

SkyKick Partner Terms & Conditions

Last updated: April 17, 2015

These SkyKick, Inc. ("SkyKick") Partner Terms and Conditions (the "Terms and Conditions") will apply to any and all orders placed by a SkyKick IT solutions provider ("Partner") via the SkyKick Partner Portal (an "Order"). SkyKick's acceptance of an Order is subject to and expressly conditioned on Partner's assent to these Terms and Conditions, the Order and any other written agreements executed by SkyKick and Partner that reference or are executed pursuant to these Terms and Conditions (collectively, the "Agreement"). The effective date of the Agreement (the "Effective Date") will be the date that SkyKick first provides an authorized Partner with access to the Partner Portal (as defined below) available via the SkyKick website www.skykick.com, or any successor website thereto (the "SkyKick Site"). SkyKick and Partner are sometimes referred to herein individually as a "Party" and together as the "Parties."

By accessing and using the Partner Portal, Partner agrees to all of the terms and conditions of these SkyKick Terms and Conditions, including the limitations on liability set forth herein and the provisions governing SkyKick's ability to modify these Terms and Conditions set forth in Section 13.10. IF PARTNER DOES NOT AGREE WITH ALL OF THE TERMS AND CONDITIONS SET FORTH HEREIN, PARTNER IS NOT PERMITTED TO USE THE PARTNER PORTAL.

RECITALS

A. SkyKick is in the business of providing certain IT products and services as more fully described in the Documentation or an applicable Order (the "Services").

B. Partner desires to provide its customers with the Services and, as such, wishes to resell the Services to its customers and/or use the Services for the benefit of its customers.

C. SkyKick will permit Partner to use and resell the Services in accordance with and pursuant to the terms and conditions of this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Definitions. For the purposes of this Agreement, the following terms will have the following meanings:

1.1 “Confidential Information” means all information disclosed (whether in oral, written, or other tangible or intangible form) by a Party to the other Party concerning or related to this Agreement (whether before, on or after the Effective Date), which the receiving Party knows or should know, given the facts and circumstances surrounding the disclosure of the information, is confidential information of the disclosing Party. Confidential Information includes, but is not limited to, the pricing terms for the Services as set forth in the Order or otherwise, the Intellectual Property Rights of SkyKick, any Customer Data, the SkyKick Platform, components of the business plans, the Services, the Software, inventions, design plans, any proprietary software or technology of SkyKick, financial plans, computer programs, know-how, customer information, strategies and other similar information. Notwithstanding the foregoing, Confidential Information will not include information that: (a) is in or enters the public domain without breach of this Agreement through no fault of the receiving Party; (b) the receiving Party can reasonably demonstrate was in its possession prior to first receiving it from the disclosing Party; (c) the receiving Party can demonstrate was developed by the receiving Party independently and without use of or reference to the Confidential Information; or (d) the receiving Party receives from a third party without restriction on disclosure and without breach of a nondisclosure obligation.

1.2 “Customer” means any Person who purchases the Services from Partner or otherwise benefits from Partner’s use of the Services for such Person’s own business operations and not for further re-sale, redistribution or servicing of third parties.

1.3 “Customer Contract” means an agreement between Partner and any Customer pursuant to which Partner makes the Services available to such Customer.

1.4 “Customer Data” means any and all Customer or User information, emails, data, text, audio, video, images or other content (a) provided by a Customer or User to Partner or SkyKick in connection with the purchase or receipt of the Services or use of the SkyKick Platform; or (b) provided to, hosted and/or stored by SkyKick in connection with the provision of the Services.

1.5 “Documentation” means SkyKick’s product and services descriptions, user instructions and other documentation relating to the SkyKick Platform which SkyKick may provide via the SkyKick Site or to Partner from time to time in connection with the provision of the Services.

1.6 “Intellectual Property Rights” means patents, copyrights, moral rights, trademarks, trade secrets, trade dress and any other form of intellectual property rights recognized in any jurisdiction, including applications and registrations for any of the foregoing.

1.7 “Partner Portal” means the SkyKick platform, software and related technology provided by SkyKick for use by Partners to facilitate and manage such Partner’s relationships with Customers with respect to the Services.

1.8 “Person” means an individual, partnership, limited liability company, association, corporation or other entity.

1.9 “SkyKick Platform” means the Services, the Software and any other technology used by SkyKick in the provision and operation of the Services or supplied by SkyKick to Partner or Customer in connection with the provision or receipt of Services, including the Partner Portal and SkyKick Site.

1.10 “Software” means the SkyKick proprietary software provided by SkyKick to Partner in connection with the provision of the Services as further described in the Documentation for each applicable Service.

1.11 “User” means each employee, contractor or agent of Customer who is authorized by SkyKick and Partner to use the Services.

2. Non-Exclusive Appointment; Services.

2.1 Non-Exclusive Appointment. Subject to the terms and conditions set forth herein, SkyKick appoints Partner, and Partner hereby accepts appointment, as a non-exclusive provider of the Services to Customers. The relationship created by this Agreement is non-exclusive in all respects. SkyKick reserves the right at its sole discretion to appoint and remove other partners, resellers, distributors, or representatives in the sale of the Services, or to sell the Services to Customers directly.

2.2 Customer Contracts. Partner’s sale or provision of Services to Customers shall be governed by a written Customer Contract fully executed by the authorized signatories of both Partner and such Customers. Partner shall provide the Services to Customers only pursuant to valid Customer Contracts. Partner shall not place in any Customer Contract any term or provision that conflicts with or is otherwise inconsistent with any terms and conditions provided by SkyKick on the SkyKick Site or to Partner from time to time (each a “SkyKick Policy”) or the terms of this Agreement.

2.3 Consent to SkyKick Terms. SkyKick’s provision of the Services to Customers is contingent upon SkyKick’s receipt of Customer’s consent to SkyKick’s terms of service applicable to such Customer’s use of the Services. SkyKick shall have no obligation to provide Services to any Customer unless and until SkyKick obtains Customer’s consent to SkyKick’s terms of service. With respect to each Customer, Partner will be solely responsible for (a) obtaining such Customer’s consent to SkyKick’s terms of service or (b) obtaining the requisite consent and authority from such Customer to accept SkyKick’s terms of service on behalf of the Customer and to legally bind Customer to such terms of service.

2.4 Status. Partner shall use reasonable, diligent efforts to market, promote and distribute the Services. Partner is solely responsible for the means, manner and method of its performance under this Agreement.

2.5 Marketing and Promotion. SkyKick may from time to time provide promotional and marketing materials to Partner (the “SkyKick Materials”). Partner may build its own marketing strategies and market the Services using commercially reasonable marketing concepts and means of popularizing and providing access to the Services (forums, blogs,

social networks, personal or business websites, printed media, etc.); provided, however, that Partner shall not (a) market, promote or provide access to the Services to any Person who is, to Partner's knowledge, using the Services at the time Partner approaches or markets the Services to such entity or person; (b) utilize any marketing methods that violate this Agreement or any other SkyKick Policy; (c) infringe, dilute or otherwise violate the intellectual property rights of any third parties; or (d) violate any applicable law, rule, regulation or order in such marketing activities.

2.6 Use by Customers Only. The Services sold to Partner under this Agreement are intended for use only by Customers and their Users. Partner may not use the Services for its own business operations or for any other purpose pursuant to this Agreement. If Partner wishes to use the Services for its own account, it must place an Order naming itself as the Customer and its use of the Services in that capacity will be subject to SkyKick's terms of service and other terms and conditions applicable to Customers.

2.7 Distributor Relationship. If Partner accesses and uses the Partner Portal pursuant to its relationship with a SkyKick-approved third-party distributor ("Approved Distributor"), Partner acknowledges that the terms and conditions of SkyKick's applicable agreement with such Approved Distributor ("Distributor Agreement") may establish a different Order process or different payment terms than those set forth in this Agreement. To the extent any conflict between Section 3 (Order Process; Partner Portal) and Section 4 (Fees; Payment) of this Agreement and any Distributor Agreement, the terms of such Distributor Agreement will govern. Partner is responsible for contacting its Approved Distributor with any questions regarding the Order process and payment terms applicable to its use of the Partner Portal. SkyKick will not be responsible or liable to Partner for any Liabilities arising out of or related to the invoicing, billing, collection, payment or non-payment of fees pursuant to a Distributor Agreement.

3. Order Process; Partner Portal.

3.1 Registration; Partner Portal. SkyKick will provide Partner with an account, user name and password granting Partner access to and use of the Partner Portal, located at the SkyKick Site. Partner is responsible for maintaining the confidentiality of any such account information and is fully responsible for all activities that occur under Partner's account. During the registration process for the Partner Portal, Partner will provide certain information, including contact information, business qualifications (if applicable) and any other information required by SkyKick. Partner represents and warrants that (a) all information provided during the registration process is accurate and complete; (b) Partner is at least eighteen (18) years of age and has the legal capacity to enter into this Agreement; and (c) if registering on behalf of an entity or organization, Partner is an authorized representative of such entity or organization with the authority to legally bind such entity or organization to this Agreement. If SkyKick determines that Partner has provided false, misleading or otherwise inaccurate information to SkyKick, SkyKick may terminate this Agreement immediately upon notice to Partner and Partner shall cease holding itself out as a Partner of the Services.

3.2 Orders. From time to time during the Term, Partner may order Services from SkyKick on behalf of Customers by submitting an Order via the Partner Portal. Any Orders received from Partner by SkyKick shall be deemed to have been authorized by both Partner and Customer. Such Order will include all required information to enable SkyKick to perform the Services for Customer as set forth in the Partner Portal, including the name of the Customer, the number of Users included in the Services (if applicable), the date on which Customer requires access to the Services, and any other instructions or requirements pertinent to such Customer.

3.5 Information. Partner is responsible for providing complete and accurate information to SkyKick with respect to all Customers in order for SkyKick to make the Services available such Customers. Partner acknowledges that SkyKick will have access to all of the data and information provided by Partner, Customers and Users.

4. Fees; Payment.

4.1 Fees. Partner will pay SkyKick the fees for the Services in the amounts set forth in the Order ("Fees"). SkyKick will have the right to modify the Fees for any Services from time to time in its discretion. The then-current Fees for the Services will be available on the Partner Portal on the SkyKick Site. The Fees charged to Partner for the Services represent payment for Partner's right to sell and provide Services to Customers and Partner's right to collect payments from Customers for such Services. Partner shall have full discretion to set its own Customer prices for the sale of the Services to Customers.

4.2 Payment Terms. Except as otherwise set forth in an applicable Order, all Fees for Partner's purchase of Services shall be due and payable at the time Partner submits an Order to SkyKick. Partner will pay for the Services by providing SkyKick with valid payment information in order to facilitate such purchase, including, if applicable, a Payment Card number, billing address and any related payment information required by SkyKick. SkyKick will be deemed to have accepted an Order upon its receipt of valid payment information from Partner. All Fees will be due and payable to SkyKick regardless of whether Partner has received payment from its Customers.

4.3 Taxes. All Fees payable by Partner are exclusive of applicable taxes and duties, including VAT and applicable sales tax. Partner will provide SkyKick with any information requested by SkyKick to determine whether SkyKick is obligated to collect VAT from Partner, including Partner's VAT identification number. If Partner is legally entitled to an exemption from any sales, use, or similar transaction tax, Partner is responsible for providing SkyKick with legally-sufficient tax exemption certificates for each taxing jurisdiction. SkyKick will apply the tax exemption certificates to charges under Partner's account occurring after the date SkyKick receives the tax exemption certificates. If any deduction or withholding is required by law, Partner will notify SkyKick and will pay SkyKick any additional amounts necessary to ensure that the net amount that SkyKick receives, after any deduction and withholding, equals the amount SkyKick would have received if no deduction or withholding had been required. Additionally, Partner will provide SkyKick with documentation showing that the withheld and deducted amounts have been paid to the relevant taxing authority.

4.4 Audit. During the Term of this Agreement, SkyKick will have the right to audit the records of Partner relating to Partner's sale of the Services to Customers to ensure that Partner is compliant with the terms and conditions of this Agreement, including the calculation of Fees in accordance with this Section 4.

4.5 Payment Card Terms. Except as otherwise set forth in an applicable Order, Partner will pay SkyKick any subscription-based Fees via Partner's credit or debit card ("Payment Card") as set forth on the applicable Order. By providing SkyKick with Payment Card information (including account number, expiration date, card verification code, and billing address), Partner authorizes SkyKick to charge such Payment Card for all subscription-based Fees that are due and payable hereunder. SkyKick will initiate periodic charges to such Payment Card for all subscription-based Fees incurred during the Term. Partner's authorization of such recurring charges will remain effective for the duration of the Term, unless Partner notifies SkyKick in writing that Partner revokes such consent or changes its payment preferences via the Partner Portal. Partner further authorizes SkyKick to receive updated Payment Card account information from the issuer of the Payment Card.

5. Customer Data; Confidentiality.

5.1 Customer Data. Partner represents and warrants that: (a) Partner has the right to use, and to permit SkyKick to use, the Customer Data in connection with the Services hereunder and (b) Partner has not received notice that any such Customer Data or the use of any such Customer Data in conjunction with the Services infringe upon any third party Intellectual Property Rights or violate the terms of any license agreement or other agreement. Except with respect to SkyKick's provision of Services to Customer under an accepted Order, SkyKick bears no liability whatsoever for Partner's management of Customer accounts, including, but not limited to, SkyKick's adherence to instructions from Partner regarding management of Customer accounts.

5.2 Confidentiality. Each Party will, during the Term of this Agreement and thereafter, maintain in confidence the Confidential Information of the other Party and will not use such Confidential Information except as expressly permitted herein. Each Party will use the same degree of care in protecting such Confidential Information as such Party uses to protect its own confidential information from unauthorized use or disclosure, but in no event less than reasonable care. Each Party will use such Confidential Information solely for the purpose of carrying out its respective obligations under this Agreement. In addition, each Party: (a) will not reproduce such Confidential Information, in any form, except as required to accomplish its obligations under this Agreement; and (b) will only disclose such Confidential Information to its employees, consultants and third-party service providers who have a need to know such Confidential Information in order to perform their duties relating to this Agreement and have been informed of the obligation to preserve the confidentiality of such information prior to receiving such information. Confidential Information will be the property of the disclosing Party during the Term of this Agreement and afterwards in perpetuity, subject only to the exceptions expressly stated in this Agreement.

6. Proprietary Rights. As between SkyKick and Partner, SkyKick or its licensors own and reserve all right, other than the limited rights explicitly granted to Partner under this

Agreement, title, and interest in and to the SkyKick Platform, including without limitation the Software and any other SkyKick proprietary software or technology utilized in the provision or use of the Services, and all Intellectual Property Rights therein. Partner acknowledges that (a) all right, title and interest in and to the Services, including the SkyKick Platform and Documentation provided in connection therewith, and all Intellectual Property Rights embodied therein or associated therewith, are and shall remain with SkyKick or its third party licensors; (b) no right or interest in the SkyKick Platform is conveyed other than the limited licenses granted herein; (c) the SkyKick Platform is protected by copyright and other intellectual property laws; and (d) the SkyKick Platform embodies valuable confidential and secret information of SkyKick or its licensors, the development of which required the expenditure of considerable time and money. Partner will not take or encourage any action during or after the Term of this Agreement that will in any way impair the rights of SkyKick in and to the SkyKick Platform, any proprietary software or technology of SkyKick, or any Intellectual Property Rights in and to any of the foregoing.

7. SkyKick Services.

7.1 Provision of Services. SkyKick will, subject to all other terms and conditions of this Agreement, use commercially reasonable efforts to provide the Services in material accordance with the applicable Documentation for such Services.

7.2 Access to and Use of the Software. During the Term of the Agreement, SkyKick grants to Partner a limited, nonexclusive, nontransferable right to permit and enable Customers and Users to access and use the SkyKick Platform solely in connection with Partner's resale or provision of Services provided under the Agreement and to use the Documentation in connection with Partner's exercise of such right. Except for the limited licenses granted hereunder, SkyKick reserves all rights not expressly granted and no such additional rights may be implied.

8. Partner Obligations and Acknowledgements.

8.1 Cooperation. Partner understands and agrees that Partner and Customer's full, reasonable cooperation is required in order for SkyKick to properly, efficiently and effectively perform the Services for Customer hereunder. Partner agrees to comply with all of SkyKick's reasonable requests made in connection with the provision of Services to Customer hereunder. Partner understands and agrees that its failure or Customer's failure to so cooperate with SkyKick could result in SkyKick's inability to properly, efficiently and effectively perform the Services hereunder. SkyKick's provision of the Services is subject to (a) delays due to unanticipated Partner or Customer requests, complications with Customer's systems, programs, accounts and data, and other unforeseen circumstances beyond the reasonable control of SkyKick, (b) Partner's and Customer's cooperation (including the cooperation of third parties under such Partner's or Customer's control) with SkyKick, as well as (c) Partner's and Customer's compliance with this Agreement or any other SkyKick Policy. SkyKick shall have no liability whatsoever for any delays, deficiencies or failures that occur in the performance of Services as a result of Partner's or Customer's failure to so cooperate.

8.2 Compliance with Law. Partner will obtain all registrations, licenses and permits required to perform its obligations under this Agreement. Partner will comply with all applicable laws, rules, regulations and orders relating to its performance under this Agreement (including, without limitation (a) those concerning the exporting, importing and re-exporting of computer software and the protection of privacy and personal information, and (b) laws and policies related to unsolicited, commercial e-mails (SPAM) or any illegal, objectionable or offensive activities).

8.3 Misrepresentations. Partner will not make any false or misleading representations concerning the Services, or make any representations concerning the Services' specifications, features, capabilities and applicable warranties which are inconsistent with or are in addition to those set forth in this Agreement, any other SkyKick Policy, the Documentation, product descriptions or other promotional materials made available by SkyKick to Partner.

8.4 Customer Requirements. In connection with each Customer engagement, (a) Partner represents and warrants that it has and will maintain all requisite authority to grant SkyKick access to such Customer's systems and cloud computing accounts as required for SkyKick to provide the Services (including administrative-level access); (b) it has obtained and will maintain all required consents and authorizations from such Customer, and taken all other steps, necessary to ensure that SkyKick's provision of the Services complies with applicable law, including requiring such Customer to obtain consent and authorization from its Users permitting SkyKick to access and use Users' email and system credentials. Partner acknowledges that it will be required to provide SkyKick with certain information regarding each Customer via the Partner Portal in order to enable SkyKick to provide the Services to such Customer, including the Customer Data and Customer's contact and payment information. Partner represents and warrants that (i) it is authorized by each Customer to share such Customer Data and other information with SkyKick; and (b) that each Customer has agreed to receive communications from SkyKick (via email or other means) regarding SkyKick's performance of the Services. In order to use the Services, a Customer's computer hardware, software and internet connectivity must meet certain minimum requirements as may be specified in the Documentation provided from time to time. SkyKick bears no liability or responsibility if Customers cannot access or receive the Services due to a failure to meet these minimum requirements.

8.5 Agreement to Microsoft Terms. PARTNER AUTHORIZES SKYKICK, ON BEHALF OF CUSTOMER, TO REGISTER CUSTOMER FOR THE USE OF CERTAIN CLOUD COMPUTING SERVICES OFFERED BY MICROSOFT CORPORATION ("MICROSOFT") AS MAY BE REQUIRED FOR SKYKICK'S PERFORMANCE OF THE SERVICES. AS A CONDITION TO THE RIGHTS GRANTED TO PARTNER HEREUNDER, AND BY AGREEING TO THE TERMS OF THIS AGREEMENT, PARTNER HEREBY REPRESENTS AND WARRANTS THAT: (A) PARTNER HAS OBTAINED PROPER AUTHORIZATION FROM EACH CUSTOMER TO PERMIT SKYKICK TO REGISTER SUCH CUSTOMER FOR A SUBSCRIPTION TO THE MICROSOFT CLOUD COMPUTING SERVICES, INCLUDING AUTHORIZATION TO SUBMIT CUSTOMER'S CONTACT AND PAYMENT INFORMATION TO MICROSOFT, (B) PARTNER HAS PROVIDED A COPY TO CUSTOMER OF THE APPLICABLE MICROSOFT ONLINE SUBSCRIPTION

AGREEMENT FOR MICROSOFT OFFICE 365, AND (C) PARTNER HAS RECEIVED CUSTOMER'S CONSENT TO BE BOUND BY ALL TERMS AND CONDITIONS OF SUCH SUBSCRIPTION AGREEMENT, INCLUDING ALL PAYMENT TERMS AND FEES APPLICABLE TO SUCH SUBSCRIPTION. PARTNER AUTHORIZES SKYKICK TO USE AND SUBMIT PARTNER'S NAME AS THE AUTHORIZING PARTY WHEN REGISTERING CUSTOMER FOR THE MICROSOFT CLOUD COMPUTING SERVICES UNDER THIS SECTION 8.5.

8.6 Changes to Services. SkyKick may introduce new Services and/or alter existing Services without prior notice to Partner, Customers, Users or others, including revising the user interface, features, and functionality of the Services as part of improvements or other necessary changes to the Services during the Term. SkyKick may also update or revise the Documentation during the Term. SkyKick will have the right, in its sole discretion, to discontinue some or all of the Services, or to change some or all of the Services, upon notification to Partner of any such discontinuation or change.

8.7 Use of the SkyKick Intellectual Property Rights. Partner will not, and will not encourage or permit any Customer, Users or other Person to (a) use the SkyKick Platform in any manner or for any purpose other than as expressly permitted by this Agreement; (b) access or use the SkyKick Platform in a way intended to avoid incurring fees to be paid to SkyKick pursuant to this Agreement; (c) access or use the SkyKick Platform in any way that violates this Agreement or any applicable laws, rules, or regulations; (d) modify, alter, tamper with, repair or otherwise create derivative works of any software, technology, content or any Intellectual Property Rights of SkyKick included in or used to provide the SkyKick Platform; (e) reverse engineer, disassemble or decompile the SkyKick Platform or any software or technology of SkyKick included in or used to provide the Services, or (f) attempt to discover or recreate the SkyKick Platform or any software, technology or Intellectual Property Rights of SkyKick.

8.8 Responsibility for Other Parties. Partner will be liable for any action that it permits, assists or facilitates any of its affiliates, officers, directors, employees, contractors, representatives, agents or other Person (each, a "Partner Party," and collectively, "Partner Parties") to take related to this Agreement, the Customer Data or the use of the SkyKick Platform. Partner will ensure that all Partner Parties comply with Partner's obligations under this Agreement.

8.9 Notification of Unauthorized Use. Partner will immediately notify SkyKick in writing of any unauthorized use of the SkyKick Platform or breach of this Agreement that comes to Partner's attention. In the event of any unauthorized use by any third party that obtained access to the SkyKick Platform directly or indirectly through Partner, Partner will take all steps necessary to terminate such unauthorized use and will provide SkyKick such cooperation and assistance as requested by SkyKick in connection with SkyKick's actions to stop or prevent unauthorized use of the SkyKick Platform.

8.10 Limited Use of the SkyKick Platform. Partner's access to the SkyKick Platform shall be limited to the purpose of reselling or providing the Services to Customers. Partner may not access and use the SkyKick Platform for the purpose of developing (or intending to

develop) a product or service that contains similar capabilities or functionalities as or that otherwise competes with the Software and Services.

8.11 Passwords. Partner is responsible for protecting and safeguarding any keys, certificates, passwords, access codes, user IDs or other credentials and login information (collectively, "Passwords") that have been provided to Partner or that are generated in connection with Partner's or its Customers' use of the SkyKick Platform. Partner will not disclose or make available Passwords other than to authorized Users, if applicable, and shall use all commercially reasonable efforts to prevent unauthorized access to, or use of, the Passwords or the SkyKick Platform. Partner and/or its Customers are fully responsible for all activities that occur in connection with the Passwords.

8.12 Downtime. SkyKick may suspend or limit access to the SkyKick Platform for the duration of any scheduled or unscheduled downtime or unavailability of any portion or all of the SkyKick Platform for any reason, including as a result of power outages, system failures, maintenance, upgrades or other interruptions.

8.13 Suspension, Limitation or Termination. SkyKick may, without liability to Partner, immediately suspend, terminate or limit access to the SkyKick Platform at any time in the event (a) SkyKick determines that the SkyKick Platform is being used in violation of applicable federal, state or local law or ordinance, this Agreement, or any other SkyKick Policy; (b) SkyKick determines that the SkyKick Platform is being used in an unauthorized or fraudulent manner or that Partner or Customers have submitted fraudulent or inaccurate information to SkyKick; (c) SkyKick determines that Partner's or Customers' use of the SkyKick Platform adversely affects SkyKick's equipment or service to others; (d) SkyKick is prohibited by an order of a court or other governmental agency from providing the Services; (e) of a denial of service attack or any other event which SkyKick determines, in its sole discretion, may create a risk to the Services or to any other customers if the Services were not suspended; (f) of a security incident or other disaster that impacts the Services or the security of Customer Data; or (g) Partner's failure to pay SkyKick all Fees due and payable under this Agreement in accordance with Section 4. SkyKick shall have no liability for any damages, liabilities or losses as a result of any suspension, limitation or termination of Partners use of the SkyKick Platform or a Customer's use of the Services in accordance with this Section 8.13.

8.14 Postings Regarding the Services. Partner grants SkyKick a perpetual, irrevocable, royalty-free, non-exclusive, worldwide, sublicensable permission to use, edit, reproduce, distribute, display, and publish at any time, in whole or in part and in any media, and at SkyKick's discretion (including, without limitation, publication on the Internet) any feedback, comments, reviews, or other postings made by Partner regarding SkyKick or the Services, whether to SkyKick directly, on any third party websites, or otherwise ("Postings"). Partner acknowledges and agrees that Postings may include, but are not limited to, Partner's name, statements, and employer name (if applicable), and agrees to provide additional appropriate testimonial affidavits and supporting information and documentation at SkyKick's request. SkyKick has the right to identify Partner as a Partner of the Services in SkyKick's promotional materials and releases, however printed or displayed and in any medium of expression, and if applicable, to use Partner's corporate logo as it appears from time to time

on Partner's website or other promotional materials. Partner represents and warrants such Postings reflect Partner's honest beliefs and real experience in connection with SkyKick or the Services, are made voluntarily, and are provided without compensation to Partner. Partner waives, releases, and discharges SkyKick and its employees, officers, affiliates, licensees, successors, assigns, agents, customers, and suppliers from any and all claims Partner may now or later have (whether related to copyright, right of privacy, right of publicity, performer rights, tort, contract, statute or otherwise) by reason of any use, edit, reproduction, distribution, display, or publication of the Postings by SkyKick or by any third party authorized to do so by SkyKick. Partner will not to assert (a) any ownership or other right or interest in the Postings or (b) any claim for compensation related to the Postings or the use, reproduction, distribution, or publication thereof. Partner may withdraw Partner's permission to SkyKick to use, edit, reproduce, distribute, display, or publish Postings at any time by contacting SkyKick at support@skykick.com, provided that such withdrawal shall only apply to Postings which SkyKick can easily remove from the SkyKick Site or other websites, and shall not apply to any printed materials or publications in circulation or ordered for circulation at the time of such withdrawal.

9. Representations and Warranties; Disclaimer.

9.1 Warranty. Each Party represents and warrants that: (a) it is validly existing and in good standing under the laws of its state of incorporation; (b) it has full corporate power and authority to execute, deliver and perform its obligations under this Agreement; (c) its execution and delivery of this Agreement and its performance of its obligations under this Agreement will not result in its breach of or default under any agreement or arrangement by which it is bound; (d) the person entering into this Agreement on its behalf has been duly authorized and empowered to enter into this Agreement; and (e) this Agreement is valid, binding and enforceable against it in accordance with its terms.

9.2 Disclaimers. THE SKYKICK PLATFORM IS PROVIDED "AS IS." EXCEPT AS PROVIDED IN SECTION 9.1, SKYKICK AND ITS AFFILIATES MAKE NO (AND HEREBY DISCLAIM ALL) WARRANTIES OR REPRESENTATIONS (EXPRESS OR IMPLIED, ORAL OR WRITTEN), WHETHER ALLEGED TO ARISE BY OPERATION OF LAW, BY REASON OF CUSTOM OR USAGE IN THE TRADE, BY COURSE OF DEALING OR OTHERWISE, INCLUDING, WITH RESPECT TO THE SKYKICK PLATFORM, ANY AND ALL (A) WARRANTIES OF MERCHANTABILITY, (B) WARRANTIES OF FITNESS OR SUITABILITY FOR ANY PURPOSE (WHETHER OR NOT SUCH PARTY KNOWS, HAS REASON TO KNOW, HAS BEEN ADVISED, OR IS OTHERWISE AWARE OF ANY SUCH PURPOSE), (C) ANY WARRANTY THAT THE SKYKICK PLATFORM WILL BE UNINTERRUPTED, ERROR FREE OR FREE OF HARMFUL COMPONENTS, OR THAT THE CUSTOMER DATA WILL NOT BE LOST OR DAMAGED, AND (D) WARRANTIES OF NONINFRINGEMENT OR CONDITION OF TITLE. THIS DISCLAIMER AND EXCLUSION WILL APPLY EVEN IF THE EXPRESS WARRANTY SET FORTH ABOVE FAILS OF ITS ESSENTIAL PURPOSE.

10. Limitation of Liability. IN NO EVENT WILL SKYKICK BE LIABLE TO PARTNER, CUSTOMER OR ANY THIRD PARTY FOR ANY LOSS OF PROFITS, LOSS OF USE, LOSS OF REVENUE, LOSS OF GOODWILL, ANY INTERRUPTION OF BUSINESS, OR

FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY PRODUCTS, SERVICES OR SKYKICK APPLICATIONS PROVIDED BY SKYKICK, INCLUDING THE SKYKICK PLATFORM, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, EVEN IF SKYKICK HAS BEEN ADVISED OR IS OTHERWISE AWARE OF THE POSSIBILITY OF SUCH DAMAGES. FURTHER, NEITHER SKYKICK NOR ANY OF ITS AFFILIATES WILL BE RESPONSIBLE FOR ANY COMPENSATION, REIMBURSEMENT, OR DAMAGES ARISING IN CONNECTION WITH: (A) PARTNER OR CUSTOMER'S INABILITY TO USE THE SERVICES AS A RESULT OF ANY DOWNTIME OF ALL OR A PORTION OF THE SKYKICK PLATFORM FOR ANY REASON, INCLUDING AS A RESULT OF POWER OUTAGES, SYSTEM FAILURES OR OTHER INTERRUPTIONS; (B) THE COST OF PROCUREMENT OF SUBSTITUTE PRODUCTS OR SERVICES; (C) ANY INVESTMENTS, EXPENDITURES, OR COMMITMENTS BY PARTNER IN CONNECTION WITH THIS AGREEMENT OR CUSTOMER'S USE OF OR ACCESS TO THE SKYKICK PLATFORM; OR (D) ANY UNAUTHORIZED ACCESS TO, ALTERATION OF, OR THE DELETION, DESTRUCTION, DAMAGE OR LOSS OF ANY CUSTOMER DATA OR OTHER DATA. IN ANY CASE, SKYKICK AND ITS AFFILIATES' AGGREGATE LIABILITY UNDER THIS AGREEMENT WILL BE LIMITED TO THE FEES ACTUALLY PAID BY PARTNER TO SKYKICK FOR SERVICES DURING THE TWELVE (12) MONTHS PRECEDING THE CLAIM. THIS SECTION WILL BE GIVEN FULL EFFECT EVEN IF ANY REMEDY SPECIFIED IN THIS AGREEMENT IS DEEMED TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

11. Indemnification.

11.1 General. In addition to all other indemnification obligations set forth in other sections of this Agreement, Partner, at its sole expense, will defend, indemnify and hold harmless SkyKick and its directors, officers, employees, contractors, agents, successors and assigns (collectively, the "SkyKick Indemnitees") from and against any and all actual or threatened suits, actions, proceedings (at law or in equity), claims (groundless or otherwise), damages, payments, deficiencies, fines, judgments, settlements, liabilities, losses, costs and expenses (including, but not limited to, reasonable attorney fees, costs, penalties, interest and disbursements) (collectively, "Liabilities") resulting from any claim (including third party claims), suit, action, or proceeding against any SkyKick Indemnatee, whether successful or not, resulting from or arising in connection with (a) Partner's sale, failure to sell, or provision of the Services to Customer; (b) Partner or Partner Party's use of the Customer Data or the SkyKick Platform; (c) any breach of this Agreement or an applicable Customer Contract or a violation of applicable law by Partner or a Partner Party; (d) any statement, representation, warranty, contractual obligation or other commitment made by Partner with respect to the Services that is inconsistent with or not provided by SkyKick in the terms of this Agreement, the Documentation provided by SkyKick or any SkyKick Policy; (f) the negligence or willful misconduct of Partner or any Partner Party; or (e) Partner's failure to obtain any required consents or authorizations from Customer as described in Section 2.3 or Section 8.4 of this Agreement.

11.2 Process. SkyKick will reasonably notify Partner of any claim subject to the indemnification obligations set forth in this Agreement, but the failure of SkyKick to so notify Partner will only affect Partners' indemnification obligations hereunder to the extent that such failure materially prejudices Partner's ability to defend the subject claim. Provided that Partner promptly investigates and defends any such claim, Partner will have control over the defense and settlement thereof at its sole cost and expense. Notwithstanding the foregoing, Partner will not settle or compromise any claim in a manner that does not fully release SkyKick from such claim or results in a restriction on or admission by SkyKick or subjects SkyKick to any additional obligations. In the event that SkyKick determines, in its sole discretion, that Partner has failed to promptly investigate or rigorously defend any claim for which Partner has an obligation to indemnify, SkyKick will have the right to defend and settle such claim at Partner's cost and expense.

12. Term; Termination; Effect of Termination.

12.1 Term. This Agreement will commence on the Effective Date and continue in effect unless otherwise terminated by the Parties hereunder (the "Term").

12.2 Termination. Either Party may terminate this Agreement, with or without cause, upon five (5) days written notice to the other Party. In the event of termination under this Section 12.2 by SkyKick for any reason other than for Partner's material breach of this Agreement, SkyKick will (a) perform all Services (other than subscription-based Services) under Orders received and accepted prior to such termination date; and (b) perform all subscription-based Services under Orders received and accepted prior to such termination date for the duration of the then-current subscription term set forth in the applicable Order (without renewal) or a period of ninety (90) days (whichever is shorter).

12.3 Effect of Termination. Upon any expiration or termination of this Agreement for any reason, (a) any and all Liabilities accrued prior to the date of such expiration or termination will survive; (b) each Party will promptly provide the other Party with all Confidential Information then in its possession or destroy all copies of such Confidential Information, at the disclosing Party's sole discretion and direction; and (c) Partner will (i) cease to hold itself out in any fashion as a Partner of the Services and cease the placement of Orders; (ii) promptly discontinue use of the SkyKick Platform; (iii) promptly cease all use of any promotional, marketing or instructional materials relating to the Services and immediately return such materials to SkyKick. The following sections will survive any expiration or termination of this Agreement: Sections 1, 4, 5, 6, 8.10, 8.14, 9.2, 10, 11, 12.3 and 13.

13. General Provisions.

13.1 Entire Agreement. This Agreement, the Order Form or any other terms and conditions referenced in these this Agreement (the "Additional Policies") are the entire agreement of the Parties regarding the subject matter hereof, superseding all other agreements between them, whether oral or written, regarding the subject matter hereof.

13.2 Governing Law; Venue; Dispute Resolution. This Agreement will be governed by and construed and enforced in accordance with the laws of the State of Washington, without resort to its conflict of law provisions. The Parties agree that any action at law or in equity arising out of or relating to this Agreement will be filed only in the state and federal courts located in Seattle, Washington, and the Parties hereby irrevocably and unconditionally consent and submit to the exclusive jurisdiction of such courts over any suit, action or proceeding arising out of this Agreement.

13.3 Assignment. Neither this Agreement nor any right or duty under this Agreement may be transferred, assigned or delegated by Partner, including by operation of law or otherwise, without the prior written consent of SkyKick, and any attempted transfer, assignment or delegation without such consent will be void and without effect. SkyKick may freely assign this Agreement and any right or duty under this Agreement to an affiliate or other Person by operation of law, change of control, merger, reorganization, or sale of stock or all or substantially all of its assets. Subject to the foregoing, this Agreement will be binding upon and will inure to the benefit of the Parties and their respective representatives, heirs, administrators, successors and permitted assigns.

13.4 Relationship of the Parties. Neither Party will, for any purpose, be deemed to be an employee, representative, owner or partner of the other Party; and, the relationship between the Parties will only be that of independent contractors. Neither Party will have any right or authority to assume or create any obligations or to make any representations or warranties on behalf of any other Party, whether express or implied, or to bind the other Party in any respect whatsoever.

13.5 References. Neither Party may disclose the specific terms of this Agreement or issue a public statement or press release regarding this Agreement without the prior consent of the other Party. Notwithstanding the foregoing, SkyKick may, during the Term of this Agreement, identify Partner as an authorized Partner of the Services and display Partner's logo and/or other branding materials on SkyKick's website and other marketing materials.

13.6 Nonwaiver. The failure of either Party to insist upon or enforce strict performance of any of the provisions of this Agreement or to exercise any rights or remedies under this Agreement will not be construed as a waiver or relinquishment to any extent of such Party's right to assert or rely upon any such provision, right or remedy in that or any other instance; rather, the same will remain in full force and effect.

13.7 Severability. If any provision of this Agreement is invalid, illegal, or incapable of being enforced by any rule of law or public policy, all other provisions of this Agreement will nonetheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated by this Agreement is not affected in any manner adverse to any Party. Upon such determination that any provision is invalid, illegal, or incapable of being enforced, the Parties will negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner to the end that the transactions contemplated hereby are fulfilled.

13.8 Notice. Any notice, demand or communication required or permitted to be given by any provision of this Agreement will be deemed to have been sufficiently given or served for all purposes if: (a) delivered personally; (b) deposited with a pre-paid messenger, express or air courier or similar courier; or (c) transmitted by telecopier, facsimile, email or other communication equipment that transmits a facsimile of the notice to like equipment that receives and reproduces such notice. Notices will be addressed to a Party at the Party's address, facsimile number or email address as provided by Partner in the Partner Portal. Notices will be deemed to have been received (i) in the case of personal delivery, upon receipt, (ii) in the case of messenger, express or air courier or similar courier, two days after being deposited, and (iii) in the case of telecopier, facsimile, email or other communication equipment, the day of receipt as evidenced by a telecopier, facsimile, email or similar communication equipment confirmation statement. Further, either Party may change its contact information by notice in accordance with this Section or using tools available via the Partner Portal.

13.9 Force Majeure. In the event that either Party is prevented from performing, or is unable to perform, any of its obligations under this Agreement due to any cause beyond the reasonable control of the Party invoking this provision, the affected Party's performance will be excused and the time for performance will be extended for the period of delay or inability to perform due to such occurrence; provided, that the affected Party: (a) provides the other Party prompt notice of the nature and expected duration of the event, (b) uses commercially reasonable efforts to address and mitigate the cause and effect of such event, (c) provides periodic notice of relevant developments, and (d) provides prompt notice of the end of such event.

13.10 Modifications to the Terms and Conditions. SkyKick may modify these Terms and Conditions or any Additional Policies at any time by posting a revised version of these Terms and Conditions or Additional Policies on the SkyKick Site. Unless otherwise set forth in this Agreement, the revised terms shall be effective upon the earlier of (a) ten (10) days after posting and/or notifying Partner of the changes; or (b) upon Partner's acceptance if SkyKick provides a mechanism for the acceptance of the revised terms, such as a click-through confirmation or acceptance button. By continuing to use the SkyKick Platform or resell the Services after the effective date of any revisions to these Terms and Conditions or any Additional Policies, Partner agrees to be bound by the revised Terms and Conditions or any revised Additional Policies. It is Partner's responsibility to check the SkyKick Site regularly for changes to these Terms and Conditions or the Additional Policies, as applicable. If Partner disagrees with any modifications to these Terms and Conditions or any Additional Policies, Partner's sole and exclusive remedy shall be to terminate the Agreement in accordance with Section 12 herein.
