

SKYSITE® Terms of Use

IMPORTANT -- PLEASE READ THESE TERMS OF USE (“TOU”) CAREFULLY. BY SELECTING THE “I ACCEPT” BUTTON OR BY ACCESSING OR USING ANY OF THE SKYSITE® PRODUCTS (AS DEFINED BELOW), YOU INDICATE YOUR ACCEPTANCE OF THESE TERMS. YOU SHOULD PRINT AND KEEP A COPY OF THIS TOU. IF YOU AGREE TO THIS TOU ON BEHALF OF A BUSINESS OR ORGANIZATION, YOU REPRESENT AND WARRANT THAT YOU HAVE THE AUTHORITY TO BIND THAT BUSINESS OR ORGANIZATION TO THIS TOU AND YOUR AGREEMENT TO THIS TOU WILL BE TREATED AS THE AGREEMENT OF THE BUSINESS OR ORGANIZATION. IF YOU DO NOT AGREE WITH THIS TOU, SKYSITE (AS DEFINED BELOW) IS NOT WILLING TO LICENSE TO YOU AND YOU MAY NOT USE THE SKYSITE® PRODUCTS.

This TOU constitute a legal and binding agreement between SKYSITE® Technologies, Inc. and its affiliates (collectively, “SKYSITE”) on the one hand, and the person or legal entity who has purchased a subscription to any of the SKYSITE® Products (“Customer” or “you”) and Customer’s employees, consultants, contractors, and other parties who access the SKYSITE® using Customer’s subscription (“Users”) on the other. Customer's and Users’ right to access and use the SKYSITE® Products (which include all of the products and services available through the SKYSITE® Web site located at www.skysite.com, including, but not limited to SKYSITE® Projects and SKYSITE® Facilities and Archive) through a restricted Web site ("Site"), to use or download documents and certain other materials on the Site (the "SKYSITE® Materials"), and to use and access any customer support services purchased by Customer with respect to its subscription to the Site (“Customer Support Services”) (the Site, the SKYSITE® Materials and the Customer Support Services are collectively referred to as the "SKYSITE® Products") is governed by this TOU.

1. SERVICE ACCESS.

As provided below and subject to the terms and conditions of this TOU, including payment by Customer of all amounts due hereunder, SKYSITE® grants a nonexclusive, nontransferable license to Customer and Users to access and use the SKYSITE® products for which it has purchased access as identified in the applicable SKYSITE® Order Form (the “Order Form”) and hosted on servers owned or operated by SKYSITE® or its designee during the Term (as defined below) in connection with Customer’s internal business purposes for which Customer has fully paid the applicable subscription fees to SKYSITE®. To be eligible to access and use the relevant SKYSITE® Products, Customer must be current in all payments due hereunder.

Subject to the requirements set forth in this TOU, Customer may provide unique user log-in information to Users who collaborate on Customer’s project to enable such Users to access the purchased SKYSITE® Products, up to a maximum number of Users for which Customer has fully paid the applicable subscription fees. Customer shall be responsible and liable for all Users’ compliance with this TOU and use of the SKYSITE® Products. SKYSITE® will not allow more than one individual to access a given SKYSITE® product at the same time under a single user

license. Except as otherwise permitted herein, Customer will not: (i) rent, lease, lend, assign, sublicense, transfer, or otherwise make available, any of the SKYSITE® Products to any third party; or (ii) use or permit any of the SKYSITE® Products to be used, as part of a service bureau, timesharing, interactive cable system or otherwise, for the benefit of any third party.

2. REGISTRATION.

In order to utilize the purchased SKYSITE® Products, Customer and its Users will be required to provide certain contact and account information as part of a registration process. Each of Customer and User (i) represents and warrants that all information submitted by it during the registration process is accurate and (ii) agrees to update this information to keep it accurate and complete during the term of this TOU.

3. PAYMENT.

You agree to pay the subscription fees set forth in the Order Form. You agree to pay all applicable taxes relating to your and your Users' use of the relevant SKYSITE® Products. Any amount payable by you to SKYSITE which is past due will be subject to a late payment charge equal to one percent (1%) per month, or the highest rate permitted by law, whichever is less.

The fees set forth in the Order Form do not include any taxes, which may apply to your purchase and which shall be the responsibility of Customer. Any such taxes required to be collected by SKYSITE shall be added to the amount quoted and shall appear as a separate item when invoiced.

The right of SKYSITE to receive any payment provided for under the TOU will not be subject to any abatement, reduction, setoff, defense, counterclaim or recoup of any amount due or alleged to be due because of any past, present or future claims of Customer or any User.

4. SOFTWARE.

Any software available for downloading from the Site ("Software"), as applicable, shall be subject to the end user license agreement accompanying such Software (or, in the absence of any such separate end user license agreement, this TOU).

5. INTELLECTUAL PROPERTY RIGHTS.

Except as expressly provided otherwise in this TOU, title, ownership, and all rights and interest including, without limitation, patents, copyrights, trademarks, trade secrets, and other intellectual property rights in and to any and all of the SKYSITE® Products remain with SKYSITE and its licensors. In addition, all content published on the Site, including, but not limited to, reports, presentations, written content, graphics, images, marks, logos, sound or video clips are protected by SKYSITE's copyrights or trademarks or those of SKYSITE's partners or Customers. The structure, organization, and code of the SKYSITE® Products and accompanying materials, if any, are valuable trade secrets of SKYSITE and its licensors, and Customer and its Users shall keep such trade secrets confidential. No logo, graphic, sound, content or image from the Site may be copied or retransmitted unless expressly permitted by SKYSITE and/or its licensors in a separate

writing. The SKYSITE® Products are licensed, not sold. SKYSITE hereby grants you a nonexclusive, nontransferable right to use the purchased SKYSITE® Products for the term for which you have paid the applicable subscription fees, solely for your own internal business purposes, subject to this TOU and the Order Form.

The Site includes a combination of content that SKYSITE creates, that SKYSITE's partners create, and that Customers and Users create. You may not modify, publish, transmit, participate in the transfer of, reproduce, create derivative works of, distribute, publicly perform, reverse engineer, publicly display, or in any way exploit any of the software, materials or content of any of the SKYSITE® Products.

You are solely responsible for all materials, whether publicly posted or privately transmitted, that you and/or your Users upload, post, e-mail, transmit, or otherwise make available on the Site or through the SKYSITE® Projects ("Content"). You have the sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of your Content. You warrant that you own or have sufficient legal right to the intellectual property rights in your Content and that your Content, including any use thereof by SKYSITE as described herein, does not violate applicable law or the rights of any third party. You hereby grant SKYSITE a worldwide, irrevocable, royaltyfree, nonexclusive, sublicensable right during the term of your use of any of the SKYSITE® Products to use, reproduce, create derivative works of, distribute, publicly perform, publicly display, transfer, transmit, distribute and publish your Content and subsequent versions of your Content for the purposes of (i) displaying your Content on the Site for your use; (ii) processing your Content in connection with SKYSITE providing the SKYSITE® Products to you; (iii) distributing your Content, either electronically or via other media, to Users seeking to download or otherwise acquire it; (iv) storing or hosting your Content in a remote database or on the Site for access by your Users; and/or formatting, maintenance, repair, protection, organization, or other administration of the Site and the SKYSITE® Products and use such Content in the ordinary course of SKYSITE's, or its designated third parties', provision of the SKYSITE® Products. This license will apply to the distribution and storage of your Content in any form, medium, or technology now known or later developed.

You and/or your Users may be exposed to content that you find offensive, indecent or objectionable or that is inaccurate, and you bear all risks associated with using that content. SKYSITE has the right, but not the obligation, to remove any content that may, in SKYSITE's sole discretion, violate this TOU or that is otherwise objectionable.

SKYSITE shall be entitled to adjust the scope of SKYSITE® Products and the underlying technical infrastructure to reflect the continuing development of the SKYSITE® Products and technical advances.

6. ACCEPTABLE USE AND PRIVACY POLICY.

Customer's and Users' use of the SKYSITE® Products is also subject to compliance with SKYSITE® Acceptable Use Policy and SKYSITE® Privacy Policy, each of which is incorporated

by reference into this TOU and is available for review on the Site (or any successor or replacement Web page designated by SKYSITE) located on www.skysite.com.

7. RIGHT TO REMOVE OR DISABLE ACCESS.

If SKYSITE is made aware of Content or Customer or User conduct that is, or that SKYSITE believes in good faith may be, (i) libelous, obscene, excessively violent or defamatory, (ii) a violation of any law, regulation, or rights of a third party, including, but not limited to, rights under the copyright law and prohibitions on libel, slander, and invasion of privacy, or (iii) a violation of SKYSITE's Acceptable Use Policy, SKYSITE has the right, but not the obligation, to immediately remove or disable access to that Content and/or terminate Customer's and/or User's ability to access the SKYSITE® Products without notice to the Customer.

8. CONTENT: GENERAL.

As between SKYSITE and Customer, Customer is solely responsible for all Content and all activities that occur on the Site under Customer's User accounts, including, without limitation any comments, information, questions, data, plans, feedback, ideas, descriptions of processes, or other information submitted, posted, reproduced, published, distributed, or otherwise transmitted to SKYSITE by Customer or any User through the Site or any SKYSITE® Products. Customer may use the SKYSITE® Products for lawful purposes only.

Customer is responsible for implementing sufficient procedures and checkpoints to satisfy Customer's particular requirements for accuracy of data input and output. Customer acknowledges that: (i) Customer will evaluate and bear all risks associated with the use of any Content, including any reliance by Customer or its Users on the accuracy, completeness, or usefulness of such Content; and (ii) under no circumstances will SKYSITE be liable in any way for any Content, including, but not limited to, any errors or omissions in any Content, or any loss or damages or any kind incurred as a result of Customer's or any User's use, deletion, modification, or correction of any Content.

9. PROTECTION OF CONTENT

During the term of this TOU, SKYSITE will use commercially reasonable standards and practices to back up and protect Content. Notwithstanding the foregoing, SKYSITE makes no warranties or representations regarding its back-up practices, and does not warrant that it will be able to restore any lost or damaged Content or other data. Customer acknowledges that no network security procedures can assure complete network security or prevent all unauthorized access to the Site and will immediately notify SKYSITE of any known security breaches affecting any of the SKYSITE® Products.

10. SKYSITE LIMITED WARRANTY AND DISCLAIMER.

EXCEPT AS EXPRESSLY PROVIDED OTHERWISE IN A WRITTEN AGREEMENT SIGNED BY AUTHORIZED REPRESENTATIVES OF YOU AND SKYSITE, THE SOFTWARE AND SKYSITE® PRODUCTS ARE PROVIDED "AS IS," "WITH ALL

FAULTS” AND “AS AVAILABLE” AND SKYSITE AND ITS SUPPLIERS MAKE NO EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, INCLUDING, WITHOUT LIMITATION, (i) REGARDING THE USABILITY, SUITABILITY, CONDITION, OPERATION OR ACCURACY OF THE SOFTWARE OR THE SKYSITE® PRODUCTS ; (ii) THAT ACCESS TO OR USE OF THE CONTENT, SOFTWARE OR SKYSITE® PRODUCTS WILL BE AVAILABLE, TIMELY, UNINTERRUPTED OR ERROR-FREE; (iii) THAT THE SKYSITE® PRODUCTS WILL DELIVER CUSTOMER’S DESIRED RESULTS OR MEET CUSTOMER REQUIREMENTS OR EXPECTATIONS; OR (iv) THAT THE CONTENT, SKYSITE® PRODUCTS AND ANY OTHER RELATED SOFTWARE WILL BE FREE OF VIRUSES, WORMS, TROJAN HORSES OR OTHER CODE THAT MANIFESTS CONTAMINATING OR DESTRUCTIVE PROPERTIES. EXCEPT AS EXPRESSLY PROVIDED OTHERWISE IN A WRITTEN AGREEMENT SIGNED BY AUTHORIZED REPRESENTATIVES OF YOU AND SKYSITE, SKYSITE AND ITS SUPPLIERS SPECIFICALLY DISCLAIM ALL WARRANTIES WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ALL WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, COMPATIBILITY, SECURITY OR ACCURACY. CUSTOMER’S AND USERS’ USE OF THE SKYSITE® PRODUCTS AND CONTENT IS AT ITS OWN RISK, AND CUSTOMER ASSUMES FULL RESPONSIBILITY AND RISK OF LOSS RESULTING FROM USE OF OR INABILITY TO USE THE CONTENT, SOFTWARE, OR SKYSITE® PRODUCTS.

11. LIMITATION OF LIABILITY.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER SKYSITE NOR ITS SUPPLIERS SHALL BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, OR INDIRECT DAMAGES, LOSS OF PROFITS, REVENUE OR DATA, OR COST OF COVER ARISING OUT OF OR IN CONNECTION WITH THIS TOU, THE SKYSITE® PRODUCTS, ANY OTHER SOFTWARE OR THE CONTENT.

IF YOU ARE DISSATISFIED WITH THE SKYSITE® PRODUCTS OR YOU HAVE ANY OTHER DISPUTE OR CLAIM WITH OR AGAINST SKYSITE WITH RESPECT TO THIS TOU OR THE SKYSITE® PRODUCTS, THEN YOUR SOLE AND EXCLUSIVE REMEDY IS TO DISCONTINUE USING THE SKYSITE® PRODUCTS. IN THE EVENT THAT, NOTWITHSTANDING THE FOREGOING DISCLAIMERS, SKYSITE IS FOUND RESPONSIBLE TO ANY CUSTOMER OR USER FOR ANY REASON WHATSOEVER, SKYSITE’S RESPONSIBILITY SHALL BE LIMITED TO THE AMOUNTS ACTUALLY PAID BY SUCH CUSTOMER OR USER FOR USE OF THE SKYSITE® PRODUCTS, AND SHALL NOT INCLUDE PUNITIVE, CONSEQUENTIAL OR RESULTING DAMAGES OF ANY NATURE.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE LIMITATIONS OF LIABILITY IN THIS SECTION 11 SHALL APPLY TO ALL DAMAGES, CLAIMS AND LOSSES, HOWEVER CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY, WHETHER DERIVED FROM CONTRACT (INCLUDING, BUT NOT LIMITED TO, WARRANTY OR INDEMNIFICATION CLAIMS), TORT (INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE), OR OTHERWISE, EVEN IF SKYSITE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND REGARDLESS OF WHETHER THE LIMITED REMEDIES AVAILABLE HEREUNDER FAIL OF THEIR ESSENTIAL PURPOSE.

SOME STATES/JURISDICTIONS DO NOT ALLOW EXCLUSION OF IMPLIED WARRANTIES OR LIMITATION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO YOU. IN SUCH STATES/JURISDICTIONS, SKYSITE'S ABILITY AND THAT OF ITS SUPPLIERS WILL BE LIMITED TO THE GREATEST EXTENT PERMITTED BY LAW.

12. TERM, SUSPENSION AND TERMINATION.

The TOU takes effect on the start date specified in the Order Form (the "Effective Date"), and shall continue until the end date specified in the Order Form, or, if earlier, the date on which this TOU is terminated in accordance with the terms set forth herein (the "Term"). Your subscription to the relevant SKYSITE® Products shall be automatically renewed upon the expiration of the then-current Term, unless you give SKYSITE written notice thirty (30) days prior to the end of the then-current Term of your intention to terminate your subscription to the relevant SKYSITE® Products. Fees at the time of automatic renewals shall be the then-current rate, as determined by SKYSITE in its sole discretion.

For free or evaluation subscriptions to any SKYSITE® Products, SKYSITE may suspend or terminate this TOU and/or Customer's and Users' access to the SKYSITE® Products in its sole discretion at any time without notice. For all other versions of the SKYSITE® Products, and without limiting any other rights or remedies available to SKYSITE under contract or otherwise, SKYSITE may (i) suspend Customer's and Users' access to the SKYSITE® Products effective upon ten (10) days prior notice in the event that Customer is not current in its payments and (ii) terminate the TOU upon thirty (30) days prior notice for any breach of or failure by Customer or any User to comply with the provisions of this TOU, including, without limitation, its payment obligations hereunder. SKYSITE may terminate the TOU, without penalty or further obligation, for any reason upon ninety (90) days prior written notice to Customer.

Should SKYSITE elect termination for any reason other than Customer's default, Customer shall only be liable for a pro rata payment for those SKYSITE® Pdelivered to Customer prior to the effective date of termination. Termination is in addition to all other legal or equitable remedies available to SKYSITE. Sections 3, 5, 9, 11, 12, 13, 14, 16, and 17.4 shall survive any termination of this TOU.

13. EFFECT OF TERMINATION.

Upon the earlier of (i) receipt of notice from SKYSITE that this TOU and/or Customer's and Users' access to the relevant SKYSITE® Products are being terminated, (ii) expiration of this TOU, or (iii) termination of any free or evaluation subscription period, Customer shall remove all Content and data from the SKYSITE® Products. Customer acknowledges and agrees that SKYSITE also may delete the Content and data from the SKYSITE® Products (and all backups thereof), without further notice upon any termination or expiration of this TOU, and that SKYSITE is not liable for any loss or damage which may be incurred by Customer, Users or any third parties as a result of such deletion.

Upon termination or expiration of this TOU for any reason, Customer shall cease to access any/all of the SKYSITE® Products. Upon termination or expiration of the TOU, all of Customer's and each User's rights hereunder shall cease. SKYSITE may in its sole discretion make mutually agreed upon Content migration services available to Customer pursuant to a mutually agreed upon professional services agreement.

14. INDEMNITY.

Customer agrees to indemnify, defend and hold harmless SKYSITE and its officers, directors, owners, agents, employees and suppliers (collectively, the "SKYSITE Indemnified Parties") from all damages, losses, liability, costs and expenses (including, without limitation, reasonable attorneys' fees) incurred by the SKYSITE Indemnified Parties in connection with any third party claim against an SKYSITE Indemnified Party arising out of or related to (i) Customer's or User's use of any of the SKYSITE® Products ; (ii) any use or alleged use of Customer or User accounts or passwords by any person, whether or not authorized by Customer or User; (iii) the content, quality, or the performance of Content that is submitted by Customer or User to the SKYSITE® Products; (iv) Customer's or any of its Users' violation of this TOU; and/or (v) any claim that the Content or Customer's or Users' use of the SKYSITE® Products violates any applicable law, rule, regulation or the rights of any third party. SKYSITE shall promptly notify Customer of any such claim and shall cooperate, at Customer's expense, as reasonably required by Customer in the defense of any claim. Customer shall have the right to conduct the defense of any such claim, provided, however, that SKYSITE shall have the right, at its own expense, to participate in the defense of any matter subject to indemnification hereunder, and Customer shall not settle any such claim without the consent of SKYSITE. SKYSITE reserves the right to assume the exclusive defense and control of any matter otherwise subject to indemnification by Customer hereunder.

15. ADDITIONAL SERVICES.

15.1. Your use of the SKYSITE® Products may be subject to additional conditions either posted on the Site or contained in the Order Form that describe order-specific information, such as billing information, subscription prices, user quantities and license term. Your use of the SKYSITE® Products is subject to those conditions, which are incorporated into this TOU by reference. In the event of any inconsistency between this TOU and any additional conditions, the provisions of such additional conditions will prevail.

15.2. You understand and agree that the SKYSITE® Projects and/or SKYSITE® Facilities and SKYSITEhive may include communications such as service announcements and administrative messages from SKYSITE. You will not be able to opt out of receiving those service announcements and administrative messages while using the SKYSITE® Products. You also understand that the SKYSITE® Products may include advertisements.

15.3. Customer Support. Any Customer Support Services purchased by Customer are subject to the terms of SKYSITE's support policies, which are incorporated by reference into this TOU and are available for review on SKYSITE's Website at www.skysite.com

15.4. Professional Services. The terms and conditions governing any consulting or professional services relating to the SKYSITE® Products, including, without limitation, customization, configuration, training or other professional services, are not included in this TOU and shall be mutually agreed upon by the parties in a separate agreement.

16. COPYRIGHT.

SKYSITE respects the intellectual property rights of others and requires that Customers and Users do the same. If you believe that your work has been copied in a way that constitutes copyright infringement, please forward the following information to the contact person named below (our agent for notice of claimed infringement):

your address, telephone number and/or email address;

a description of the copyrighted work that you claim has been infringed;

a description of the claimed infringing material and information sufficient to allow us to locate the claimed infringing material ;

a statement by you that you have a good faith belief that the disputed use is not authorized by the copyright owner, its agent, or by law;

an electronic or physical signature of the copyright owner or a person authorized to act on behalf of the copyright owner; and

a statement by you, made under penalty of perjury, that the above information in your notice is accurate and that you are the copyright owner or authorized to act on the copyright owner's behalf to enforce the copyrights that are claimed to be infringed.

SKYSITE® Copyright Agent
1981 N. Broadway
Suite 360
Walnut Creek, CA 94596
Email Address: support@skyskite.com

You may contact our agent for notice of claimed infringement specified above with complaints regarding allegedly infringing material posted on the Site and we will investigate those complaints. If we believe, in good faith, that the posted material violates any applicable law, we will remove or disable access to any such material, and we will notify the posting party that the material has been blocked or removed.

17. DEFAMATION; COMMUNICATIONS DECENCY ACT NOTICE.

The Site is a provider of “interactive computer services” under the Communications Decency Act, 47 U.S.C. Section 230, and as such, SKYSITE’s liability for defamation and other claims arising out of any postings to the Site by third parties is limited as described therein. SKYSITE is not responsible for content or any other information posted to the Site by third parties. SKYSITE neither warrants the accuracy of such postings nor exercises any editorial control of content posted by third parties or liability in connection with such postings, including any responsibility or liability for investigating or verifying the accuracy of any content or any other information contained in such postings.

18. CALIFORNIA CIVIL CODE SECTION 1789.3 COMPLIANCE

Californians have rights to the following information pursuant to California Civil Code Section 1789.3 and California Business and Professions Code Section 17538. SKYSITE is located at 1981 North Broadway, Suite 385, Walnut Creek, California 94596. Please feel free to contact us to resolve issues regarding any aspect of the SKYSITE® Products by writing to the address specified above in this section or emailing us at support@skysite.com. The Complaint Assistance Unit of the Division of Consumer Services of the Department of Consumer Affairs in California may be contacted in writing at 400 R. Street, Suite 3090, Sacramento, California or by calling 1800-9525210.

19. GENERAL PROVISIONS.

19.1. Waiver/Severability. No term or provision hereof will be considered waived, and no breach excused, unless such waiver is in writing signed on behalf of the party against whom the waiver is asserted. No waiver (whether express or implied) will constitute a consent to, waiver of or excuse of any other, different or subsequent breach. If and to the extent any provision of this TOU is held illegal, invalid, or unenforceable in whole or in part under applicable law, such provision or such portion thereof shall be ineffective as to the jurisdiction in which it is illegal, invalid, or unenforceable to the extent of its illegality, invalidity, or unenforceability and shall be deemed modified to the extent necessary to conform to applicable law so as to give the maximum effect to the intent of the parties. The illegality, invalidity, or unenforceability of such provision in that jurisdiction shall not in any way affect the legality, validity, or enforceability of any other provision of this TOU in any other jurisdiction.

19.2. Force Majeure. Except for the failure to make payments, neither party will be liable for any loss, damage or penalty resulting from delays or failures in performance resulting

from acts of God, war, terrorism or terrorist act, civil unrest, strikes, lockouts or other labor disturbances, failure or interruption of a third party internet connection(s) or infrastructure, supplier delay or other causes beyond the non-performing party's reasonable control and not caused by the negligence of the non-performing party, provided that the nonperforming party promptly notifies the other party of the delay and the cause thereof and promptly resumes performance as soon as it is reasonably possible to do so.

19.3. Independent Contractor. In performing their respective duties under this TOU, each of the parties will be operating as an independent contractor. Nothing contained herein will in any way constitute any association, partnership, or joint venture between the parties hereto, or be construed to evidence the intention of the parties to establish any such relationship. Neither of the parties will hold itself out in any manner that would be contrary to the provisions of this Section 19.3.

19.4. Governing Law, Jurisdiction and Venue. The SKYSITE® Products are currently controlled by SKYSITE from within the state of California, United States of America. By accessing or using the any of the SKYSITE® Products, Customer agrees that the statutes and laws of the State of California, without regard to the conflicts of laws principles thereof, shall govern all matters relating to Customer's access to, or use of, such SKYSITE® Products. Customer and SKYSITE specifically disclaim the U.N. Convention on Contracts for the International Sale of Goods. No choice of law rules of any jurisdiction apply. The parties hereby submit to the exclusive personal jurisdiction of and venue in the Superior Court of the State of California, County of Contra Costa or County of Santa Clara (at SKYSITE's option), and the United States District Court for the Northern District of California in San Francisco in respect of all claims arising out of or related to any of the SKYSITE® Products and the TOU. The TOU is void where prohibited by law, and the right to access the SKYSITE® Products is hereby revoked in such jurisdictions.

19.5. Export. In conformity with laws and regulations of the United States and other countries relating to international trade, Customer and its employees, agents and Users shall not disclose, export or re-export, directly or indirectly, any product, documentation or technical data (or direct products thereof) provided under this TOU or use the SKYSITE® to disclose, export or re-export any Content to any country, entity or other party which is ineligible to receive such items under U.S. laws and regulations as modified from time to time by the U.S. Department of Commerce or the U.S. Department of the Treasury or under other laws or regulations to which Customer may be subject. Customer shall be solely responsible for (i) complying with those laws and regulations and (ii) monitoring any modifications to them.

SKYSITE makes no representation that the SKYSITE® Products or Content are appropriate or available for use in locations outside the United States, and accessing them from territories where their contents are illegal is prohibited. Those who choose to access any of the SKYSITE® Products or Content from other locations do so on their own initiative and risk, and are responsible for compliance with local laws.

19.6. Notices. Notices to SKYSITE under the TOU shall be sufficient only if in writing and transmitted via personal delivery or delivered by a major commercial rapid delivery courier service or by certified or registered mail, return receipt requested, to SKYSITE Technologies Inc, Attention: Legal Department, 1981 North Broadway, Suite 385, Walnut Creek, California 94596.

SKYSITE may be required by state or federal law to notify you of certain events. You hereby acknowledge and consent that such notices will be effective upon SKYSITE posting them on the Site or delivering them to you via e-mail. By subscribing to or otherwise purchasing any of the SKYSITE® Products, you understand, acknowledge and agree that SKYSITE may send you communications or data regarding the SKYSITE® Products, including but not limited to (i) notices about your use of the SKYSITE® Products, including any notices concerning violations of this TOU; (ii) updates; and (iii) promotional information and materials regarding SKYSITE's products and services, via e-mail. SKYSITE will give you the opportunity to opt-out of receiving certain emails from it by following opt-out instructions provided in the message.

19.7. Links. The SKYSITE® Products may contain links to third-party Web sites that are not under the control of SKYSITE. When Customer and or its Users accesses a non-SKYSITE Web site, it does so at Customer's own risk and SKYSITE is not responsible for the accuracy or reliability of any information, data, opinions, advice, or statements made on these sites; or for the quality of any products or services available on such sites; or for any damage or loss caused or alleged to be caused through or in connection with use of or reliance on the content, goods, or services available on or through any such link, site, or resource.

19.8. Assignment. Customer agrees that its rights and obligations under this TOU may not be transferred or assigned and its duties may not be delegated directly or indirectly without the prior written consent of SKYSITE in its sole discretion. SKYSITE may assign or otherwise transfer its rights and obligations to successors-in-interest (whether by purchase of stock or assets, merger, operation of law, or otherwise) of that portion of its business related to the subject matter hereof. Any attempted assignment in violation of this Section 19.8 shall be a material breach of this TOU and shall be void. Subject to the restrictions set forth in this Section 19.8, all of the terms and conditions of this TOU shall be binding upon, inure to the benefit of, and be enforceable by the respective successors and permitted assigns of the parties hereto.

19.9. Public Statements; Customer Trademarks. Neither party may make any public statement, press release, or other public announcement relating to the terms of or existence of the TOU or any relationship between the parties, without the prior written approval of the other party, except as required by law; provided, however, that SKYSITE may identify Customer as a customer on any SKYSITE customer list published orally, in print or electronically. Customer hereby grants SKYSITE a limited, non-exclusive, nontransferable, royalty-free license to use, reproduce and publicly display its trademarks, tradenames and/or service marks specifically and only in connection with marketing and

promotion of the SKYSITE® Products during the term of Customer's subscription to and/or use of the SKYSITE® Products.

19.10. This TOU (including the documents incorporated by reference herein) contains the entire agreement and understanding between Customer, its Users and SKYSITE concerning the subject matter of this TOU, and supersedes all other prior or contemporaneous communications, representations, advertising, discussions, negotiations, proposed agreements, and all other agreements, whether written or oral for any of the SKYSITE® Products. SKYSITE has not made and Customer has not relied upon any representations not expressly set forth in this document in making this TOU.

19.11. SKYSITE may update or modify the terms of this TOU, the Acceptable Use Policy or its support policies at any time upon notice to you and your continued use of the SKYSITE® Products will require your acceptance of such updates and/or modifications.

SKYSITE® Products Acceptable Use Policy

Customer and User incur the following obligations and agrees not to use the SKYSITE® Products, or any portion thereof, to:

- (a) Upload, post or otherwise transmit any content which violates, misappropriates, or infringes, in any way, upon the rights of others, which is unlawful, harmful, threatening, abusive, harassing, tortuous, defamatory, obscene, libelous, invasive of another's privacy, hateful, or racially, ethnically or otherwise objectionable, or which encourages conduct that would constitute a criminal offense, or otherwise violate any law. SKYSITE may disclose, in its sole discretion, content or registration information in order to cooperate with any law enforcement authorities or court order, provided that SKYSITE does not disclose content to any other third parties except as compelled by court or governmental order;
- (b) Access information related to minors or harm minors in any way;
- (c) Impersonate any person or entity, or falsely state or otherwise misrepresent Customer's or User's affiliation with any person or entity;
- (d) Upload, post or otherwise transmit any unsolicited or unauthorized advertising, promotional materials, "junk mail," "spam," "chain letters," "pyramid schemes," or any other form of solicitation;
- (e) Upload, post, or otherwise transmit any material which contains software viruses, harmful materials, or any other computer code, files, or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment, including, but not limited to, the SKYSITE® Projects;
- (f) Interfere with or disrupt the SKYSITE® Projects, or servers or networks connected to the Site, or disobey any requirements, procedures, policies or regulations of networks connected to the Site or associated with the SKYSITE® Projects;

- (g)** Harass or disparage any person or entity, including, but not limited to, SKYSITE;
- (h)** Collect or store personal data about any person or entity without the requisite rights to do so;
- (i)** Promote or provide instructional information about illegal activities and/or promote physical harm or injury against any group or individual;
- (j)** Use the SKYSITE® Projects as storage for remote loading or as a door or signpost to another home page, whether inside or beyond the Site;
- (k)** Intentionally or unintentionally violate any applicable local, state, national, or international law, including, but not limited to, all applicable export control laws and regulations; or
- (l)** Breach the TOU or any applicable Order Form or End User License Agreement.

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