

Skykit End User License Agreement

THIS END USER LICENSE AGREEMENT ("AGREEMENT") GOVERNS YOUR PURCHASE AND USE OF THE SKYKIT SOFTWARE, SKYKIT SERVICES, AND THE DOCUMENTATION DESCRIBED HEREIN. BY (1) EXECUTING AN ORDER THAT REFERENCES THIS AGREEMENT, OR (2) ELECTRONICALLY ACCEPTING THIS AGREEMENT, YOU AGREE TO BE BOUND BY THE TERMS OF THIS AGREEMENT WITHOUT MODIFICATION. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THIS AGREEMENT, IN WHICH CASE THE TERM "CUSTOMER" SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF YOU DO NOT HAVE SUCH AUTHORITY, OR DO NOT AGREE TO THE TERMS AND CONDITIONS SET FORTH IN THIS AGREEMENT, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SKYKIT SOFTWARE, SKYKIT SERVICES OR DOCUMENTATION. THIS AGREEMENT IS A BINDING AGREEMENT BETWEEN SKYKIT LLC ("SKYKIT") AND CUSTOMER.

1. Definitions.

"Confidential Information" means the Documentation, Software, the Service (including the results of any performance tests of the Service) and any and all source code, inventions, know-how, and ideas, trade secrets, updates, any non-public information regarding the business of a Party (where such information is marked or otherwise communicated as being "proprietary" or "confidential" or the like, or where such information is, by its nature, intended to be maintained as generally confidential). For purposes of this Agreement, Confidential Information does not include any information which: (a) is publicly known at the time of its disclosure; (b) is published or otherwise made known to the public without breach of this Agreement; (c) was generated independently by a Party before its receipt from the other Party; or (d) is obtained by a Party from an unrelated third party not under a duty of confidentiality. The Documentation, Software, and Service are the Confidential Information of Skykit.

"Customer Content" means the data inputted or content used by Customer or Third-Party Content Providers on Customer's behalf, for the purpose of using the Service or facilitating Customer's use of the Service. Customer Content is the Confidential Information of Customer.

"Documentation" means the document made available to Customer by Skykit at setup/installation which sets out the user instructions for the Service.

"Force Majeure Event" means an act of God, weather conditions, natural disasters, dangerous or environmental goods incidents, public enemies, including but not limited to, hackers, quarantine, riots, strikes, work stoppages or slowdowns, or other labor disputes or disturbances, civil commotions or hazards incident to a state of war or terroristic threat or action, local or national disruptions in ground or air transportation networks or systems, or other events beyond Skykit's reasonable control and effort that prevent Skykit from performing its obligations under this Agreement.

"Intellectual Property Right" means any and all now known or hereafter known tangible and intangible (a) rights associated with works of authorship throughout the world, including but not limited to copyrights, moral rights, and mask-works, (b) trademark

and trade name rights and similar rights, (c) trade secret rights, (d) patents, patent applications and other industrial property rights, (e) all other intellectual property rights, of every kind, however designated, and (f) all registrations, initial applications, renewals, extensions, continuations, divisions or reissues thereof now or hereafter in force.

“Reseller” means an entity authorized to sell the Sky kit Service to Customer and is responsible for managing the end-to-end sales process with its customers.

“Skykit Service” or “Service” means the proprietary digital content management service created by Skykit and the subscription service provided by Skykit to Customer under this Agreement, as more particularly described in the Documentation.

“Skykit Content” means the digital content Skykit provides to Customer as part of the Service upon payment of the Subscription Fees.

“ Skykit Software” or “Software” means any tools, objects, programs (both in executable code and source code form and the business processes identified in the documentation surrounding such code), algorithms, processes, methodologies, instructions, comments, design documentation, scripts, manuals, user guides and other materials related to use of the above, and all modifications, enhancements and derivative works of the foregoing, all as either developed by Skykit or licensed from a third party at any time prior to or during the term of this Agreement , that are useful or necessary in the creation, maintenance, execution, or use of the Service.

“Support Services Policy” means Skykit's policy for providing support in relation to the Service as made available as a part of the Documentation or at a website address as may be provided to Customer from time to time.

“Third-Party Content” means the digital content and applications Customer acquires from third parties and not from Skykit for use with the Service.

2. Scope of License. Subject to Customer's purchase of a subscription to the SkyKit Service, the restrictions set forth herein and the other terms and conditions of this Agreement; Skykit hereby grants to Customer a non-exclusive, non-transferable license to use the Skykit Service, the SkyKit Software and the Documentation during the Subscription Term solely for Customer's business operations.

3. License Restrictions.

Customer shall at no time exceed the number of displays allocated to Customer under its subscription. If Customer exceeds its usage of the Skykit Service, Customer shall pay to Skykit additional fees for such excess use. Skykit may audit Customer's compliance under this agreement upon reasonable advance notice to Customer. Customer shall not access, store, distribute or transmit any Viruses, or any digital content or application during the course of its use of the Service that violates Skykit's Acceptable Use Policy (“AUP”), available at www.skykit.com/AUP and as may be amended by Skykit.

Customer shall not (i) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and (ii) except to the extent expressly permitted under this Agreement:

(A) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation in any form or media or by any means;

(B) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software, or access all or any part of the Service and Documentation in order to build a product or service which competes with Skykit;

(C) use the Service and/or Documentation to provide services to third parties;

(D) license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Service and/or Documentation available to any third party; or

(E) attempt to obtain, or assist third parties in obtaining, access to the Service and/or Documentation. Customer shall use all commercially reasonable efforts to prevent, and is solely responsible for, any unauthorized access to, or use of, the Service and/or the Documentation and, in the event of any such unauthorized access or use, promptly notify Skykit.

4. Google Apps and Services. Customer acknowledges that implementation of the Service requires use of some features within Google Apps and Services. Customer acknowledges that Agosto, Inc. (Skykit's parent company) is an authorized reseller of Google Apps and Chrome OS services ("Google Apps") and that Customer is required to obtain licenses from Google Inc. ("Google") as necessary to access and use the Google Apps and Chrome OS services. The terms under which Customer shall be entitled to use such Google Apps are as set forth in the Google Apps for Business via Reseller Agreement ("Google ToS") available at http://www.google.com/apps/intl/en/terms/reseller_premier_terms.html and <http://www.google.com/chromebook/termsofservice.html> and as may be amended by Google. Customer agrees to accept and comply with the then current Google ToS. The Service provided by Skykit hereunder does not include any warranties of performance related to the Google Apps and Services, and neither Skykit nor Agosto shall be liable for the operation, performance, or content of the Google Apps and Services. Skykit, through Agosto, Inc., is authorized by Google to provide "standard support" for the Google Apps and Services so long as Customer complies with the terms of this Agreement.

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5. Service Levels. Skykit will use industry-appropriate efforts to make the Service available to Customer on a 24x7, 365 days per year basis. Skykit shall have no liability to Customer if the Service is unavailable for any of the following non-exclusive events: (A) scheduled downtime; (B) compliance with laws, regulations or requirements of state or federal governments, including directions or orders of public authorities acting with actual, apparent or implied authority; (C) acts of commission or omission of any person or party other than Skykit, its officers, directors, shareholders and employees; (D) degradation, disruption or failure of communication systems, information systems, mechanical systems or utilities, due to events beyond Skykit's control; (E) a Force Majeure Event; (F) Customer's use of the Service violates applicable law or regulation or any of the terms and conditions of this Agreement or of the Google ToS; or (G) the subscription term has expired.

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6. Suspension of the Skykit Service. Skykit reserves the right to suspend Customer's use of the Service if: (A) Skykit, acting in good

faith upon the instructions or directives of a court of competent jurisdiction or law enforcement or in response to a disaster declaration; (B) Skykit properly notified Customer of a material breach of this Agreement or has a reasonable basis on which to suspect that Customer is in material breach of this Agreement but has not yet had the reasonable opportunity to notify Customer of such breach; (C) Skykit has a reasonable basis on which to suspect that Customer's account information contains inaccuracies or falsehoods; or (D) Customer fails to pay the subscription fees.

7. Support. Skykit will, as part of the Service and at no additional cost to Customer, provide Customer with Skykit's standard customer support services in accordance with Skykit's then-current Support Services Policy.

8. Customer Content. Customer display of any Customer Content through the Service is at Customer's own risk. Customer retains all Intellectual Property Rights in and to Customer Content. Customer represents and warrants that it has all of the rights, licenses, consents, permissions and releases necessary to use, reproduce, publish, display publicly, perform publicly or distribute or otherwise use the Customer content and to grant to Skykit all of the license rights granted herein. For purposes of solely providing the Service to Customer, Customer grants to Skykit (and its successors, assigns, affiliates and third-party service providers) a world-wide, non-exclusive, irrevocable, royalty-free, fully paid, sublicensable, and transferable license to use, reproduce, modify, distribute, publicly display and otherwise exploit such content on and in connection with the Service, all according to Skykit distribution settings selected by Customer.

9. Customer Obligations. Customer must comply with all applicable laws and regulations relating to its activities as contemplated by this Agreement, including but not limited to all applicable privacy and data security laws and any applicable export control laws and regulations that may apply in respect of the use of the Software and delivery of the Service outside of the United States or to a non-U.S. person.

10. Third Party Content Providers. Customer acknowledges that the Service may enable or assist it to access the digital content and applications of, correspond with, and purchase products and services from, third parties via third-party websites or otherwise and that it does so solely at its own risk. Skykit makes no representation or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any Third Party Content Provider and their websites, or any transactions completed, and any contract entered into by Customer, with any Third Party Content Provider by whatever means. Any contract entered into and any transaction completed with a Third Party Content Provider via any third-party website or otherwise is between Customer and the relevant Third Party Content Provider, and not Skykit.

11. Proprietary Rights.

a. Customer acknowledges that Skykit and/or its licensors own all Intellectual Property Rights in the Software, Service and the Documentation. All rights not expressly licensed by Skykit under this Agreement are reserved. As between the parties, Skykit shall retain all ownership rights in and to the Service, all updates and/or upgrades thereto and other derivative works of the Service and all Intellectual Property Rights incorporated into or related to the foregoing.

b. The Google Apps and Services, and all Intellectual Property Rights associated with or relating to the Google Apps and Services including any patent, copyright, trademark, or trade secrets are and shall remain the intellectual property of Google Inc.

12. Confidentiality.

a. Each party may be given access to Confidential Information from the other party in order to perform its obligations under this Agreement.

b. Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this Agreement. Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement. Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.

c. Each party acknowledges and agrees that, due to the unique nature of Confidential Information, there can be no adequate remedy at law for breach of this Section 13 and that such breach would cause irreparable harm to the non-breaching party; therefore, the non-breaching party shall be entitled to seek immediate injunctive relief from any court of competent jurisdiction, in addition to whatever remedies it might have under this Agreement. The requirement to arbitrate disputes between the parties set forth does not apply to disputes arising under this Section.

13. Indemnity.

a. Customer shall defend, indemnify and hold harmless Skykit against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) (collectively, "Claims") arising out of or in connection with (i) Customer's use of the Software, Service and/or Documentation and the Google Apps; (ii) the Customer Content, including Skykit's use of the Customer Content as set forth in this Agreement; or (iii) Customer's breach of its representations, warranties, covenants, or obligations under this Agreement, provided that: (A) Customer is given prompt notice of any such claim; (B) Skykit provides reasonable cooperation to Customer in the defense and settlement of such claim, at Customer's sole cost and expense; and (C) Customer is given sole authority to defend or settle the claim.

b. Subject to Section 14.4, Skykit shall defend Customer, its officers, directors and employees against any Claims arising from or relating to allegations that Customer's use of the Software, Service or Documentation in accordance with this Agreement infringes a U.S. Intellectual Property Right effective as of the Effective Date of this Agreement, and shall indemnify Customer for any amounts awarded against Customer in judgment or settlement of such claims, including reasonable attorneys' fees, provided that: (A) Skykit is given prompt notice of any such claim; (B) Customer provides reasonable cooperation to Skykit in the defense and settlement of such claim, at Skykit's sole cost and expense; and (C) Skykit is given sole authority to defend or settle the claim.

c. In the defense or settlement of any claim, Skykit may procure the right for Customer to continue using the Service, replace or modify the Service so that it becomes non-infringing or, if such remedies are not reasonably available, terminate this Agreement on two (2) Business Days' notice to Customer without any additional liability or obligation to pay liquidated damages or other additional costs to Customer, unless a court of competent jurisdiction orders otherwise. The foregoing states Customer's sole and exclusive rights and remedies, and Skykit's, its affiliated entities, and their respective employees, agents and subcontractors entire obligations and liability, for infringement of any Intellectual Property Rights.

d. In no event shall Skykit, its affiliated entities, or their respective employees, agents and subcontractors be liable to Customer to the extent that the alleged infringement is based on: (A) modification of the Service or Documentation by anyone other than Skykit; (B) Customer's use of the Service or Documentation in a manner contrary to the instructions given to Customer by Skykit;

(C) Customer's use of the Service or Documentation after notice of the alleged or actual infringement from Skykit or any appropriate authority; (D) Customer's display of content or applications that violate any federal or state law, statute or statutory provision; or (E) any combination, operation or use of the Software or Service with systems, software or other resources not provided by Skykit.

14. Warranty and Disclaimer.

Skykit warrants that it has and will maintain all necessary licenses, consents, and permissions necessary for the performance of its obligations under this Agreement and that the Service will be performed substantially in accordance with the Documentation and with reasonable skill and care.

NOTWITHSTANDING THE FOREGOING, THE SOFTWARE, SERVICE AND DOCUMENTATION ARE PROVIDED TO CUSTOMER ON AN "AS IS" BASIS, WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY, MERCHANTABLE QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, TITLE OR ANY WARRANTY OR CONDITION ARISING BY USAGE OR TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE. SKYKIT MAKES NO WARRANTY THAT: (A) THE SERVICE WILL MEET CUSTOMER'S REQUIREMENTS; (B) THE SERVICE WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE; (C) CUSTOMER CONTENT WILL BE HOSTED AND/OR TRANSMITTED WITHOUT INTERRUPTION OR CESSATION; (D) ANY PRODUCTS, SITES, INFORMATION, OR OTHER MATERIAL WHETHER IN TANGIBLE OR INTANGIBLE FORM, PURCHASED OR OBTAINED BY CUSTOMER THROUGH THE SERVICE WILL MEET CUSTOMER'S EXPECTATIONS OR ANY STANDARD OF QUALITY; AND (E) ANY DEFECTS IN THE OPERATION OR FUNCTIONALITY OF THE SOFTWARE OR THE SERVICE WILL BE CORRECTED. SOME STATES DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO THE ABOVE LIMITATIONS MAY NOT APPLY TO CUSTOMER. NO ADVICE, REPRESENTATION, OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM SKYKIT OR THROUGH THE SERVICE SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THIS AGREEMENT.

15. Limitation of Liability.

Subject only to the provisions of Section 14.2, Skykit shall not be liable whether in tort (including for negligence or breach of a statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this Agreement; and Skykit's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited to the total Subscription Fees paid during the two (2) months immediately preceding the date on which the claim arose.

16. Term and Termination.

a. This Agreement shall continue for the initial subscription term set forth in the order between Customer and the Skykit reseller; thereafter, this Agreement shall automatically renew for successive periods of 12 months, unless: (A) either party notifies the other party of termination, in writing, at least ninety (90) days before the end of the Initial Subscription Term or any Renewal Period, in which case this Agreement shall terminate upon the expiration of the applicable term, or (B) this Agreement is terminated in accordance with its provisions.

b. Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate this Agreement without liability to the other if: (A) the other party commits a material breach of any of the terms of this Agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; (B) an order of a court of competent jurisdiction is made or a resolution is passed for the winding down of the other party, or circumstances arise which entitle a court of competent jurisdiction to make a winding-down order in relation to the other party; (C) a receiver is appointed of any of the other party's assets or undertaking, or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the other party, or if any other person takes possession of or sells the other party's assets; or (D) the other party makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way.

c. Failure of Customer to follow the Google ToS, including, but not limited to, the Acceptable Use Policy, constitutes a material breach of this Agreement. Customer is solely liable for all damages caused by such breach. In the event of such breach, Skykit may immediately suspend its performance of Services and such suspension shall not constitute a breach of the Agreement.

d. On termination of this Agreement for any reason all licenses granted under this Agreement shall immediately terminate.

17. Governing Law; Arbitration; Jurisdiction. Agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by, and construed in accordance with, the laws of the State of Minnesota, regardless of choice of law principles of Minnesota or any other state. The parties agree to exclusively use final, binding arbitration to resolve any claims arising under or related to this Agreement, regardless of the legal theories upon which such claims are based. The parties irrevocably waive the right to resolve any claims arising under or related to this Agreement in any other forum or to demand trial by jury. Any arbitration shall follow the American Arbitration Association Commercial Arbitration Rules and shall occur in Minneapolis, Minnesota. Judgment of award rendered in any arbitration may be entered in any court having jurisdiction.

18. Notices. All notices between the parties regarding the Service must be in writing and will be deemed received three (3) business days beyond the date of deposit into the United States Postal Service, or upon written confirmation of receipt of an electronic communication. The parties may act upon any directive, order or request in an electronic communication from and between their authorized representatives. All notices to Skykit shall be sent to [Skykit Attn: Legal 420 North 5th Street Suite 400 Minneapolis MN 55401].

19. Assignment. Customer shall not, without the prior written consent of Skykit, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under this Agreement. Skykit may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under this Agreement.

20. Survival. Sections 8,9,11,12,13,14,15,16,17 and 18 shall survive any breach or termination of this Agreement.

21. Entire Agreement. This Agreement, and any documents referred to in it, constitute the whole agreement between the parties

and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover. Each of the parties acknowledges and agrees that in entering into this Agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this Agreement or not) relating to the subject matter of this Agreement, other than as expressly set out in this Agreement.