding on and apply to Users of our Website, Clients (“**Client**”, “**you**”, “**your**”) and Service Providers using the Platform provided by Whimble Care Inc. (“**Whimble**”, “**us**”, “**we**”, “**our**”) (together the “**Parties**” and each a “**Party**”). By creating an Account on our Platform you acknowledge that you have read, understood, and agree to be bound by this Agreement, along with any and all policies incorporated by reference, including our Privacy Policy available at <https://www.whimble.ca/terms-and-conditions>.
- b. Reference is made to the Independent Contractor Agreement, set out at <https://www.whimble.ca/terms-and-conditions>, which governs the contractual relationship between the Service Provider and Whimble. The Parties acknowledge and agree that this Independent Contractor Agreement is intended to supplement this Agreement, which is incorporated by reference herein. In the event of any conflict between the terms of this Agreement and the Independent Contractor Agreement, the terms of this Agreement shall prevail, save and except for where the Independent Contractor Agreement provides greater protection for Client, in which case the terms of the Independent Contractor Agreement shall prevail.
- c. Whimble reserves the right to modify this Agreement from time to time in its sole and absolute discretion. In the event of any material change, Whimble will provide you with written notice. Your continued use of the Platform following such updates constitutes your acceptance of the same. The last date this Agreement was revised is set forth below.

2) Definitions

- a. “**Account**” means the account created through Whimble’s Platform and used by Clients to access the Services provided by Service Providers.
- b. “**Applicable Law**” means all local, provincial, national and international laws, rules and regulations.
- c. “**Job**” means the specific Service requested by Client and accepted by Service Provider for performance at a specified time and date. Each accepted Request by Client constitutes a “**Job**”.
- d. “**Services**” means any and all services provided by a Service Provider, as requested by Client, including home care, personal care and errands.
- e. “**Service Provider**” means a personal support worker, social worker, caregiver, home care aide, rehab support worker, nurse, developmental support worker, driver, or similar professional that is able to provide the Services.
- f. “**Whimble’s Content**” means the text files, images, photos, videos, sounds, or other materials or works of authorship belonging to Whimble.

- g. “**Malicious Code**” means viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs.
- h. “**Platform**” means the platform on the Website where a Client can access their account and make Requests.
- i. “**Term**” means the period from the effective date of your first Account, to the date of termination of the Account.
- j. “**User**” means any person browsing the Website provided by Whimble.
- k. “**Website**” or “**Site**” means the website owned and operated by Whimble.

3) **Contractual Relationship Between Client and Service Provider**

- a. Whimble connects Clients and Service Providers for the provision of Services performed by Service Provider to Client. Whimble neither performs nor employs individuals to perform Services. You acknowledge and agree that Whimble does not supervise, direct, control, or monitor Service Providers in the performance of the Services.
- b. Service Providers and Clients agree to be bound by the terms of this Agreement for the provision of Services. The terms of the Independent Contractor Agreement apply to the benefit of the Client where such terms provide greater benefit or protections to Client. Whimble is not responsible for providing the Services and under no circumstances will any employment or service relationship be created between Whimble and any Client.

4) **Use of the Services**

- a. You will become a Client upon registering for an Account with Whimble, using Whimble’s Platform.
- b. **Requesting Services.** A Client may use the Account to request a particular Service (a “**Request**”). Such Requests must be clearly worded, correctly provide the relevant category of service, and be a fair and accurate description of the work to be done. When making a request, the Client is solely responsible for confirming the accuracy of all information provided, including, the Service requested to be done and the location at which the Client will require such Services (the “**Premises**”). A Client may request multiple Services in a single Service Request. By submitting your Request, you understand and agree that you have made an order, for which a Service Provider has the power to accept or reject in the Service Provider’s sole discretion. You further acknowledge and understand that the first Service Provider who accepts your Request shall be the Service Provider to perform the Service. Once a Service Provider accepts your Request, we will share your contact information with the Service Provider, who will contact you only in relation to the Services you have requested.
- c. **Cancelling Services.** You may cancel or reschedule your Request at any time, however a cancellation fee may apply, in accordance with Section 5(c) below.
- d. **Cancellation by Service Provider.** A Service Provider may cancel a Job within a grace period after accepting the Job or in extenuating circumstances. If a Service Provider cancels your Job, we will take reasonable efforts to match your Request with an alternate Service Provider but are under no obligation to do so and do not guarantee that an alternate Service

Provider will be available or able to assist you.

- e. **Timing of Services.** We will take reasonable efforts to connect you with a Service Provider who is available to provide the requested Services to your Premises. You acknowledge and accept that we cannot guarantee that a suitable Service Provider will be available, and disclaim all liability regarding same. We do not guarantee that your Request will be accepted within the timeline prescribed for the Service, or at all.

5) Fees & Payment

- a. **Whimble Rates.** We set the rates for Services (the “**Whimble Rate**”), which may be provided to you during your Request process. The Whimble Rate excludes any materials required by the Service provider to complete the Service. You acknowledge and agree that the cost of materials will be in addition to the respective Whimble Rate. We reserve the right to modify or update the Whimble Rates at any time and in our sole discretion. When submitting a Request for a particular Service, we may provide you with the Whimble Rate, but are under no obligation to do so and you hereby agree that it is your responsibility to remain informed about the current Whimble Rates for the category of Services at the time requested.
- b. **Payment and Billing.** Clients will be responsible for paying the invoice for each Service (the “**Invoice**”), which will include the pricing terms of the Service as provided on the Website. By submitting a Request, you agree that you will pay for all Services requested (including all materials, taxes and late fees, as applicable) (the “**Service Payment**”) that may be accrued by or in connection with your Account. You hereby authorize us to charge your credit card for the amounts due for the Service Payment immediately upon the Service Provider completing the Job. If your payment does not go through, for any reason, you agree to pay all amounts due within 7 days of receipt of the Invoice. You further agree that you are responsible for the timely payment of all Service Payments.
- c. **Payments to Service Provider.** All Service Payments shall be made to Whimble directly, in accordance with this Agreement. Under no circumstances shall the Client provide payment directly to the Service Provider.
- d. **Deposit.** You understand and agree that there is an immediate deposit of \$35 required for the Services (the “**Deposit**”), which will be charged to the credit card you have provided. The Deposit will be applied to the Service’s total cost. This Deposit is non-refundable unless the Services are cancelled by the Service Provider, or by you before your Request has been confirmed, in which case you will receive a full refund. The Deposit is non-refundable for Services cancelled by you after your Request has been confirmed, in which case the deposit will be applied as a cancellation fee. We reserve the right to change, modify, increase, or decrease the amount and terms of the cancellation fees in our discretion from time to time. If we choose to do so, we will notify you by posting the update to the Website.
- e. **Payment Processor.** We use Shopify Payments to process payments on our behalf (the “**Payment Processor**”). You acknowledge and agree that the Payment Processor’s terms and conditions, and Privacy Policy govern your agreement and interactions with the Payment Processor. For further clarity, this agreement and our Privacy Policy do not govern your interaction with the Payment Processor, including the collection, use, disclosure or other processing of your Personal Information or Personal Health Information, and we have no liability arising from your use of or access to the Payment Processor.
- f. **Taxes.** Unless otherwise stated, Whimble’s fees do not include any direct or indirect local, provincial, state, federal or foreign taxes, levies, duties or similar governmental assessments

of any nature, including value-added, use or withholding taxes (collectively, “**Taxes**”). Client is responsible for paying all Taxes associated with its purchases hereunder, excluding taxes based on Whimble’s net income or property. If Whimble has the legal obligation to pay or collect Taxes for which Client is responsible under this Section, the appropriate amount shall be paid by Client.

- g. Payment Disputes.** Client must assert any payment dispute in writing to Whimble’s accounting department hello@whimble.ca within 7 days after the date of the invoice giving rise to the dispute. Whimble shall not exercise its suspension or termination rights or apply interest on late payments if Client disputes the applicable charges reasonably and in good faith and provides reasonable cooperation to resolve the dispute.

6) Prohibited Activities and Services. Without limitation, Clients and Users may not use (or allow anyone else to use) the Services:

- a. To engage in, promote, or encourage activities in violation of any applicable law, regulation, governmental order or decree or legal agreement;
- b. To violate, or encourage violation of the legal rights of others, including, but not limited to, infringing or misappropriating any intellectual property or proprietary right of another;
- c. To use, upload, store, share, host, copy, distribute, display, publish, transmit, or send User Data/Content that is or may be deemed offensive, inflammatory, hateful, infringing, defamatory, discriminatory, obscene, threatening, libelous, abusive, invasive of privacy, harmful to others, objectionable, or otherwise unlawful or tortious material;
- d. Send or store Malicious Code (whether intentional or inadvertent);
- e. In a way that could harm the Service or impair anyone else’s use of the Services; and
- f. For any unlawful, invasive, defamatory, infringing, or fraudulent purpose.

7) Term & Termination

- a. Term.** The Agreement will remain in effect for as long as you have an active Account with Whimble.
- b. Termination for Cause.** Whimble may suspend or cancel your Account and terminate this Agreement and your use of the Service at any time in the event that you materially breach this Agreement and do not cure such breach within 30 days of Whimble providing you with written notice of such breach (including notice by email). Material breach by Client includes the following: (1) Client has not paid all amounts owing for the Service; (2) Client’s use of the Service is in violation of Applicable Law; or (3) Client is uploading Malicious Code to the Account. Client acknowledges and agree that Whimble shall not be liable for costs, fees, damages, lost profits, penalties, or other costs incurred, as a result of termination or any reason whatsoever under this Section 7.
- c. Outstanding Fees.** Suspension or termination of this Agreement or Whimble’s Platform shall not relieve Client of the obligation to pay any fees accrued or payable to Whimble prior to termination.

8) Warranties & Disclaimers

- a. Mutual Warranties.** Each Party represents and warrants to the other Party that (i) it has the authority to enter into this Agreement and perform its obligations hereunder; and (ii) it does not conduct business and will not use the Service for any unlawful purpose.
- b. Whimble Warranties.** Whimble represents and warrants that (i) it will provide the Platform in a manner consistent with general industry standards reasonably applicable to the provision

- thereof; (ii) the functionality of the Platform will not materially decrease during the Term; (iii) the Platform will not contain or transmit any Malicious Code (except for any Malicious Code uploaded to the Platform by the Client); and (iv) it owns or has a valid right in the Website and Platform, including intellectual property rights, to grant to Client the rights to use same granted herein.
- c. **Client Warranties.** By making a Request, Client represents and warrants that Client has the right to grant the Service Provider access to the Premises to perform the Services. Client further represents and warrants that Client will be present at the Premises or will have a representative who is 18 years old or older present at the Premises at all times while the Service is being performed.
 - d. **Disclaimer.** YOUR USE OF THE PLATFORM AND WEBSITE ARE AT YOUR OWN RISK. TO THE FULLEST EXTENT PERMISSIBLE PURSUANT TO APPLICABLE LAW, THE PLATFORM, WEBSITE, AND ALL INFORMATION AND MATERIALS IN CONNECTION THEREWITH ARE PROVIDED ON AN “AS-IS” AND “AS AVAILABLE” BASIS, AND WE DISCLAIM ALL REPRESENTATIONS, WARRANTIES, AND CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THOSE REGARDING MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE, THE CORRECTNESS, ACCURACY, QUALITY OR RELIABILITY OF THE PLATFORM, OR ANY INFORMATION OR MATERIALS IN CONNECTION THEREWITH. WHIMBLE DOES NOT GUARANTEE ANY SPECIFIC RESULTS FROM THE USE OF THE PLATFORM OR WEBSITE NOR DOES IT GUARANTEE THAT A SERVICE PROVIDER WILL BECOME ENGAGED BY A CLIENT FOLLOWING USE OF THE WEBSITE NOR THE QUALITY OF THE SERVICES PROVIDED TO THE CLIENT. WE DO NOT WARRANT THAT THE WEBSITE WILL BE NON-INFRINGEMENT, UNINTERRUPTED, VIRUS-FREE OR ERROR-FREE, OR THAT DEFECTS WILL BE FOUND OR CORRECTED. WE ALSO PROVIDE NO REPRESENTATION, WARRANTY OR CONDITION REGARDING THE ACCURACY, TIMELINESS, AUTHENTICITY, COMPLETENESS OR RELIABILITY OF THE WEBSITE, OR ANY INFORMATION OR MATERIALS IN CONNECTION THEREWITH. IF YOUR JURISDICTION DOES NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES OR CONDITIONS OR LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, THIS LIMITATION DOES NOT APPLY TO YOU.
 - e. **Disclaimer regarding Service Providers.** WHIMBLE IS NOT RESPONSIBLE FOR, AND TO THE FULLEST EXTENT PERMISSIBLE BY APPLICABLE LAW DISCLAIMS ALL LIABILITY FOR THE SERVICES, INCLUDING BUT NOT LIMITED TO ANY NEGLIGENCE, WILFUL MISCONDUCT, RECKLESSNESS OR TORTIOUS ACTION OR INACTION BY SERVICE PROVIDERS. WHIMBLE DOES NOT GUARANTEE THAT SERVICE PROVIDERS ARE REGISTERED OR CERTIFIED TO PROVIDE THE SERVICES.

9) Intellectual Property

- a. **Reservation of Rights.** Whimble retains all right, title and interest in all intellectual property including any patent, copyright, trademark, trade dress, industrial design, trade name, moral rights, trade secrets, and Whimble’s Content (the “**Intellectual Property**”). Whimble grants Client a royalty-free, revokable, non-exclusive, non-transferable and non-assignable license to access and use the Website and Platform, and to Request Services.

- b. **Client Data.** Client exclusively owns all rights, title and interest in all data or information transmitted by the Client in the process of using the Platform (“**Client Data**”), including any Personal Information or Personal Health Information. Client Data is deemed Confidential Information under this Agreement. Whimble shall only access Client Data to coordinate a Request with a Service Provider or with Client’s consent.
- c. **Suggestions.** Whimble shall have a royalty-free, worldwide, transferable, sublicensable, irrevocable, perpetual license to use or incorporate into the Service any suggestions, enhancement requests, recommendations or other feedback provided by Client or its Users relating to the operation of the Platform and Website.

10) Privacy Rights

- a. **Privacy Obligations.** Whimble and Client agree to strictly abide by all such restrictions pertaining to the Personal Information (as such term is defined in our Privacy Policy), including laws related to the collection, use or disclosure of Personal Information (“**Privacy Laws**”) as they are promulgated and applied, currently and in the future. If Whimble or Client’s use (whether directly or indirectly) of the Personal Information is contrary to any Privacy Law, or contrary to any of the restrictions set forth in this Agreement, the non-violating Party shall have the right to: (a) terminate this agreement immediately in accordance with Section 7; and (b) pursue any other legal and equitable remedies. For greater certainty, Whimble’s Privacy Policy governs Whimble’s collection, use, disclosure, retention and other processing of Personal Information and forms part of this Agreement.

11) Security of Login Information

- a. Each Client is responsible for maintaining the confidentiality of your member identification and password information, and for restricting access to your computer. You agree to accept responsibility for all activities that occur under your member identification and password.

12) Confidentiality

- a. **Definition of Confidential Information.** As used herein, “**Confidential Information**” means all confidential and proprietary information of a Party (“**Disclosing Party**”) disclosed to another Party (“**Receiving Party**”), whether orally or in writing, or whether disclosed purposefully or inadvertently, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure, including the Client Data, Personal Information, or Personal Health Information. Confidential Information shall not include any information that: (i) is or becomes generally known to the public without breach of any obligation owed to Disclosing Party; (ii) was known to Receiving Party prior to disclosure by Disclosing Party without breach of any obligation owed to Disclosing Party; (iii) is received from a third-party without breach of any obligation owed to Disclosing Party; or (iv) was independently developed by Receiving Party without any use of or reference to Disclosing Party’s Confidential Information.
- b. **Safeguards.** Whimble shall implement and maintain commercially reasonable and appropriate technical, administrative, and physical safeguards and security methods designed to prevent any unauthorized release, access to or publication of Client Data, Confidential Information, or Personal Information. Whimble shall implement processes and maintain procedures designed to comply with Applicable Laws.

- c. **Subcontractors.** Whimble may use subcontractors, such as Payment Processors and Service Providers, to facilitate its obligations under this Agreement. Whimble shall use commercially reasonable measures to ensure that such subcontractors implement and comply with reasonable security measures in handling any Confidential Information. Whimble and subcontractors shall not disclose or use any Confidential Information for any purpose outside the scope of this Agreement, except with Client's prior written consent.
- d. **Compelled Disclosure.** If Receiving Party is compelled by law to disclose Disclosing Party's Confidential Information, including Personal Information and Personal Health Information, it shall provide Disclosing Party with prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at Disclosing Party's cost, if Disclosing Party wishes to contest the disclosure.

13) Limitation of Liability

- a. **Limitation of Liability.** IN NO EVENT WILL WHIMBLE BE LIABLE FOR ANY CLAIM FOR DAMAGES, PENALTIES, ADMINISTRATIVE FINES, COSTS, AND THE LIKE ASSERTED BY OR AGAINST WHIMBLE, INCLUDING, BUT NOT LIMITED TO ANY DIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, AGGRAVATED, PUNITIVE OR OTHER INDIRECT DAMAGES ARISING OUT OF (I) THE USE OF OR INABILITY TO USE THE SITE, OR THE PLATFORM, (II) ANY TRANSACTION CONDUCTED THROUGH OR FACILITATED BY THE SITE; (III) ANY CLAIM ATTRIBUTABLE TO ERRORS, OMISSIONS, OR OTHER INACCURACIES IN THE SITE, AND/OR THE PLATFORM, OR (IV) ANY OTHER MATTER RELATING TO THE SITE, OR THE PLATFORM, EVEN IF WHIMBLE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, PENALTIES, COSTS, AND THE LIKE ASSERTED BY OR AGAINST THEM. IN NO EVENT SHALL WHIMBLE'S LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY EXCEED \$1,000.00 CDN.
- b. YOU FURTHER AGREE THAT WHIMBLE IS NOT RESPONSIBLE FOR THE PROVISION OF SERVICES BY SERVICE PROVIDER IN ANY WAY AND YOU HEREBY RELEASE WHIMBLE OF ANY LIABILITY RELATED THERETO, WHETHER DIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, AGGRAVATED, PUNITIVE OR OTHER INDIRECT DAMAGES. WHIMBLE WILL NOT BE LIABLE FOR ANY CLAIM, INJURY, OR DAMAGE ARISING IN CONNECTION WITH YOUR USE OF THE SERVICE.
- c. THESE EXCLUSIONS AND LIMITATIONS APPLY EVEN IF THE REMEDIES ARE INSUFFICIENT TO COVER ALL OF THE LOSSES OR DAMAGES OF CLAIMING PARTY. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES. ACCORDINGLY, SOME OR ALL OF THE ABOVE EXCLUSIONS OR LIMITATIONS MAY NOT APPLY AND THE PARTIES MAY HAVE ADDITIONAL RIGHTS.

14) Indemnification

- a. **Indemnification by Client.** Client agrees to indemnify, defend and hold harmless Whimble and each of their directors, officers, agents, contractors, partners and employees from and against all claims, losses, penalties, fines, expenses, damages and costs (including reasonable attorney's fees) arising out of Client's use, misuse, or inability to use the Website, the Platform, the Account, or any violation by Client, User or Service Provider of this Agreement.

15) General Provisions

- a. **Relationship of the Parties.** This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the Parties.
- b. **Entire Agreement.** This Agreement consists of the entire agreement between the Parties hereto with respect to the subject matter hereof and supersede any previous understandings or agreements, whether written or oral, in respect of such subject matter.
- c. **No Waiver.** The failure of either Party to enforce any provision of this Agreement shall not be construed to be a waiver of such provision or the right of such Party thereafter to enforce such provision or any other provision of this Agreement.
- d. **Governing Law and Venue.** The Agreement is governed by the laws of the Province of Ontario, without giving effect to the conflicts of law principles thereof. Any legal action or proceeding with respect to this Agreement must be adjudicated by the Ontario Superior Court of Justice and the Parties hereto attorn to the exclusive jurisdiction of this Court for this purpose.
- e. **Notices.** Except as otherwise required herein, notices shall be effective when delivered, as indicated by a delivery receipt, or, in the case of notices delivered by post, 7 business days after being mailed to the designated address by first class mail. Notices to you shall be made to the address recorded in the Client's Account or via electronic mail to Client. Notices to Whimble should be delivered to: hello@whimble.ca.
- f. **Severability.** Any provision in the Agreement that is held to be illegal or unenforceable in any jurisdiction shall be effective only up to the extent of such illegality or unenforceability, if possible, and shall not invalidate the remaining provisions of the paragraph or the Agreement. To the largest extent possible, the illegal or unenforceable provision shall be restated to reflect the Parties' intent.
- g. **Assignment.** Client may not assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of Whimble (not to be unreasonably withheld). Notwithstanding the foregoing, Whimble may assign this Agreement in its entirety, without consent of the Client, in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. Any attempt by Client to assign its rights or obligations under this Agreement is in breach of this Section shall be void and of no effect. Subject to the foregoing, this Agreement shall bind and enure to the benefit of the Parties, their respective successors and permitted assigns.

Last Updated: August 24, 2022