

Subscription Services Agreement

PLEASE READ THIS AGREEMENT CAREFULLY BEFORE USING THIS SERVICE. BY USING THE SERVICE OR CLICKING "YES" USER IS AGREEING TO BE BOUND BY THIS AGREEMENT.

This agreement is between SkySlate, LLC, a Limited liability company (**SkySlate**), and the user agreeing to these terms (**User**).

1. **SOFTWARE SERVICE.** This agreement provides User access to and usage of an Internet based Skyslate software service on computer devices and mobile devices (**Service**).
2. **USE OF SERVICE.**
 - a. **User Owned Data.** All data uploaded by User remains the property of User, as between SkySlate and User (**User Data**). User grants SkySlate the right to use the User Data solely for purposes of performing under this agreement. During the term of this agreement, User may export its User Data as allowed by functionality within the Service.
 - b. **User Responsibilities.** User (i) must keep its passwords secure and confidential; (ii) is solely responsible for User Data and all activity in its account in the Service; (iii) must use commercially reasonable efforts to prevent unauthorized access to its account, and notify SkySlate promptly of any such unauthorized access; and (iv) may use the Service only in accordance with the Service's user guide published under "How To" section and applicable law.
 - c. **SkySlate Support.** SkySlate must provide User support for issues arising out of technical problems related to the Service (**Support**). SkySlate must use commercially reasonable efforts to keep the Service functioning as expected
 - d. **30-Day Trial Version.** If User has registered for a trial use of the Service, User may access the Service for a 30-day time period (unless extended by SkySlate in writing). The Service is provided AS IS, with no warranty during this time period. All User data may be deleted after the trial period, unless User converts its account to a paid Service.
3. **SERVICE LEVEL AGREEMENT & WARRANTY.**
 - a. **Warranty.** SkySlate warrants to User that commercially reasonable efforts will be made to maintain the online availability of the Service.
 - b. **DISCLAIMER. SKYSLATE DISCLAIMS ALL OTHER WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE AND FITNESS FOR A PARTICULAR PURPOSE. WHILE SKYSLATE TAKES REASONABLE PHYSICAL, TECHNICAL AND ADMINISTRATIVE MEASURES TO SECURE THE SERVICE, SKYSLATE DOES NOT GUARANTEE THAT THE SERVICE CANNOT BE COMPROMISED. USER UNDERSTANDS THAT (I) THE SERVICE MAY NOT BE ERROR FREE, (II) USE OF THE SERVICE MAY BE INTERRUPTED, (III) SKYSLATE DOES NOT MAKE ANY EXPLICIT OR IMPLIED GUARANTEE THAT USE OF THE SERVICE WILL IMPROVE USER'S PERFORMANCE OR TEST SCORES, AND (IV) THE USER IS SOLELY RESPONSIBLE FOR THE DIRECT AND INDIRECT CONSEQUENCES OF USING THIS PRODUCT INCLUDING BUT NOT LIMITED TO THE LOSS OF OPPORTUNITY IN ANY FORM, LOSS OF TIME, DEGRADATION IN THE PERFORMANCE OR TEST SCORES.**
4. **PAYMENT.** User must pay all fees as specified on the order, but if not specified then within 5 days of receipt of an invoice. All fees are non-refundable. User is responsible for the payment of all sales, use, withholding, VAT and other similar taxes. This agreement contemplates one or more orders for the Service, which orders are governed by the terms of this agreement.
5. **MUTUAL CONFIDENTIALITY.**
 - a. **Definition of Confidential Information.** Confidential Information means all non-public information disclosed by a party (**Discloser**) to the other party (**Recipient**), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure (**Confidential Information**). SkySlate's Confidential Information includes without limitation the Service, its user interface design and layout, and pricing information, and the Software and Documentation (defined below).
 - b. **Protection of Confidential Information.** The Recipient must use the same degree of care that it uses to protect the confidentiality of its own confidential information (but in no event less than reasonable care) not to disclose or use any Confidential Information of the Discloser for any purpose outside the scope of this agreement. The Recipient must make commercially reasonable efforts to limit access to Confidential Information of Discloser to those of its employees and contractors who need such access for purposes consistent with this agreement and who have signed confidentiality agreements with Recipient no less restrictive than the confidentiality terms of this agreement. Notwithstanding the foregoing, User may not share or provide access to the Service to any third party or other user.
 - c. **Exclusions.** Confidential Information *excludes* information that: (i) is or becomes generally known to the public without breach of any obligation owed to Discloser, (ii) was known to the Recipient prior to its disclosure by the Discloser without breach of any obligation owed

to the Discloser, (iii) is received from a third party without breach of any obligation owed to Discloser, or (iv) was independently developed by the Recipient without use or access to the Confidential Information. The Recipient may disclose Confidential Information to the extent required by law or court order, but will provide Discloser with advance notice to seek a protective order.

6. SKYSLATE PROPERTY.

- a. **Reservation of Rights.** The software, workflow processes, user interface, designs and Software and Documentation, and other technologies provided by SkySlate as part of the Service are the proprietary property of SkySlate and its licensors, and all right, title and interest in and to such items, including all associated intellectual property rights, remain only with SkySlate. User may not remove or modify any proprietary marking or restrictive legends in the Service or Software and Documentation. SkySlate reserves all rights unless expressly granted in this agreement.
- b. **Restrictions.** User *may not* (i) sell, resell, rent lease, or otherwise provide access to or use of the Service to any other user, or use the Service in a service provider capacity; (ii) use the Service to store or transmit infringing, unsolicited marketing emails, libelous, or otherwise objectionable, unlawful or tortious material, or to store or transmit material in violation of third-party rights; (iii) interfere with or disrupt the integrity or performance of the Service; (iv) attempt to gain unauthorized access to the Service or its related systems or networks; (v) reverse engineer the Service or the Software and Documentation; (vi) copy, save, and/or transmit the application screens or worksheet contents, or answer sheet contents for any purpose; or (vii) access the Service or use the Software and Documentation to build a competitive service or product, or copy any feature, function or graphic for competitive purposes;
- c. **Software and Documentation.** All software provided by SkySlate as part of the Service, and the Service documentation, sample data, marketing materials, training material and other material provided through the Service or by SkySlate (**Software and Documentation**) are licensed to User as follows: SkySlate grants User a non-exclusive, non-transferable license during the term of this agreement, to use and copy such Software in accordance with the Documentation, solely in connection with the Service.
- d. **Mobile Software.** Some Software licensed above may include mobile software to access the Service via a mobile device (**Mobile Software**). To use the Mobile Software, User must have a mobile device that is compatible with the Mobile Software, and have an active subscription to the Service. SkySlate does not warrant that the Mobile Software will be compatible with User's mobile device. User may use mobile data in connection with the Mobile Software and may incur additional charges from User's wireless provider for these services. User agrees that the User is solely responsible for any such charges. User acknowledges that SkySlate may from time to time issue upgraded versions of the Mobile Software, and may automatically electronically upgrade the version of the Mobile Software that User is using on its mobile device. User consents to such automatic upgrading on its mobile device.
- e. **Mobile Software from Apple App Store or from Google Android Marketplace.** The following applies to any Mobile Software User acquires from the Apple App Store or from Google Android Marketplace (**App Store Software**) the Mobile Software can be downloaded from Apple, Google, or any other software storefront (**Manufacturer**): User agrees that this agreement is solely between User and SkySlate, not Manufacturer, and that Manufacturer has no responsibility for the App Store Software or content thereof. User's use of the App Store Software must comply with the App Store Terms of Service. User acknowledges that Manufacturer has no obligation whatsoever to furnish any maintenance and support services with respect to the App Store Software. In the event of any failure of the App Store Software to conform to any applicable warranty, User may notify Manufacturer, and Manufacturer may refund the purchase price for the App Store Software to User. To the maximum extent permitted by applicable law, Manufacturer will have no other warranty obligation whatsoever with respect to the App Store Software, and any other claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to any warranty will be solely governed by this agreement and any law applicable to SkySlate as provider of the App Store Software. User acknowledges that Manufacturer is not responsible for addressing any claims by User or any third party relating to the App Store Software or User's possession and/or use of the App Store Software, including, but not limited to: (i) product liability claims; (ii) any claim that the App Store Software fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection or similar legislation; and all such claims are governed solely by this agreement and any law applicable to SkySlate as provider of the App Store Software. User acknowledges that, in the event of any third-party claim that the App Store Software or User's possession and use of that App Store Software infringes that third party's intellectual property rights, SkySlate, not Manufacturer, will be solely responsible for the investigation, defense, settlement and discharge of any such intellectual property infringement claim to the extent required by this agreement. User and SkySlate acknowledge and agree that Manufacturer, and Manufacturer's subsidiaries are third-party beneficiaries of this agreement as relates to User's license of the App Store Software, and that, upon User's acceptance of the terms and conditions of this agreement, Manufacturer will have the right (and will be deemed to have accepted the right) to enforce this agreement as relates to User's license of the App Store Software against User as a third-party beneficiary thereof.
- f. **Anonymized Data.** During and after the term of this agreement, SkySlate may use and owns all anonymized data within the Service for purposes of enhancing the Service, aggregated statistical analysis, technical support and other business purposes.

7. TERM AND TERMINATION.

- a. **Term.** This agreement continues as long as the user continues to use the Service or until all orders have expired or are terminated for material breach under Section 7(b).
- b. **Mutual Termination for Material Breach.** If either party is in material breach of this agreement, the other party may terminate this agreement at the end of a written 30-day notice/cure period, if the breach has not been cured.
- c. **Return of User Data.**

- *Within 60-days after termination*, upon request SkySlate will make the Service available for User to export User Data as provided in Section 2(a).
 - *After such 60-day period*, SkySlate has no obligation to maintain the User Data and may destroy it.
- d. **Return SkySlate Property Upon Termination.** Upon termination of this agreement for any reason, User must pay SkySlate for any unpaid amounts, and destroy or return all property of SkySlate and stop using the Service. Upon SkySlate's request, User will confirm in writing its compliance with this destruction or return requirement.
- e. **Suspension for Violations of Law.** SkySlate may temporarily suspend the Service or remove the applicable User Data, or both, if it in good faith believes that, as part of using the Service, User has violated a law. SkySlate will attempt to contact User in advance.
- f. **Suspension for Non-Payment.** SkySlate may suspend the Service if User is more than 30 days late on any payment due pursuant to an order.
8. **LIABILITY LIMIT.**
- a. **EXCLUSION OF INDIRECT DAMAGES.** SkySlate is not liable for any indirect, special, incidental or consequential damages arising out of or related to this agreement (including, without limitation, costs of delay; unavailability of Service; faulty content or Service; loss of or unauthorized access to data or information; issues with other services that User makes use of; loss of opportunity; and lost profits, revenue or anticipated cost savings), even if SkySlate knows of the possibility of such damage or loss.
- b. **TOTAL LIMIT ON LIABILITY.** Except for SkySlate's indemnity obligations, SkySlate's total liability arising out of or related to this agreement (whether in contract, tort or otherwise) does not exceed the amount paid by User within the 6 month period prior to the event that gave rise to the liability.
9. **INDEMNITY.**
- a. **Defense of Third Party Claims.** SkySlate will defend or settle any third party claim against User to the extent that such claim alleges that SkySlate technology used to provide the Service violates a copyright, patent, trademark or other intellectual property right, if User, promptly notifies SkySlate of the claim in writing, cooperates with SkySlate in the defense, and allows SkySlate to solely control the defense or settlement of the claim. **Costs.** SkySlate will pay infringement claim defense costs it incurs in defending User, and SkySlate negotiated settlement amounts, and court awarded damages. **Process.** If such a claim appears likely, then SkySlate may modify the Service, procure the necessary rights, or replace it with the functional equivalent. If SkySlate determines that none of these are reasonably available, then SkySlate may terminate the Service and refund any prepaid and unused fees. **Exclusions.** SkySlate has no obligation for any claim arising from: SkySlate's compliance with User's specifications; a combination of the Service with other technology or aspects where the infringement would not occur but for the combination; use of User Data; or technology or aspects not provided by SkySlate. **THIS SECTION CONTAINS USER'S EXCLUSIVE REMEDIES AND SKYSLATE'S SOLE LIABILITY FOR INTELLECTUAL PROPERTY INFRINGEMENT CLAIMS.**
- b. **By User.** If a third-party makes a claim against SkySlate that any part of the User Data or any activity with regard to the Services infringes or violates that party's patent, copyright or other right, User will defend SkySlate against that claim at User's expense and pay all costs, damages, and attorney's fees, that a court finally awards or that are included in a settlement approved by User, provided that SkySlate: promptly notifies User in writing of the claim; and allows User to control, and cooperates with User in, the defense and any related settlement.
10. **GOVERNING LAW AND FORUM.** This agreement is governed by the laws of the State of MI (without regard to conflicts of law principles) for any dispute between the parties or relating in any way to the subject matter of this agreement. Any suit or legal proceeding must be exclusively brought in the federal or state courts for Macomb County, MI, and User submits to this personal jurisdiction and venue. Nothing in this agreement prevents either party from seeking injunctive relief in a court of competent jurisdiction. The prevailing party in any litigation is entitled to recover its attorneys' fees and costs from the other party.
11. **OTHER TERMS.**
- a. **Entire Agreement and Changes.** This agreement and the order constitute the entire agreement between the parties and supersede any prior or contemporaneous negotiations or agreements, whether oral or written, related to this subject matter. User is not relying on any representation concerning this subject matter, oral or written, not included in this agreement. No representation, promise or inducement not included in this agreement is binding. No modification of this agreement is effective unless both parties sign it. No waiver is effective unless the party waiving the right signs a waiver in writing.
- b. **No Assignment.** Neither party may assign or transfer this agreement or an order to a third party, except that this agreement with all orders may be assigned, without the consent of the other party, as part of a merger, or sale of substantially all the assets, of a party.
- c. **Independent Contractors.** The parties are independent contractors with respect to each other.
- d. **Enforceability and Force Majeure.** If any term of this agreement is invalid or unenforceable, the other terms remain in effect. Except for the payment of monies, neither party is liable for events beyond its reasonable control, including, without limitation force majeure events.

- e. **Money Damages Insufficient.** Any breach by a party of this agreement or violation of the other party's intellectual property rights could cause irreparable injury or harm to the other party. The other party may seek a court order to stop any breach or avoid any future breach.
- f. **No Additional Terms.** SkySlate rejects additional or conflicting terms of any User form-purchasing document.
- g. **Order of Precedence.** If there is an inconsistency between this agreement and an order, the order prevails.
- h. **Survival of Terms.** Any terms that by their nature survive termination of this agreement for a party to assert its rights and receive the protections of this agreement, will survive (including without limitation, the confidentiality terms). The UN Convention on Contracts for the International Sale of Goods does not apply.
- i. **Feedback.** If User provides feedback or suggestions about the Service, then SkySlate (and those it allows to use its technology) may use such information without obligation to User.