

SkyKick Customer Terms & Conditions Supplement

The usage of SkyKick apps and services are ruled by [SkyKick Customer Terms & Conditions](#)

SkyKick Customer Terms & Conditions

Last updated: November 7, 2023

These SkyKick Customer Terms and Conditions (the “Terms and Conditions”) apply to any and all orders placed by an end-customer (“Customer”) or an authorized IT solutions provider (a “Partner”) on behalf of a Customer with or SkyKick LLC or its affiliate (“SkyKick”) either through an electronic marketplace or directly with/from SkyKick (the “Order”). All offers and sales of services and products offered by SkyKick through a Partner are subject to and expressly conditioned on these Terms and Conditions, the Order and any other written or electronic terms executed by SkyKick and Customer (or a Partner on Customer’s behalf) that reference or are executed pursuant to these Terms and Conditions (collectively, the “Agreement”).

The effective date of this Agreement will be the date that the applicable Order is submitted to SkyKick by a Partner on Customer’s behalf and accepted by SkyKick (the “Effective Date”). SkyKick and Customer are sometimes referred to herein individually as a “Party” and together as the “Parties”. By using or receiving the Services (defined below), Customer agrees to all of the terms and conditions of these 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 CUSTOMER IS BASED IN AUSTRALIA SPECIFIC MARKET TERMS MAY APPLY, accessible here: [SkyKick Customer Terms & Conditions for Australia](#). IF CUSTOMER DOES NOT AGREE WITH ALL OF THE TERMS AND CONDITIONS SET FORTH HEREIN, CUSTOMER IS NOT PERMITTED TO USE THE SERVICES. In the event that a Partner accepts these Terms and Conditions and any Agreement hereunder on Customer’s behalf, Customer will be bound thereby as if these Terms and Conditions or such Agreement were directly executed by Customer.

Recitals

A) SkyKick is in the business of providing certain IT-related products and services as more fully described in the Documentation and applicable Order (the “Services”);

B) Customer has entered into an agreement with a Partner (the “Partner Agreement”) to procure services offered by Partner that involve the use or management of SkyKick’s Services (the “Partner Offerings”); and

C) Customer desires to engage SkyKick to provide the Services for use in connection with the Partner Offerings, and has authorized Partner to act on Customer’s behalf with respect to the placement, configuration and/or management of Orders and Customer’s utilization of the Services, and SkyKick desires to provide such Services in accordance with and pursuant to the terms and conditions of this 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:

Agreement

1. Definitions. For the purposes of this Agreement, capitalized terms will have the meanings set forth below or elsewhere in this Agreement:

1.1 “Confidential Information” means all information disclosed or made available (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. Customer’s Confidential Information includes, but is not limited to, any Order Data and Customer Data (defined below), and SkyKick’s Confidential Information includes, but is not limited to, the details of any Order, Usage Data (defined below), and other information relating to the SkyKick Platform, the Services, the software and any other proprietary software or technology of SkyKick, any inventions, design or business plans, financial plans, know-how, customer information, strategies and other similar information. Notwithstanding the foregoing, Confidential Information will not include information that: (a) is or becomes publicly available 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 without the 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 Data” means any and all information, emails, data, text, audio, video, images or other content provided to, hosted, stored, and/or accessed by SkyKick in connection with the provision of Services (such as, data Backup, Migration and Cloud Manager), other than Order Data.

1.3 “Data Protection Law” means any and all data protection laws and regulations that apply to the processing of personal information by SkyKick under this Agreement.

1.4 “Documentation” means SkyKick’s product and services descriptions, user instructions and any other documentation relating to the SkyKick Platform that SkyKick may provide via the SkyKick Site, directly to Customer or through the Partner, from time to time.

1.5 “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.

1.6 “Order Data” means data (such as, Partner’s, Customer’s and/or Users’ names and contact information) provided or made available by Customer and/or the Partner to SkyKick in connection with submitting an Order and otherwise required for SkyKick to administer the Order.

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

1.8 “Provider” means a service provider that provides, hosts and/or stores, through any service, Customer Data accessed by SkyKick in connection with providing the Services.

1.9 “Provider Offering” means any services offered by a Provider.

1.10 “Provider Agreement” means an agreement between the Customer and a Provider pursuant to which the Provider makes the Provider Offerings available to Customer.

1.11 “SkyKick Platform” means the proprietary software and any other technology used by SkyKick in the provision and operation of the Services or made available by SkyKick to Customer, and the applicable Partner for Customer’s benefit, in connection with the provision or receipt of Services, including the SkyKick Site.

1.12 “SkyKick Site” means the SkyKick website at www.skykick.com, or any successor website thereto.

1.13 “User” means any employee, contractor, delegate, or agent of Customer, or other person who is authorized by Customer to use, or benefit from the use of, the Services or who otherwise accesses or uses the SkyKick Platform and/or Services provided, or whose data is processed or accessed by the SkyKick Platform and/or Services.

2. Orders; Access to Systems.

2.1 Authorization. Customer affirms that it has authorized the Partner to place Orders, purchase Services, and to submit associated information, on its behalf and hereby authorizes SkyKick to perform the Services purchased through a Partner in accordance with the terms and conditions of this Agreement. To the extent required by the Partner, Customer hereby appoints SkyKick as a delegated administrator with respect to any applicable Provider Offering that may be accessed by the SkyKick Platform in relation to providing the Services.

2.2 Access to Customer’s Systems and Order Data. Customer will grant to SkyKick access to Customer’s systems and online hosted accounts as required for SkyKick to provide the Services (including administrative-level access). Customer will provide SkyKick and, if applicable, the Partner, with any credentials or other keys required for Customer to grant the access set forth herein, any other information necessary to enable SkyKick to perform the Services, and any other instructions or requirements pertinent to Customer’s access to and use of the Services. Customer represents and warrants that the information provided to SkyKick and Partner is complete and accurate, and it has taken, and will take, all other steps necessary to ensure that SkyKick’s provision of the Services complies with applicable law, including obtaining an applicable consent and authorization from Users permitting SkyKick to access and use any relevant information. In order to use the Services, 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 Customer cannot access or receive the Services due to a failure to grant the necessary access, provide the necessary information or meet such minimum requirements.

2.3 Purchases through a Partner. Customer must purchase access to, support of, and use of the SkyKick Platform through a Partner pursuant to a Partner Agreement. SkyKick’s provision of the Services to Customer is contingent upon Customer’s consent to this Agreement. SkyKick shall have no obligation to provide Services to Customer until Customer consents to this Agreement.

3. Customer Data, Data Protection, and Confidentiality.

3.1 Customer Data. As between SkyKick and Customer, Customer is the sole owner of the Customer Data. Customer hereby authorizes SkyKick to perform such actions with respect to Customer Data as it deems necessary to fulfill its obligations, including, without limitation:

- to provide the Services and/or access to the SkyKick Platform (including, as applicable, to the Partner or a Provider on Customer's behalf),
- as otherwise requested to fulfill its obligations under this Agreement, or
- to comply with any request of a governmental or regulatory body (including subpoenas or court orders).

Customer acknowledges that it bears sole responsibility for adequate security, protection and backup of the Customer Data on any equipment and systems (including Partner and Provider systems) not owned or controlled by SkyKick.

3.2. Usage Data. Separately SkyKick may collect, generate, use and store anonymous or aggregate information regarding use of the Services ("Usage Data") solely for SkyKick's business purposes (including, but not limited to, billing, enhancing the Services and creating new features, functionality and services). As between SkyKick and Customer, SkyKick is the sole owner of the Usage Data.

3.3 Data Protection. SkyKick will meet its obligations under the Data Protection Laws that apply to the Services and the provision thereof by SkyKick. The [SkyKick Data Processing Addendum](#) applies between Customer and the relevant SkyKick affiliate. Insofar the Regulation (EU) 2016/679 ("GDPR") applies, SkyKick classifies as a "processor", and Customer as a "controller" with respect to the Customer Data, both as defined in the GDPR. In case SkyKick receives a legally binding request from a public authority, including judicial authorities, under the laws of the country of destination for the disclosure of Customer personal data, SkyKick agrees to review the legality of the request for disclosure, in particular whether it remains within the powers granted to the requesting public authority, and to challenge the request if, after a careful assessment, SkyKick concludes that there are reasonable grounds to consider that the request is unlawful under the laws of the country of destination, applicable obligations under international law, or principles of international comity. Upon request from Customer, SkyKick shall, where permissible under the laws of the country of destination, provide Customer with as much relevant information as reasonably and technically practicable on the requests received.

3.4 Confidentiality. Without limiting anything in Section 3.3, each Party will, during the Term (as defined below) 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 and afterwards in perpetuity, subject only to the exceptions expressly stated in this Agreement.

3.5 Security. SkyKick has established, and will maintain during the Term, commercially reasonable administrative, physical and technical safeguards for the protection of Customer's Confidential Information.

4. Proprietary Rights. As between SkyKick and Customer, other than the limited rights explicitly granted to Customer under this Agreement, SkyKick or its licensors own and reserve all right, title, and interest in and to the SkyKick Platform and Services, including, without limitation, any SkyKick proprietary software or technology utilized in the provision or use thereof, the Documentation, and all Intellectual Property Rights therein. Customer 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 rights expressly 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. Customer will not take or encourage any action during or after the Term 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.

5. SkyKick Services.

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

5.2 Access and Use of the SkyKick Platform. During the Term, SkyKick grants to Customer a limited, non-exclusive, non-transferable right to access and use, and permit and enable its Users to access and use, the SkyKick Platform, including the right to install any software clients and other code as provided and instructed by SkyKick, and related Documentation, solely in connection with the Services provided under this Agreement, strictly for Customer's own business operations, and not for re-sale or redistribution. Except for the limited rights granted hereunder, SkyKick reserves all rights not expressly granted and no such additional rights may be implied.

5.3 SkyKick B.V or SkyKick LLC. The Services will be provided by SkyKick LLC if Customer is based in the United States of America or by SkyKick B.V. if the Customer is located outside the United States of America.

6. Customer's Obligations and Acknowledgements.

6.1 Cooperation. Customer understands and agrees that Customer's full, reasonable cooperation is required in order for SkyKick to properly, efficiently and effectively perform the Services hereunder. Customer agrees to comply with all of SkyKick's, and the Partner's, reasonable requests made in connection with the provision of Services to Customer hereunder. Customer understands and agrees that failure to so cooperate with SkyKick, or the Partner, could result in SkyKick's inability to properly, efficiently and effectively perform the Services hereunder and shall be deemed a material breach of this Agreement by Customer thereunder. SkyKick's provision of the Services is subject to Customer's cooperation (including the cooperation of third parties under such Customer's control) with SkyKick, and the Partner, as well as Customer's compliance with this Agreement. SkyKick shall have no liability whatsoever for any delays, deficiencies or failures that occur in the performance of Services as a result of Customer's failure to so cooperate. Customer hereby consents to receive communications from SkyKick (via email or other means) regarding SkyKick's performance of the Services.

6.2 Compliance with Provider Agreement and Partner Agreement. Customer will comply with all terms and conditions set forth in the Partner Agreement and any applicable Provider Agreement. SkyKick will have no responsibility or liability for any breach by Customer, the Partner or any Provider of the Partner Agreement and/or Provider Agreement.

6.3 Compliance with Law. Customer will comply with all applicable laws, rules, regulations and orders relating to its access and use of the SkyKick Platform and Services under this Agreement (including without limitation (a) laws and policies related to unsolicited, commercial e-mails, including, without limitation, the Controlling the Assault of Non-Solicited Pornography And Marketing Act of 2003 (or, CAN-SPAM), or any illegal, objectionable or offensive activities, (b) laws and policies applicable to Customer's processing and storage of Customer Data in connection with Customer's use of the SkyKick Platform and the Services, and (c) as applicable, those concerning the exporting, importing and re-exporting of computer software and the protection of privacy and personal information, including, without limitation, the Australian Privacy Act 1988 (Cth) (even if it is not an organisation bound by the Act).

6.4 Obligations Regarding Customer Data. Customer is solely responsible for, and will indemnify SkyKick against any Liabilities related to: (a) ensuring that the Customer Data complies with all applicable laws, rules, regulations, and policies; (b) any claims arising from or relating to the Customer Data; and (c) properly handling and processing notices sent to Customer by any person claiming that any Customer Data violates such person's rights.

6.5 Changes to Services. SkyKick may introduce new Services and/or alter existing Services without prior notice to 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 the Customer (directly or via the Partner) of any such discontinuation or change.

6.6 User Restrictions. Customer will not, and will not encourage or permit any User or other Person to: (a) use the SkyKick Platform, including the Services, 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) upload, post or store any content that infringes the rights of any Person or contains hate speech, promotes or encourages violence or otherwise violates SkyKick policy, (d) access or use the SkyKick Platform in any way that violates this Agreement or any applicable laws, rules, or regulations; (e) modify, alter, tamper with, repair or otherwise create derivative works of any software, technology, content or infringe any Intellectual Property Rights of SkyKick included in or used to provide the SkyKick Platform; (f) reverse engineer, disassemble or decompile the SkyKick Platform or any software or technology of SkyKick included in or used to provide the Services; or (g) attempt to discover or recreate the SkyKick Platform or any software, technology or intellectual property of SkyKick.

6.7 Third Party Products and Services. Except as otherwise expressly provided under this Agreement, Customer is solely responsible for obtaining and maintaining, at its sole cost and expense, hardware, equipment, software and services required to access or use any of the Partner Offering, the SkyKick Platform and any Provider Offering. Without limiting the foregoing, Customer must obtain and maintain, and pay all charges, taxes and other costs and fees related to, internet access, telephone, computer, and other equipment, and any communications or other charges incurred by Customer to access and use the SkyKick Platform.

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

6.9 Notification of Unauthorized Use. In the event that Customer becomes aware of any unauthorized use by any third party that obtained access to the SkyKick Platform directly or indirectly through Customer, Customer will promptly notify SkyKick through the Partner or via email to support@skykick.com, take all steps necessary to terminate such unauthorized use and will provide SkyKick such cooperation and assistance as requested by SkyKick or the Partner in connection with SkyKick’ actions to stop or prevent unauthorized use of the SkyKick Platform.

6.10 Limited Use of the SkyKick Platform. Customer’s access to the SkyKick Platform shall be limited to the purpose of using and receiving the Services for Customer’s internal use. Customer may not access and use the SkyKick Platform for commercial purposes or for the purpose of developing (or intending to develop) a product or service that contains substantially similar capabilities or functionalities as, or that otherwise competes with the Services.

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

6.12 Downtime. Customer acknowledges that access to the SkyKick Platform may be limited, or the SkyKick Platform may be unavailable, for the duration of any scheduled or emergency downtime, or due to other causes, including as a result of power outages, system failures, maintenance, upgrades or other interruption, whether affecting SkyKick, the Partner or a Provider, SkyKick shall have no liability for any such interruption.

7. Suspension or Termination of Access. SkyKick may, without liability to Customer, immediately limit, suspend or terminate access to the SkyKick Platform or Services 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 agreement or policy applicable to the SkyKick Platform; (b) SkyKick determines that the SkyKick Platform is being used in an unauthorized or fraudulent manner or that Customer (or the Partner on Customer’s behalf) has submitted fraudulent or inaccurate information to SkyKick, a Provider or the Partner; (c) SkyKick determines that Customer’s use of the SkyKick Platform (or the Partner’s use on Customer’s behalf) 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, the SkyKick Platform, or to any other customers; (f) of a security incident or imminent security risk or threat that impacts the Services or SkyKick Platform, or the security of Order Data or Customer Data; or (g) the Partner’s failure to pay SkyKick any Fees (defined below) applicable to Customer’s use of the SkyKick Platform. SkyKick shall have no liability for any damages, liabilities or losses as a result of any limitation, suspension or termination pursuant to this Section 7.

8. Fees. All fees, costs and expenses due and payable by Customer for the Services (“Fees”) and corresponding payment terms and conditions are established between Customer and a Partner as set forth in the applicable Partner Agreement and are independent of any amounts due and owing from the Partner to SkyKick with respect to such Services. SkyKick will not be responsible or liable to Customer for any disputes arising out of or related to the invoicing, billing, collection, payment or non-payment of any amounts paid or owed pursuant to a Partner Agreement. Customer acknowledges that (a) SkyKick has the right to take action against Customer for delinquent payment by Partner of any amounts that are due and payable from the Partner to SkyKick arising out of the Services; and (b) such action, including pursuant to Section 7, shall be without regard to whether Customer has paid the Partner for such Services.

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 country or 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. EXCEPT AS SET FORTH IN SECTION 9.1 AND AS REQUIRED OF SKYKICK UNDER THE CONSUMER GUARANTEES (AS SET FORTH IN SECTION 9.3 BELOW), SECTION 9.1 TO THE FULLEST EXTENT PERMITTED BY LAW, THE SKYKICK PLATFORM IS PROVIDED
SkyKick Customer Terms & Conditions

“AS IS” AND “AS AVAILABLE.” 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 ORDER DATA OR 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.

9.3 Consumer Guarantees Required by Law. Where applicable, the Australian Consumer Law (as embodied in Schedule 2 to the Competition and Consumer Act 2010 (Cth) (ACL) may require that certain guarantees must be given by SkyKick to Customer in relation to the supply by SkyKick of goods or services to Customer (Consumer Guarantees) by SkyKick and acquired by the Customer in trade in terms of sections 2 and 43 of the New Zealand Consumer Guarantees Act 1993 and that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply to the Customer (directly or via the Partner). The Customer agrees and acknowledges that it is fair and reasonable, in all circumstances, for the Customer to be bound by the terms set out in this Section 9.4.

10. Limitation of Liability.

10.1 EXCEPT TO THE EXTENT THAT SKYKICK’S LIABILITY ARISES FROM SKYKICK’S FAILURE TO COMPLY WITH THE CONSUMER GUARANTEES (AS TO WHICH, SEE SECTION 9.3 ABOVE), TO THE FULLEST EXTENT PERMITTED BY LAW, IN NO EVENT WILL SKYKICK BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY LOSS OF PROFITS OR REVENUE, LOSS OF DATA, LOSS OF USE, LOSS OF GOODWILL, ANY INTERRUPTION OF BUSINESS, COST OF PROCUREMENT OF SUBSTITUTE PRODUCTS OR SERVICES, INVESTMENTS, EXPENDITURES, OR ANY INVESTMENTS OR COMMITMENTS UNDERTAKEN BY CUSTOMER IN RELIANCE ON THIS AGREEMENT, 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 SOFTWARE 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. NOR WILL SKYKICK BE LIABLE FOR ANY COMPENSATION, REIMBURSEMENT, OR DAMAGES ARISING IN CONNECTION WITH: (A) CUSTOMER’S INABILITY TO USE THE SERVICES, INCLUDING WITHOUT LIMITATION, AS A RESULT OF (I) THE TERMINATION OR SUSPENSION OF AN ORDER, THE PARTNER AGREEMENT OR ANY PROVIDER AGREEMENT, OR (II) OF CUSTOMER’S USE OF OR ACCESS TO ANY PARTNER OFFERINGS OR PROVIDER OFFERINGS, OR (III) ANY DOWNTIME AFFECTING ALL OR ANY PORTION OF THE SKYKICK PLATFORM, PARTNER OFFERINGS OR PROVIDER OFFERINGS FOR ANY REASON, INCLUDING AS A RESULT OF POWER OUTAGES, SYSTEM FAILURES OR OTHER INTERRUPTIONS; (B) ERRORS OR OMISSIONS BY CUSTOMER, THE PARTNER OR ANY PROVIDER, (C) SKYKICK’S INABILITY TO PERFORM THE SERVICES DUE TO LIMITATIONS IMPOSED BY A PROVIDER, OR CUSTOMER’S SYSTEMS OR ARCHITECTURE; (D) ANY UNAUTHORIZED ACCESS TO, ALTERATION OF, OR THE DELETION, DESTRUCTION, DAMAGE OR LOSS OF ANY ORDER DATA OR CUSTOMER DATA OR OTHER DATA. IN ANY CASE, SKYKICK’S AGGREGATE LIABILITY UNDER THIS AGREEMENT WILL BE LIMITED TO THE AMOUNT ACTUALLY PAID BY CUSTOMER TO SKYKICK OR TO AN APPLICABLE SKYKICK PARTNER FOR THE PERFORMANCE BY SKYKICK OF THE SERVICES THAT GAVE RISE TO THE CLAIM DURING THE TWELVE (12) MONTHS PRECEDING THE CLAIM.

10.2 CUSTOMER ACKNOWLEDGES THAT SKYKICK HAS SET ITS PRICES AND ENTERED INTO THIS AGREEMENT IN RELIANCE UPON THE LIMITATIONS OF LIABILITY AND THE DISCLAIMERS OF WARRANTIES AND DAMAGES SET FORTH HEREIN, AND THAT THE SAME FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES. THE PARTIES AGREE THAT THE LIMITATIONS AND EXCLUSIONS OF LIABILITY AND DISCLAIMERS SPECIFIED IN THIS AGREEMENT 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, Customer, 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 Indemnitee, whether successful or not, resulting from or arising in connection with: (a) any breach of this Agreement, a Provider Agreement, Partner Agreement or other agreement to which Customer or a Customer Party is subject; (b) Customer’s use or a Customer Party’s use of the SkyKick Platform, or any Provider Offerings or Partner Offerings; (c) any violation of applicable law by Customer or any Customer Party; (d) the Order Data or Customer Data, including the collection, use, or disclosure or the

combination of the such data with other applications, content or processes, and further including any claim that any Order Data or Customer Data infringes, misappropriates or otherwise violates the rights of any third party; (e) the negligence or willful misconduct of Customer or any Customer Party; or (f) Customer's failure to obtain any required consents or authorizations from Users as described in Section 2.2 of these Terms & Conditions.

11.2 Process. SkyKick will reasonably notify Customer (directly, or via the applicable Partner) of any claim subject to the indemnification obligations set forth in this Agreement, but the failure of SkyKick to so notify Customer will only affect Customers' indemnification obligations hereunder to the extent that such failure materially prejudices Customer's ability to defend the subject claim. Provided that Customer promptly investigates and defends any such claim, Customer will have control over the defense and settlement thereof at its sole cost and expense. Notwithstanding the foregoing, Customer 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 Customer has failed to promptly investigate or rigorously defend any claim for which Customer has an obligation to indemnify, SkyKick will have the right to defend and settle such claim at Customer'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 as set forth in the applicable Order (the "Term"), unless terminated earlier in accordance with the terms of this Agreement.

12.2 Termination. SkyKick may terminate this Agreement for any or no reason upon written notice to Customer (directly or via the Partner). In addition, Orders will be terminated automatically, if suspended pursuant to the terms of this Agreement, and the cause for such suspension is not cured within ninety (90) days. In the event of termination under this Section 12.2 by SkyKick for any reason other than for Customer's material breach of this Agreement, SkyKick will (a) complete 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). For the avoidance of doubt, removal of SkyKick as Customer's delegated administrator with respect to a Partner Offering or Provider Offering, or any failure by Partner to timely pay the Fees owed pursuant to an Order (regardless of whether Customer has paid Partner), will constitute a material breach of this Agreement.

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 (including the payment of Fees for Services ordered), (b) Customer shall promptly destroy all copies of SkyKick's Confidential Information in its possession or control, discontinue use of the SkyKick Platform and uninstall any software client or other code provided by SkyKick, (c) SkyKick may retain Order Data for its own records in accordance with its data retention policy and the [SkyKick Privacy Policy](#), and (d) unless otherwise specified in the [SkyKick Data Processing Addendum](#) or other applicable law: (i) Customer Data will be deleted at Customer's request, or as required by Customer's data retention policy (of which Customer (directly or via the Partner) has notified SkyKick in writing); (ii) SkyKick reserves the right to delete all Customer Data retrieved or received by SkyKick, including, but not limited to, Customer Data in the SkyKick Platform, in connection with a Backup or Migration Order at any time upon expiration or termination of this Agreement; and (iii) Customer Data retrieved or received by SkyKick in connection with a Cloud Manager Order is retained only while there is an active connection to Customer's environment, and automatically deleted and purged when the connection to the applicable Provider Offering (e.g., SAAS, IAAS or PAAS) is removed. Notwithstanding the foregoing, SkyKick may retain Customer Data, as required by law or pursuant to a lawful subpoena or court order. Except in the case of Customer Data retrieved or received in connection with Cloud Manager, SkyKick will use commercially reasonable efforts to inform Customer (directly or via the Partner) prior to deleting Customer Data by means of a banner in the Customer Self-Service portal or via other channels.

The following sections will survive any expiration or termination of this Agreement: Sections 1, 3, 4, 8, 9, 10, 11, 12.3, and 13.

13. General Provisions.

13.1 Entire Agreement. This Agreement and any other terms and conditions referenced in this Agreement (collectively, "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. Notwithstanding the foregoing, SkyKick has the right, at its sole discretion, to bring any claim against the Customer in the court of the Partner's or Customer's place of establishment.

13.3 Assignment. Neither this Agreement nor any right or duty under this Agreement may be transferred, assigned or delegated by Customer, 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 including 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, identify Customer as a customer or user of the Services and display Customer's logo and/or other branding materials on SkyKick' 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 unenforceable 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 any determination that a provision is invalid, illegal, or unenforceable, 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. Except as otherwise provided in this Agreement, 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 (or, in the case of Customer, to the Partner) at the address, facsimile number or email address as set forth in an applicable Order. 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 13.8.

13.9 Force Majeure. In the event that SkyKick is delayed or prevented from performing any of its obligations under this Agreement due to any cause beyond its reasonable control, its 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. SkyKick will endeavor to (a) provide Customer (directly or via the Partner) prompt notice of the nature and expected duration of the event, (b) use commercially reasonable efforts to address and mitigate the cause and effect of such event, (c) provide periodic notice of relevant developments, and (d) provide 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 and the 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 Customer of the changes; or (b) upon Customer'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 or receive the Services after the effective date of any revisions to these Terms and Conditions or any Additional Policies, Customer agrees to be bound by the revised Terms and Conditions or any revised Additional Policies. It is Customer's responsibility to check the SkyKick Site regularly for changes to these Terms and Conditions or the Additional Policies, as applicable. If Customer disagrees with such modifications, Customer's sole and exclusive remedy shall be to terminate this Agreement in accordance with Section 12 herein.

13.11 Audit. During the Term, SkyKick will have the right to audit the records of Customer relating to Customer's use of the Services to ensure that Customer is compliant with the terms and conditions of this Agreement, including the calculation of Fees by the Partner.

13.12 Remedies Not Exclusive. No remedy conferred by any of the specific provisions of this Agreement is intended to be exclusive of any other remedy, and each remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity by statute or otherwise. The election of any one or more remedies shall not constitute a waiver of the right to pursue other remedies.