

# TERMS OF USE AGREEMENT

Effective: April 12, 2007

SKYROCKIT INC.

TERMS OF USE AGREEMENT

READ CAREFULLY. THIS TERMS OF USE AGREEMENT ("THE AGREEMENT") IS A LEGALLY BINDING AGREEMENT BETWEEN YOU ("YOU" AND "YOUR") AND SKYROCKIT INC. ("SKYROCKIT", "WE" OR "OUR"). BY ACCESSING AND USING THIS SITE AND THE WEB AND MOBILE SERVICES AND/OR PRODUCTS OFFERED BY SKYROCKIT (COLLECTIVELY THE "SERVICE"), YOU ARE INDICATING THAT YOU HAVE READ THIS AGREEMENT, THAT YOU UNDERSTAND IT, AND THAT YOU CONSENT TO BE BOUND BY ALL OF ITS TERMS AND CONDITIONS. IF YOU DO NOT AGREE WITH ALL OF THE FOLLOWING TERMS AND CONDITIONS, PLEASE DO NOT USE THIS SITE.

The Website means this web site, as accessed by any of the following domain names: [www.modtones.com](http://www.modtones.com), [www.SKYROCKIT.com](http://www.SKYROCKIT.com), [playatmcd.modtones.com](http://playatmcd.modtones.com), [www.mobilefaker.com](http://www.mobilefaker.com), and any web site owned or controlled by SKYROCKIT (except as otherwise provided on such other site). However, the Website does not refer to any other web site linked to or from the Website. By completing the registration process and accepting this Agreement, you represent that (i) you have read and understood this Agreement and agree to be bound by its terms and conditions and (ii) you are a 'natural person' older than the greater of the age of eighteen (18) years, or the age of majority in the country where you are a citizen. SKYROCKIT does not make the Service available to anyone under the age of 13. Any child between the ages of thirteen (13) years and seventeen (17) years may not sign up for themselves, and must have an adult parent or guardian sign up on their behalf. You agree to this Agreement on behalf of yourself and, at your discretion, on behalf of a minor child over the age of 13 for whom you are a parent or guardian and who you have authorized to use the account you create on the Service. Parents and guardians of users under the age of 18 will be responsible for their minor user's use of the Service and any violation of this Agreement.

If you do not agree to be bound by (or cannot comply with) any of the terms and conditions of this Agreement, do not check the acceptance box below and do not continue the registration process or attempt to access the Service.

## NOTICES

We reserve the right, at our sole discretion, to change, modify or otherwise alter these terms and conditions at any time. Such changes and/or modifications shall become effective immediately upon the posting thereof. Please review the terms and conditions periodically. If you do not agree to be bound by (or cannot comply with) the Agreement as amended, your only remedy is to cancel your SKYROCKIT subscription and/or account. You will be deemed to have accepted the Agreement as amended thirty days after the amended agreement is posted or if you continue to use the Service; all other terms of this Agreement will continue in effect.

## DESCRIPTION AND USE OF SERVICE

The Service is available at the Website and includes everything on the site that may exist from time to time. The Service may make available to you downloadable mobile entertainment, such as ringtones, video, games and graphics, and the ability to have timed calls placed to your mobile telephone, phone numbers to prerecorded messages, and text messages containing news, gossip and various other items of interest. Further, the Service may include the ability to exchange or share with other SKYROCKIT members, subscribers and third parties (either through upload to SKYROCKIT servers or directly) text, graphics, audio recordings, and other content. Once properly registered, and after making any applicable payment, you will be permitted to access and use the Service, which requires that you have access to one or more compatible wireless telephones or other compatible devices.

All software, designs, text, images, photographs, illustrations, audio clips, video clips, ringtones and ringtone samples, games, artwork, graphic material, or other copyrightable elements, and the selection and arrangements thereof, and trademarks, service marks and trade names served through or received from, or on, the Website and/or Services (collectively the "Material") are the property of SKYROCKIT and/or its business partners, subsidiaries, affiliates, assigns, licensors or other respective owners and are protected by intellectual property laws, including without limitation, pursuant to U.S. and international copyright and trademark laws. Subject to the terms of any applicable end user agreement applicable for any such Materials, SKYROCKIT grants you a limited, non-exclusive, non-transferable, revocable right to download the Materials, or, in the case of non-downloadable Materials, to stream such Materials, to your compatible device solely for your own non-commercial use. All rights not expressly granted to you are reserved. For the avoidance of doubt, your use of the Service and the Materials is under license; you will not obtain any ownership interest in any of them through this Agreement or otherwise.

You agree not to use, download reproduce, modify, create derivative works from, display, perform, publish, distribute, disseminate, transmit, broadcast or circulate any Material to any third party (including, without limitation, the display and distribution of the Material via a third party website) without the express prior written consent of SKYROCKIT. The source code to the Materials contains SKYROCKIT and its licensors' confidential and trade secret information, and you shall at all times take reasonable steps to protect the confidentiality of such information. You further agree that you will not disassemble, decompile, reverse engineer the Material (except to the extent that this restriction is expressly prohibited by law). You understand and agree that you may not authorize, encourage or allow any Materials used or obtained by you to be reproduced, modified, displayed, performed, transferred, distributed or otherwise used by any other party, and you agree that you will take all reasonable steps to prevent any unauthorized reproduction and/or other use of the Materials. Any unauthorized or prohibited use may subject the offender to civil liability and criminal prosecution under applicable federal and state laws.

You may not: (i) frame or link to the Service or Materials except as expressly permitted in writing by SKYROCKIT; (ii) permit other individuals to use the Materials; (iii) sell, rent, lease, or otherwise assign any rights to the Material or Service to any third party; (iv) remove any proprietary notices or labels on the Material or Service; (v) use the Material or Service in conjunction with any device or service designed to circumvent technological measures employed to control access to, or the rights in, a content file or other work protected by the copyright laws of any jurisdiction; (vi) use the Material or Service for any commercial or unlawful purpose or to harm minors in any way; (vii) use the Material or Service to invade the privacy of, or obtain personal information about, any Service account holder or user, or to obtain a list of Service account holders or users; (viii) copy, modify, erase or damage any information contained on the SKYROCKIT, or any third party, servers; (ix) use the Materials or Service in contravention of any applicable law or regulation or to violate any legal right of any third party, including any publicity or privacy right, copyright, other intellectual property right, or any contractual, fiduciary or confidentiality obligation or duty, or to take any action that is harassing, libelous, defamatory, abusive, tortious, threatening, harmful or otherwise objectionable; (x) use the Materials or Service to post or transmit any unsolicited advertising, campaigning or promotional materials; (xi) access or use any password protected, secure or non-public areas of the Service except as specifically authorized in writing by SKYROCKIT (unauthorized individuals attempting to access these areas of the Service may be subject to prosecution); (xii) distribute any software viruses or other device, computer code or routine designed to delete, disable, deactivate, interfere with or otherwise harm the functionality of any computer systems, software, hardware, data or service; (xiii) use any data mining, robots, or similar data gathering, spoofing, or extraction tools in connection with the Materials or Service; (xiv) mislead other subscribers, members or third parties as to your identity or to the origin of a message or content; (xv) use any elements of the Materials or Service in any application where the failure or potential failure of the Materials or Service may cause injury, harm, death, or other grave problems; or (xvi) use the Service to place a call or deliver a message to any telephone number, email address, or text message identifier without the permission of the person who controls the same.

Customer Support. Please direct any questions concerning the Service or any other SKYROCKIT-related issue, to a SKYROCKIT customer service representative by e-mail at: [help@modtones.com](mailto:help@modtones.com).

## PURCHASE AND REGISTRATION

During the purchase and registration processes to use the Service, you may be requested to provide certain information (e.g., name, telephone number, e-mail address, country or territory of residence, credit card and billing information), and you agree to provide true, accurate, current and complete information about yourself as prompted by such process (such information being the "Personal Information"). You may also be required to select a member name, which must comply with the requirements for other User Content, and such other policies for member names that SKYROCKIT may publish from time to time. If you open an account, and any of your Personal Information changes (e.g., new credit card number, expiration date, new address or email address, new phone number or service, etc.), you must update that information in the "My Account" area of the Website. You agree that you will use the Service only in the country or territory where you currently reside. SKYROCKIT will use your Personal Information in accordance with its privacy policy, which you can review at [here](#). Please review this privacy policy before you complete the purchase or registration process or attempt to use or access the Service. You agree that you will not allow others to use your member name, password and/or account. You agree to indemnify and hold SKYROCKIT, its partners, parents, subsidiaries, agents, affiliates, distributors and/or licensors, as applicable, harmless for any improper, unauthorized or illegal uses of your member name, password and/or your account. This includes illegal, unauthorized or improper use by anyone to whom you have given permission to use your member name, password and/or account.

## CHARGES AND PAYMENT

Payment and Taxes. The price of any Services will be the price specified at the time of your purchase. Prices for all Services exclude all applicable taxes and telecommunication charges, unless otherwise indicated. To the extent permissible by law, you agree to be responsible for any such applicable taxes and telecommunication charges. By completing the purchase and/or registration processes, you authorize SKYROCKIT and/or your telecommunications carrier, to charge the applicable fees to your designated credit card or directly to your mobile telephone invoice, as selected by you or indicated in the transaction. If you cancel your account or cease to use the SKYROCKIT Services (in whole or in part) for any reason, SKYROCKIT will not refund any of your fees paid to date, including without limitation any fees for unused credits. You must be careful when reviewing and entering information during the purchase and registration process. SKYROCKIT will not refund any fees paid, or unused credits, nor otherwise be liable to you, in the event that you own a handset that is incompatible with the SKYROCKIT Services, or if you select the wrong handset or wireless provider in the purchase or registration process. Additionally, SKYROCKIT will not refund any fees paid, or unused credits, nor otherwise be liable to you, if SKYROCKIT ceases to offer the SKYROCKIT Services for any reason, if you change your handset and the SKYROCKIT Services are no longer available on your new handset, if you lose or break your handset and/or lose or destroy any data or content on the handset, if your wireless provider ceases to offer the SKYROCKIT Services, or if you change wireless providers to one that does not offer the SKYROCKIT Services. SKYROCKIT reserves its right to collect applicable taxes and impose premium surcharges for certain features of the Service. Note that your use of certain operator networks to access the Service may result in third-party charges from your carrier or other entities, and that you are responsible for all such charges. Standard and/or other carrier charges may apply.

Right to Change Fees. All fees are subject to change upon notice from SKYROCKIT. SKYROCKIT will provide you with reasonable notice of such change. If you do not accept the new fees (which will be applicable on a prospective basis only), you will have ten days from such notice to cancel your account.

Electronic Contracts. SKYROCKIT may include in the Service the ability for you to make electronic purchases. You acknowledge and agree that any submissions you make for electronic purchases constitute your intent and agreement to be bound by the terms of and to pay for such purchases. You may withdraw your consent to enter into such electronic agreements by giving written notice to SKYROCKIT, but if you do so, you may not thereafter be able to make any electronic purchase(s). To the extent that such electronic purchases are offered to you by a third party, you acknowledge that SKYROCKIT shall not be responsible or liable to you for the products or services purchased. The provisions of this paragraph do not apply to your agreement and arrangements to pay fees to SKYROCKIT for Materials; that arrangement is addressed

in the Payment section above.

Subscriptions. Use of particular Materials, Websites or Services may require opening a subscription account. Subscriptions may be available on a one time or monthly basis. Subscriptions are subject to direct billing by your telecommunications carrier. If you purchase a monthly subscription, your billing account with your carrier will be charged at the time of purchase for your first month of use. Your billing account with your carrier will automatically be charged monthly pursuant to the regular billing procedures of your carrier for the use of the subscription, until you cancel your subscription or it is otherwise terminated as provided in this Agreement.

You may cancel your subscription at any time by contacting your carrier. If your subscription requires a minimum commitment period, you will be responsible for all charges for the entire minimum commitment period. If you cancel your subscription, you will not be refunded any remaining portion of your subscription fees already billed to your billing account with your carrier, including any minimum commitments.

#### OBJECTIONABLE OR EXPLICIT CONTENT

SKYROCKIT may, in its discretion, create a system or method by which you may report to SKYROCKIT any content, material or other aspect of the Service that you might find objectionable. You acknowledge and agree that, such a system or method notwithstanding, in no event is SKYROCKIT in any way responsible to you for any content or materials constituting all or part of any Material or any other aspect of the Service that you might find objectionable.

#### YOUR POSTINGS AND MESSAGES

The Service may enable systems that could include telephone call, email or text message capabilities and may from time to time contain other features that allow you to exchange messages, graphics, audio / video content, and other content and other information (collectively, "User Content"), either directly or through upload to SKYROCKIT systems, with other SKYROCKIT members and subscribers and third parties. You agree that you will only use such features to place a call or deliver a message to any telephone number, email address, or text message identifier without the permission of the person who controls the same. SKYROCKIT has the right but not the obligation to monitor and edit or remove any activity or content in such systems. SKYROCKIT takes no responsibility and assumes no liability for any User Content that you or any other subscribers, members or third parties post or send over such systems. You understand and agree that any loss or damage of any kind that occurs as a result of the use of any User Content that you upload, post, transmit, display or otherwise make available through your use of the Service is solely your responsibility.

As a condition to your use of the Service, you hereby grant SKYROCKIT a non-exclusive, royalty-free, worldwide, perpetual, transferable, assignable, and sublicenseable (to any number of tiers) license to modify and make derivative works of, reproduce, publicly display, publicly perform, distribute, transmit, and otherwise use your User Content (and any modifications or derivative works thereof) in all contexts, formats and media, in connection with the Service and any other elements of the business of SKYROCKIT and its successor(s). If you desire SKYROCKIT to remove your User Content from the Service and the Service allows such removal, please delete it as specified in the Service. However, we cannot guarantee that all of your User Content will be removed from the Service, nor from other users' devices, nor that other users of the Service will not misuse any content that you supply. SKYROCKIT is not responsible for any misuse of your User Content. Please contact our Copyright Agent as described below if you believe that your rights are being infringed.

By posting messages, inputting data, uploading or transmitting other content, or engaging in any other form of communication through the Service, you represent and warrant that: (a) you own or otherwise control all applicable rights to the User Content and the like that you post, upload, transmit or display; (b) the User Content is accurate; that use of the User Content that you supply does not violate third-party rights including without limitation any intellectual property rights, rights of publicity and privacy and will not

cause injury to any person or entity; (c) your User Content is not unlawful, abusive, deceptive, pornographic, obscene, defamatory, slanderous, offensive, or otherwise inappropriate or harmful to any person (including any minor) or entity; (d) your User Content contains no viruses, worms, corrupt files, Trojan horses, or other forms of corruptive code, or any other content which may compromise the Service; (e) your User Content does not advocate illegal activity; (f) your User Content does not link to any prohibited content or activity; and (g) you will indemnify SKYROCKIT, its partners, parents, subsidiaries, agents, affiliates and/or licensors, as applicable, for all claims resulting from User Content that you supply. SKYROCKIT neither endorses nor is responsible for the accuracy or reliability of any opinion, advice, information, or statement made on or in connection with the Service by anyone other than authorized SKYROCKIT employees acting in their official capacities.

In addition to the above, you acknowledge and agree that SKYROCKIT may store and/or disclose, as applicable, any such content, messages or material it is required to do so by law, or has a good faith belief that such storage or disclosure is reasonably necessary to comply with court orders or other legal processes; to enforce this Agreement; to respond to any claims that such content (or your use of the same) violates any third party's rights; or to protect the rights, property or personal safety of SKYROCKIT, its business partners, affiliates, licensors and/or licensees, any other SKYROCKIT subscriber or member, or the general public.

## PRIVACY

For additional information regarding SKYROCKIT's use of information collected in connection with the Service, please refer to SKYROCKIT's Privacy Policy, a copy of which is available at [here](#).

## COPYRIGHT AGENT

The entertainment industry depends upon copyright law to enable those people that develop and distribute creative works to get fairly compensated for their work. Unauthorized copying or distribution of copyrighted material is an infringement of the copyright holder's rights. At our discretion and in appropriate circumstances (which circumstances may include, by way of example, Users who repeatedly infringe others' copyrights), SKYROCKIT may revoke the license of users who infringe upon the copyright, or other intellectual property rights, of others. If you are an artist or other copyright holder who believes that SKYROCKIT's service is hosting or linking directly to infringing copies of your work, please let us know, and if you believe that one of our Users is a repeat infringer of your work, please let us know that in addition to the information required below. Pursuant to 17 United States Code 512(c)(2), our designated agent for notice of alleged copyright infringement on the Service is:

Sara Baylis Cabral  
222 Sutter St, Suite 450  
San Francisco, CA 94108, United States of America  
phone: (415) 814-5512  
[copyrightagent@modtones.com](mailto:copyrightagent@modtones.com)

Pursuant to Title 17, United States Code, Section 512(c)(3), a notification of claimed infringement related to the Service must be a written communication addressed to the designated agent as set forth above, and must include substantially all of the following:

1. A physical or electronic signature of the owner (or person authorized to act on behalf of the owner) of an exclusive right that is allegedly infringed;
2. Specific identification of the copyrighted work claimed to have been infringed, or if multiple copyrighted works are covered by a single notification, a list of each copyrighted work claimed to have been infringed;
3. Information related to the work(s) reasonably sufficient for SKYROCKIT to promptly locate the work (e.g. title of work, location within the Service, etc.);

4. Information reasonably sufficient to permit SKYROCKIT to directly contact the complaining party, such as a complete name and address, telephone number, and an email address;
5. A statement that the complaining party has a good faith belief that use of the work(s) in the manner complained of is not authorized by the copyright owner, its agent, or the law;
6. A statement requesting that SKYROCKIT take a specific act with respect to the alleged infringement (e.g., removal, access restricted or disabled); and
7. A statement that the information in the notification is accurate, and under penalty of perjury, that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

#### NAMES / TRADEMARK

Certain songs on the Service are Modtone's covers of songs that were originally performed by another artist. In such cases, SKYROCKIT uses the artist's name solely to identify the original composition, and this does not imply that the artist appears on or endorses such cover of the composition. Any related trademarks are owned by their respective owners.

Except as expressly set forth in this Agreement, all trademarks, service marks, trade names, domain names, slogans, logos, and other indicia of origin that appear on or in connection with the Service and Materials are the property of SKYROCKIT and/or its affiliates, licensors and/or licensees. You may not copy, display or use any of these marks without prior written permission of the mark owner.

#### VIOLATION OF INTELLECTUAL PROPERTY RIGHTS

If SKYROCKIT (a) receives a notice alleging that you have engaged in infringing behavior or (b) reasonably suspects that your use of the Service or the Materials violates SKYROCKIT's or others' intellectual property rights, SKYROCKIT may, in its sole discretion, suspend or terminate your account with or without notice to you. If SKYROCKIT suspends or terminates your account under this paragraph, it shall have no liability or responsibility to you, and SKYROCKIT will not refund any portion of your fees charged to date.

#### INTERNATIONAL

Currently, the Service is only available to residents of the United States, its territories and possessions, and Canada. You understand and acknowledge that you may not sign up for, access, or attempt to access or use the Service from countries outside of the U.S. and Canada. You agree to abide by U.S., Canadian and other applicable export control laws and not to transfer, by electronic transmission, the Service, or otherwise, any content or software subject to restrictions under such laws to a national destination or person prohibited under such laws.

#### PROMOTIONS AND ADVERTISING

SKYROCKIT and/or its business partners may present advertisements and promotional materials on or through the Service, including in or through Materials or in conjunction with your User Content. You hereby consent to the display of these advertisements in conjunction with the Materials and/or your User Content. Your participation in any SKYROCKIT promotional event is subject to the terms and conditions associated with that event. Your correspondence or business dealings with, or participation in promotions of, any third-party advertisers on or through the Service, including payment and delivery of related goods or services, and any other terms, conditions, warranties or representations associated with such dealings, are solely between you and such third-party. You agree that neither SKYROCKIT nor its business partners shall be responsible or liable for any loss or damage of any sort incurred as the result of any such dealings or as the result of the presence of such third parties on the Service.

## LINKS TO THIRD-PARTY SITES

The Service may present links to retailers and/or other third-party websites not owned or operated by SKYROCKIT. These links are provided only as a convenience to you. Neither SKYROCKIT nor its business partners are responsible for the availability of these outside sites or their contents. You understand and agree that neither SKYROCKIT nor its business partners are responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with your use of or reliance on any content of any such site or goods or services available through any such site. You should direct any concerns regarding these third-party sites to those sites' administrators.

## MODIFICATIONS TO SERVICE

Loss of Rights by SKYROCKIT. SKYROCKIT's rights to make certain Materials available to you may expire. In such event, SKYROCKIT will not deliver to you the license necessary to play back any such Materials after the end of the period in which such rights expire. If SKYROCKIT ceases making any such rights available, SKYROCKIT will not refund any portion of your fees, but you may contact customer support to receive appropriate replacement rights.

Modification. SKYROCKIT may, without liability or obligation, in its sole discretion and at any time: (i) make modifications to the Materials and/or Service and without providing you with notice; and/or (ii) require you to use modified Materials and/or Service in order to have continued access to the Service and Materials. The modifications may result in certain Materials being unavailable, or incompatible with certain devices, and/or over the networks of certain carriers and service providers. SKYROCKIT may terminate or modify your right to use any Materials previously downloaded by you upon providing you with written notice, which may be made by means of a posting on the Website. Upon SKYROCKIT giving such notice, you shall promptly cease the use of, and destroy, all copies of the specified Materials, or otherwise modify your usage as directed by SKYROCKIT. You agree that neither SKYROCKIT nor its affiliates or licensors shall be liable to you or to any third party for any modification, suspension or discontinuance of the Service or Materials.

## REMEDIES

You understand and agree that any unauthorized use of the Service or the Materials would result in irreparable injury to SKYROCKIT and/or its affiliates or licensors for which money damages would be inadequate, and in such event SKYROCKIT its affiliates and/or licensors, as applicable, shall have the right, in addition to other remedies available at law and in equity, to immediate injunctive relief against you. Nothing contained in this paragraph or elsewhere in this Agreement shall be construed to limit remedies or relief available pursuant to statutory or other claims that SKYROCKIT, its affiliates and/or licensors may have under separate legal authority, including but not limited to, any claim for intellectual property infringement.

## INDEMNITY

You agree to indemnify, defend and hold harmless, SKYROCKIT, its parent, subsidiaries, and affiliates, and each of their respective officers, directors, employees, agents, licensors, representatives, and third party providers from and against all claims, actions, demands, causes of action, and other proceedings, and all losses, expenses, fees, fines, damages and costs, including reasonable attorneys' fees and court costs, arising out of or relating to your breach of this Agreement or improper use of the Service or Materials. SKYROCKIT reserves the right to assume, at its sole expense, the exclusive defense and control of any matter subject to indemnification by you, in which event you will fully cooperate with SKYROCKIT in asserting any available defenses.

## TERMINATION, CANCELLATION AND PLAN CHANGES

SKYROCKIT may in its sole discretion terminate this Agreement or suspend your account at any time with

or without notice to you in the event that you breach (or SKYROCKIT reasonably suspects that you have breached) any provision of this Agreement. If SKYROCKIT terminates this Agreement, or suspends your account for any of the reasons set forth in this paragraph, it shall have no liability or responsibility to you, and SKYROCKIT will not refund any portion of your fees. You understand and agree that your cancellation of your account is your sole right and remedy with respect to any dispute with SKYROCKIT. This includes, but is not limited to, any dispute related to or arising out of: (1) any term of this Agreement or SKYROCKIT's enforcement or application of the same; (2) any policy or practice of SKYROCKIT, including its Privacy Policy, or SKYROCKIT's enforcement or application of these policies; (3) the Materials; (4) your use of and/or ability to access and use the Service; and (5) the amount or type of fees, surcharges, applicable taxes, billing methods, or any change to the fees, applicable taxes, surcharges or billing methods. You can cancel your account by delivering notice to SKYROCKIT at [help@modtones.com](mailto:help@modtones.com)

Except as set forth above with respect to inadvertent charges, in the event that your account is terminated or canceled, SKYROCKIT will not refund any fees.

#### DISCLAIMERS

You understand and agree that your use of the Service and the Materials is at your own sole risk. SKYROCKIT is not responsible or liable for any infections or contamination of your system, or delays, inaccuracies, errors, or omissions arising out of your use of the Service or Materials or with respect to the information and material contained on the Website. The entire risk as to the quality, accuracy, adequacy, completeness, correctness and validity of any Material rests with you. THE SERVICE AND THE MATERIALS ARE PROVIDED "AS IS" AND "AS AVAILABLE," AND WITHOUT WARRANTY BY SKYROCKIT OR ITS AGENTS, EMPLOYEES, PARENTS, SUBSIDIARIES, AFFILIATES, LICENSORS, BUSINESS PARTNERS, SERVICE PROVIDERS AND/OR DIRECT AND INDIRECT SUPPLIERS (THE "SKYROCKIT ENTITIES"), AS APPLICABLE, AND, TO THE MAXIMUM EXTENT ALLOWED BY APPLICABLE LAW, SKYROCKIT AND THE SKYROCKIT ENTITIES, AS APPLICABLE, EXPRESSLY DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ANY WARRANTY OF NONINFRINGEMENT. THERE IS NO WARRANTY THAT THE SERVICE OR THE MATERIALS WILL MEET YOUR REQUIREMENTS, OR THAT YOUR ACCESS TO THE SAME WILL BE UNINTERRUPTED OR ERROR-FREE. SKYROCKIT AND/OR THE SKYROCKIT ENTITIES, AS APPLICABLE, DO NOT WARRANT, GUARANTEE, OR MAKE ANY REPRESENTATIONS REGARDING THE USE OR THE RESULTS OF THE USE OF THE SERVICE OR THE MATERIALS WITH RESPECT TO PERFORMANCE, ACCURACY, RELIABILITY, SECURITY CAPABILITY, CURRENTNESS OR OTHERWISE. YOU WILL NOT HOLD SKYROCKIT AND/OR THE SKYROCKIT ENTITIES, AS APPLICABLE, RESPONSIBLE FOR ANY DAMAGES THAT RESULT FROM YOU ACCESSING THE SERVICE OR USING THE SERVICE, AND/OR THE MATERIALS INCLUDING, BUT NOT LIMITED TO, ANY INFECTIONS OR CONTAMINATIONS OF YOUR DEVICES YOU USE TO ACCESS THE SAME OR TO TRANSFER MATERIALS THAT MAY RESULT FROM THAT USE. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY ANY PERSON SHALL CREATE A WARRANTY IN ANY WAY WHATSOEVER RELATING TO SKYROCKIT AND/OR THE SKYROCKIT ENTITIES AS APPLICABLE.

UNDER NO CIRCUMSTANCES SHALL SKYROCKIT AND/OR THE SKYROCKIT ENTITIES AS APPLICABLE, BE LIABLE FOR ANY UNAUTHORIZED USE OF THE SERVICE AND/OR THE MATERIALS.

#### LIMITATION OF LIABILITY

TO THE FULLEST EXTENT PERMISSIBLE PURSUANT TO APPLICABLE LAW, UNDER NO CIRCUMSTANCES SHALL SKYROCKIT AND/OR THE SKYROCKIT ENTITIES AS APPLICABLE, BE LIABLE TO YOU FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL OR SIMILAR DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF

BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, AND THE LIKE) ARISING OUT OF THE USE OR INABILITY TO USE THE SERVICE AND/OR THE MATERIALS, EVEN IF SKYROCKIT AND/OR THE SKYROCKIT ENTITIES AS APPLICABLE, HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATION MAY NOT APPLY TO YOU. TO THE EXTENT THAT IN A PARTICULAR CIRCUMSTANCE ANY DISCLAIMER OR LIMITATION ON DAMAGES OR LIABILITY SET FORTH HEREIN IS PROHIBITED BY APPLICABLE LAW, THEN, INSTEAD OF THE PROVISIONS HEREOF IN SUCH PARTICULAR CIRCUMSTANCE, SKYROCKIT AND/OR THE SKYROCKIT ENTITIES AS APPLICABLE, SHALL BE ENTITLED TO THE MAXIMUM DISCLAIMERS AND/OR LIMITATIONS ON DAMAGES AND LIABILITY AVAILABLE AT LAW OR IN EQUITY BY SUCH APPLICABLE LAW IN SUCH PARTICULAR CIRCUMSTANCE, AND IN NO EVENT SHALL SUCH DAMAGES OR LIABILITY EXCEED \$50. Notwithstanding the foregoing, in no event shall SKYROCKIT's liability to you for any and all claims, damages, losses, and causes of action (whether in contract, tort or otherwise) exceed the amount paid by you, if any, for accessing the Service.

#### ARBITRATION

You agree that the exclusive remedy for all disputes and claims relating in any way to, or arising out of, this Agreement, the Service or Materials, or your use of the Service or Materials (including, to the extent permitted by applicable law, the arbitrability of any claim or dispute and the enforceability of this paragraph), or to any other alleged act or omission by you or SKYROCKIT, shall be determined exclusively by final and binding arbitration. Provided however, that you agree that the terms of this paragraph do not apply to any breach or alleged breach of the ownership or license rights of SKYROCKIT or any of its licensors with respect to any Materials and/or Services, or your (or any third party's) misuse of the Materials and/or Services, and that, in the event of any such breach or alleged breach, SKYROCKIT and its licensors will be entitled to equitable and injunctive relief in addition to all other remedies provided by this Agreement or available at law. The arbitration shall be conducted under the Commercial Arbitration Rules of the American Arbitration Association ("AAA") before a panel of three arbitrators and conducted in San Francisco, California. You and SKYROCKIT also agree that the AAA Optional Rules for Emergency Measures of Protection shall apply to the proceedings. Except as expressly set forth above in this paragraph, you and SKYROCKIT may litigate in court only to compel arbitration under this Agreement or to confirm, modify, vacate or enter judgment on the award rendered by the arbitrators. To the extent that you have breached or have indicated your intention to breach this Agreement in any manner which violates or may violate SKYROCKIT's or any of its licensor's intellectual property rights, or may cause continuing or irreparable harm to SKYROCKIT (including, but not limited to, any breach that may impact SKYROCKIT's or its licensor's intellectual property rights, or a breach by reverse engineering), SKYROCKIT may seek injunctive relief, or any other appropriate relief, in any court of competent jurisdiction. To the fullest extent permitted by applicable law: no arbitration under this Agreement shall be joined to an arbitration involving any other current or former licensee of SKYROCKIT, whether through class arbitration proceedings or otherwise; no finding or stipulation of fact in any other arbitration, judicial or similar proceeding may be given preclusive or collateral estoppel effect in any arbitration hereunder (unless determined in another proceeding between you and SKYROCKIT); and no conclusion of law in any other arbitration may be given any weight in any arbitration hereunder (unless determined in another proceeding between you and SKYROCKIT).

#### MISCELLANEOUS

This Agreement and any other terms or documents referred to herein represent your entire agreement with SKYROCKIT with respect to your use of the Service and Materials. You understand and agree that, except as expressly set forth herein, this Agreement is not intended to confer and does not confer any rights or remedies upon any person other than the parties to this Agreement. If any part of this Agreement is held invalid or unenforceable, that portion shall be construed in a manner consistent with applicable law to reflect, as nearly as possible, the original intentions of the parties, and the remaining portions shall remain in full force and effect. SKYROCKIT's failure to pursue any available claim or defense pursuant to this

Agreement or otherwise will not be a waiver of such claim or defense. The headings used in this Agreement are for convenience only, and will have no effect on the interpretation or legal enforceability of the terms herein. The laws of the State of New York, excluding its conflicts-of-law rules, govern this Agreement and your use of the Service and the Materials. The United Nations Convention of Contracts for the International Sale of Goods will not govern this Agreement, and is hereby expressly excluded. Except for claims or disputes to the extent arbitrated as provided above, you expressly agree that the state and federal courts located in San Francisco, California have exclusive jurisdiction over any claim or dispute with SKYROCKIT or relating in any way to your account or your use of the Service or the Materials. Except for claims or disputes to the extent arbitrated as provided above, you further agree and expressly consent to personal jurisdiction over you in the federal and state courts located in San Francisco, California in connection with any such dispute including any claim involving SKYROCKIT or its partners, parents, licensors, affiliates, subsidiaries, employees, contractors, officers, directors or suppliers. This Agreement will bind and inure to the benefit of each party's permitted successors and assigns. This Agreement is personal to you and may not be transferred, assigned or delegated to anyone. Any attempt by you to assign, transfer or delegate this Agreement shall be null and void.