

SkyHi Travel, Inc.

Terms of Use Agreement

Effective Date: August 19, 2018

Last Updated Date: February 19, 2018

PLEASE READ THIS TERMS OF USE AGREEMENT (THE “**TERMS OF USE**”) CAREFULLY. THIS AGREEMENT IS A LEGAL CONTRACT BETWEEN YOU AND SKYHI TRAVEL, INC. (“**SKYHI**”, “**WE**”, “**US**”). You should print a copy of these terms or save them to your computer for future reference.

IF YOU PURCHASE A MONTHLY SUBSCRIPTION, THEN YOUR SUBSCRIPTION WILL BE AUTOMATICALLY RENEWED EACH MONTH AT SKYHI’S THEN-CURRENT FEE FOR SUCH SERVICES UNLESS YOU OPT OUT OF THE AUTO-RENEWAL IN ACCORDANCE WITH SECTION 1.1 BELOW.

SKYHI DOES NOT PROVIDE AIR CARRIER SERVICES AND IS NOT A CERTIFICATED AIR CARRIER. IT IS UP TO THIRD PARTY AIR CARRIERS (“AIR CARRIERS”) TO OFFER AIR TRANSPORTATION SERVICES, WHICH MAY BE PURCHASED THROUGH USE OF SKYHI SERVICES. SKYHI OFFERS INFORMATION AND A METHOD TO OBTAIN SUCH THIRD PARTY AIR TRANSPORTATION SERVICES FROM AIR CARRIERS.

SkyHi offers access to a number of flights operated by Air Carriers. SkyHi shall act solely and exclusively as your agent in arranging a flight. SkyHi offers a method by which to obtain the services of the Air Carriers, but in no way does SkyHi have any responsibility or liability for any services provided by third parties. By using the Services and booking a flight, you authorize SkyHi to enter into a contract with the Air Carrier as your agent.

SECTION 16 OF THIS AGREEMENT IS AN ARBITRATION CLAUSE THAT REQUIRES MOST DISPUTES BETWEEN US TO BE RESOLVED THROUGH BINDING AND FINAL ARBITRATION INSTEAD OF IN COURT. SEE SECTION 16 FOR MORE INFORMATION REGARDING THIS ARBITRATION CLAUSE, AND HOW TO OPT OUT.

IF YOU ARE AN INDIVIDUAL BASED IN EUROPE, WHO USES SKYHI AS A CONSUMER, PLEASE NOTE THAT THESE TERMS APPLY TO YOU AS AMENDED BY THE EUROPEAN SPECIFIC TERMS CONTAINED IN SECTION 18.

IF YOU ARE AN INDIVIDUAL RESIDING IN CANADA WHO USES SKYHI AS A CONSUMER, PLEASE NOTE THAT THESE TERMS APPLY TO YOU AS AMENDED BY THE CANADIAN SPECIFIC TERMS CONTAINED IN SECTION 19.

By accessing or using any website with an authorized link to this Terms of Use (“**Website**”), downloading, installing, or using SkyHi’s mobile application (“**Application**”), registering an account (“**Account**”), accessing or using any content, information, services, features or resources available or enabled via the Website or Application (the “**Services**”), or clicking on a button or taking another action to signify your acceptance of this Agreement, you: (1) agree to be bound by this Agreement and any future amendments and additions to this Agreement as published through the Services; (2) represent you are of legal age in your jurisdiction of residence to form a binding contract; and (3) represent that you have the authority to enter into this Agreement personally and, if applicable, on behalf of any company, organization or other legal entity on whose behalf you use the Services. **Except as otherwise provided herein, if you do not**

agree to be bound by this Agreement, you may not access or use the Application, the Website, the Services, or the information and content available on the foregoing (collectively, the “SkyHi Properties”).

Your use of, and participation in, certain Services may be subject to additional terms (“**Supplemental Terms**”) and such Supplemental Terms will either be listed in the Terms of Use or will be presented to you for your acceptance when you sign up to use the supplemental Service. If the Terms of Use are inconsistent with the Supplemental Terms, the Supplemental Terms shall control with respect to such Service. The Terms of Use and any applicable Supplemental Terms are referred to herein as the “**Terms**.” The terms of our privacy policy, available at flyskyhi.com/legal/privacy-policy (“**Privacy Policy**”) are incorporated into these Terms by reference and apply to your use of SkyHi.

PLEASE NOTE THAT THE TERMS ARE SUBJECT TO CHANGE BY SKYHI IN ITS SOLE DISCRETION AT ANY TIME. When changes are made, SkyHi will make a new copy of the Terms of Use available on the Services and any new Supplemental Terms will be made available through the affected Service. We will also update the “Last Updated” date at the top of the Terms of Use. If we make any material changes, and you have registered with us to create an Account we will also send an e-mail to you at the last e-mail address you provided to us. Any changes to the Terms will be effective immediately for new users and will be effective thirty (30) days after posting notice of such changes on the Website for existing users, provided that any material changes shall be effective for users who have an Account with us upon the earlier of thirty (30) days after posting notice of such changes on the Website or thirty (30) days after dispatch of an e-mail notice of such changes to users who have registered an account with our Services (“**Registered User**”). SkyHi may require you to provide consent to the updated Terms in a specified manner before further use of the SkyHi Properties (as defined below) is permitted. If you do not agree to any change(s) after receiving a notice of such change(s), you shall stop using the SkyHi Properties. Otherwise, your continued use of the SkyHi Properties constitutes your acceptance of such change(s). PLEASE REGULARLY CHECK THE WEBSITE TO VIEW THE THEN-CURRENT TERMS.

Any future release, update or other addition to the SkyHi Properties shall be subject to this Agreement. SkyHi, its suppliers and service providers reserve all rights not granted in this Agreement.

1. **Subscription Fee Terms.**

1.1. **Automatic Renewal.** Your subscription will continue indefinitely until terminated in accordance with the Terms. **After your initial monthly subscription period, and again after any subsequent monthly subscription period, your subscription will automatically commence on the first day following the end of such period (each a “Renewal Commencement Date”)** and continue for an additional month, at SkyHi’s then-current price for such subscription. If you freeze your Account in accordance with Section 1.2, you will be charged the Freeze Fee, rather than the subscription fee, on any Renewal Commencement Date during the period in which you freeze your Account. You agree that your Account will be subject to this automatic renewal feature unless you cancel your subscription prior to the Renewal Commencement Date by logging into and going to the “Change/Cancel Membership” page of your “Account Settings” page or contacting SkyHi at support@flyskyhi.com or (844) 467-5944. If you cancel your subscription, you may use your subscription until the end of the then-current month; your subscription will not be renewed after the end of such month and you forfeit any accrued flight offers that you may have.

2.

You will not be eligible for a prorated refund of any portion of the subscription fee paid for the then-current month. If you later decide to reactivate your Account or subscribe to the Services again, you will be charged a ninety-nine dollar (\$99) reactivation fee. It may take up to one (1) business day to reactive your Account after we receive your reactivation fee. By subscribing, you authorize SkyHi to charge your Payment Provider (as defined in Section 1.3 below) now, and again at the beginning of any subsequent month, in accordance with this Section 1.1. Upon renewal of your subscription, if SkyHi does not receive payment from your Payment Provider, (i) you agree to pay all amounts due on your Account upon demand, and/or (ii) you agree that SkyHi may either terminate or suspend your subscription and continue to attempt to charge your Payment Provider until payment is received (upon receipt of payment, your Account will be activated and for purposes of automatic renewal, your new subscription commitment period will begin as of the day payment was received).

1.2. **Account Freezes.** You may freeze your Account in one-month increments for a fee of thirty-five dollars (\$35) per month ("**Freeze Fee**"), payable in advance, in accordance with Section 1.1. During any period in which you freeze your Account, you will have access to your Account, but will not have access to any of the Services that require a subscription. Once you unfreeze your Account, you can begin using the Services immediately and you will automatically be charged your subscription fee for that month beginning on the date you unfreeze your Account, and any subsequent Renewal Commencement Date, in accordance with Section 1.1. You may freeze and unfreeze your account by visiting "Change/Cancel Membership" page of your "Account Settings" page or contacting SkyHi at support@flyskyhi.com or (844) 467-5944.

1.3. **Refunds.** Except as set forth in these Terms, all fees are non-refundable.

1.4. **Payment.** You agree to pay all fees or charges to your Account in accordance with the fees, charges and billing terms in effect at the time a fee or charge is due and payable. You must provide SkyHi with a valid credit card (Visa, MasterCard, or any other issuer accepted by us) ("**Payment Provider**") as a condition to signing up for the Services. Your Payment Provider agreement governs your use of the designated credit card, and you must refer to that agreement and not the Terms to determine your rights and liabilities. By providing SkyHi with your credit card number and associated payment information, you agree that SkyHi is authorized to immediately invoice your Account for all fees and charges due and payable to SkyHi hereunder and that no additional notice or consent is required. You agree to immediately notify SkyHi of any change in your billing address or the credit card used for payment hereunder. SkyHi reserves the right at any time to change its prices and billing methods, either immediately upon posting on SkyHi Properties or by e-mail delivery to you.

1.5. **Taxes.** SkyHi's fees are net of any applicable Sales Tax. If you have not remitted the applicable Sales Tax to SkyHi, you will be responsible for the payment of such Sales Tax and any related penalties or interest to the relevant tax authority and you will indemnify SkyHi for any liability or expense we may incur in connection with such Sales Taxes. Upon our request, you will provide us with official receipts issued by the appropriate taxing authority, or other such evidence that you have paid all applicable taxes. For purposes of this section, "**Sales Tax**" shall mean any sales or use tax, and any other tax measured by sales proceeds that SkyHi is permitted to pass to its customers, that is the functional equivalent of a sales tax where the applicable taxing jurisdiction does not otherwise impose a sales or use tax.

1.6. **Third Party Payment Services Provider.** SkyHi uses Authorize.Net as a third party service provider for payment services (e.g., credit card transaction processing, merchant settlement, and related services). By using the SkyHi Properties, you agree to be bound by Authorize.Net's Privacy Policy available at <https://www.authorize.net/company/privacy/>. You hereby consent to provide, and authorize SkyHi and Authorize.Net to share, your information and payment instructions to the extent required to complete the payment transactions in accordance with the Terms, including personal, financial, credit card payment, and transaction information.

1.7. **Disputes.** You must notify us in writing within seven (7) days after receiving your credit card statement, if you dispute any of our charges on that statement or such dispute will be deemed waived. Billing disputes should be notified to the following address: SkyHi Travel, Inc., 13614 Sunset Drive, Apple Valley, CA 92308.

1.8. **Changes.** SkyHi reserves the right at any time to change its billing methods, either immediately upon posting on the Services or by e-mail delivery to you. Prices posted on our Services are subject to change without notice. If you have a subscription, we will send a notice to the e-mail and/or mailing address which you registered with us at least forty-five (45) days prior to a subscription price increase or other material change taking effect for your subscription.

2. **Subscription Order and Acceptance.**

2.1. **Order Acceptance Process.** After you have registered for a subscription through our Services, you will receive an email from SkyHi confirming receipt of your order. If you do not receive a confirmation email from SkyHi within 24 hours of placing your order, then please contact SkyHi at support@flyskyhi.com before you attempt to place another order for a subscription. We may require additional verifications or information before accepting any order. Please note that SkyHi's confirmation of receipt of your order does not equate to SkyHi's acceptance of your order. SkyHi is not deemed to have accepted your order until SkyHi has sent a confirmation email.

2.2. **Reservation of Rights.** We reserve the right, but are not obligated, to limit the sales of our subscription to any person, geographic region or jurisdiction. We may exercise this right on a case-by-case basis. We reserve the right to discontinue any subscription at any time and we will refund you a pro rata amount of any amounts you prepaid for any subscription you did not receive. Any offer made on our Services is void where prohibited.

2.3. **Order Issues.** Although it is unlikely that SkyHi would refuse to accept an order, SkyHi reserves the right to deny any order for any reason, including where the following situations arise: (i) insufficient information or errors in billing, payment, and/or shipping information; (ii) orders that cannot be processed due to erroneous information that you have provided, which includes, but is not limited to incorrect credit card or debit card number, expiration date, security value, or other incorrect information regarding payment types; (iii) suspected fraudulent information; or (iv) orders that are connected with a previous credit card dispute.

2.4. **Order Cancellation.** If there is an error on the Services pertaining to the order (e.g. an error pertaining to the price and/or description of a subscription), then SkyHi may cancel the order and refund any fees you have prepaid for the order. If this occurs,

then SkyHi will contact you so that you are aware of the situation. Your subscription will continue the following month unless you are otherwise notified by SkyHi or you cancel your subscription.

3. **Airline Ticket Use and Restrictions.**

3.1. **Ticket Fees.** In addition to the monthly subscription fees, there may be additional charges each time you order an airline ticket ("**Ticket**") depending on your subscription plan. Please refer to your subscription plan details for more information.

3.2. **Ticket Usage Limitations.** You may order up to the maximum number of Tickets permitted under the subscription you purchased. EACH TICKET MAY BE USED FOR A ONE-WAY ECONOMY CLASS AIRFARE WITH A TRAVEL DISTANCE OF UP TO THE MAXIMUM DISTANCE BETWEEN THE ORIGIN AIRPORT AND THE DESTINATION AIRPORT AS PERMITTED BASED ON YOUR SUBSCRIPTION PLAN. EACH USER MAY ONLY HOLD TWO (2) AIRLINE SEATS AT A TIME AND MAY NOT ORDER ADDITIONAL SEATS, INCLUDING WITHOUT LIMITATION, FOR THE PURPOSES OF MAKING AN ADVANCED RESERVATION FOR A RETURN FLIGHT. YOU ARE SOLELY RESPONSIBLE FOR ARRANGING ANY NECESSARY PROOF OF ONWARD TRAVEL THAT MAY BE REQUIRED BY AN AIR CARRIER AND/OR THE AUTHORITIES AT YOUR DESTINATION. YOU ACKNOWLEDGE AND AGREE THAT YOU SHALL NOT HOLD SKYHI LIABLE FOR, AND SKYHI HEREBY DISCLAIMS, ANY LIABILITY ARISING OF OUT OF OR IN CONNECTION WITH ANY INCONVENIENCE IN TRAVEL ARRANGEMENTS, INCLUDING WITHOUT LIMITATION, THE COST OF ANY ACCOMMODATIONS OR ADDITIONAL TRAVEL ARRANGEMENTS. Users may not order Tickets for anyone other than the Registered User on the Account. All Tickets are non-transferable, non-refundable, and cannot be redeemed for cash or any other value.

3.3. **Ticket Disclaimer.** You understand and agree that all flights displayed in the Services are remnant inventory and the Services will only display remnant flights available in the upcoming week. SkyHi does not guarantee flight inventory and does not guarantee the cumulative value of the Services will be less than the purchase of Tickets through third-parties.

3.4. **Ticket Order Issues.** If you have any issues in ordering or using your Ticket, please contact SkyHi at support@flyskyhi.com before you attempt to place another order.

3.5. **Trip Insurance.** Trip insurance is not included and must be separately purchased from a third party.

3.6. **Flight Issues.** SKYHI DOES NOT PROVIDE AIR CARRIER SERVICES, AND SKYHI IS NOT A REGISTERED OR CERTIFICATED AIR CARRIER. IT IS UP TO THE THIRD PARTY AIR CARRIER TO OFFER AIR CARRIER SERVICES, WHICH MAY BE OBTAINED THROUGH USE OF THE SKYHI SERVICES. SKYHI SOLELY OFFERS INFORMATION AND A METHOD TO OBTAIN SUCH THIRD PARTY AIR CARRIER SERVICES. YOU HEREBY ACKNOWLEDGE AND AGREE THAT YOUR RELATIONSHIP WITH THE THIRD-PARTY AIR CARRIER IS GOVERNED SOLELY BY SUCH THIRD-PARTY AIR CARRIER'S CONTRACT OF CARRIAGE, AND SKYHI DISCLAIMS ANY LIABILITY ARISING OUT OF OR IN CONNECTION WITH THE AIR CARRIER OR THE SERVICES PROVIDED BY THE AIR CARRIER, INCLUDING WITHOUT LIMITATION,

FLIGHT DELAYS, CANCELLATIONS, OR DENIED BOARDING FOR ANY REASON INCLUDING WITHOUT LIMITATION, FAILURE TO PROVIDE PROOF OF ONWARD TRAVEL.

3.7 Ancillary Fees. Ancillary Fees (“Ancillary Fees”) may be incurred from the third party Air Carrier for the provision of certain services associated with your flight, including (without limitation) fees for checked, carry-on or over-sized baggage; fees for transportation of pets; fees for seat assignments or upgraded seats; or fees for printing boarding passes. The terms upon which the services associated with the Ancillary Fees are delivered will be governed solely by the terms of the contract of carriage of the Air Carrier.

4. Account Registration.

4.1. Registering Your Account. In registering an Account on our Services, you agree to (1) provide true, accurate, current and complete information about yourself as prompted by the registration form (the “**Registration Data**”); and (2) maintain and promptly update the Registration Data to keep it true, accurate, current and complete. You represent that you are not a person barred from using SkyHi Properties under the laws of the United States, your place of residence or any other applicable jurisdiction. You are responsible for all activities that occur under your Account. You agree that you shall monitor your Account to restrict use by minors, and you will accept full responsibility for any unauthorized use of SkyHi Properties by minors. You may not share your Account or password with anyone, and you agree to (1) notify SkyHi immediately of any unauthorized use of your password or any other breach of security; and (2) exit from your Account at the end of each session. If you provide any information that is untrue, inaccurate, not current or incomplete, or SkyHi has reasonable grounds to suspect that such information is untrue, inaccurate, not current or incomplete, SkyHi has the right to suspend or terminate your Account and refuse any and all current or future use of SkyHi Properties (or any portion thereof). You agree not to create an Account using a false identity or information, or on behalf of someone other than yourself. You agree that you shall not have more than one Account at any given time. SkyHi reserves the right to remove or reclaim any usernames at any time and for any reason, including but not limited to, claims by a third party that a username violates the third party’s rights. You agree not to create an Account or use SkyHi Properties if you have been previously removed by SkyHi, or if you have been previously banned from any SkyHi Properties. Notwithstanding anything to the contrary herein, you acknowledge and agree that you shall have no ownership or other property interest in your Account, and you further acknowledge and agree that all rights in and to your Account are and shall forever be owned by and inure to the benefit of SkyHi.

4.2. Access Through a SNS. If you (i) register your Account by logging into your social networking service (“**SNS**”) account or (ii) login to your SNS account to post on our blog, you represent that you are entitled to disclose your SNS account login information to SkyHi and/or grant SkyHi access to your SNS account without breach by you of any of the terms and conditions that govern your use of the applicable SNS account and without obligating SkyHi to pay any fees or making SkyHi subject to any usage limitations imposed by such third-party service providers. By granting SkyHi access to any SNS accounts, you understand that SkyHi may access, make available and store (if applicable) any content that you have provided to and stored in your SNS account (“**SNS Content**”). All SNS Content shall be considered to be Your Content (as defined in Section 5.3). Subject to the privacy settings that you have set in such SNS account, personally

identifiable information that you post to your SNS account may be available on and through your Account on the SkyHi Properties. Please note that if a SNS account or associated service becomes unavailable or SkyHi's access to such SNS account is terminated by the third-party service provider, then SNS Content will no longer be available on and through SkyHi Properties. You have the ability to disable the connection between your Account and your SNS account through your SNS account settings. PLEASE NOTE THAT YOUR RELATIONSHIP WITH THE SNS PROVIDERS ASSOCIATED WITH YOUR SNS ACCOUNTS IS GOVERNED SOLELY BY YOUR AGREEMENTS WITH SUCH SNS PROVIDERS, AND SKYHI DISCLAIMS ANY LIABILITY FOR PERSONALLY IDENTIFIABLE INFORMATION THAT MAY BE PROVIDED TO IT BY SUCH SNS PROVIDERS IN VIOLATION OF THE PRIVACY SETTINGS THAT YOU HAVE SET IN SUCH SNS ACCOUNTS. SkyHi makes no effort to review any SNS Content for any purpose, including but not limited to, for accuracy, legality or noninfringement, and SkyHi is not responsible for any SNS Content.

5. **User Content.**

5.1. **Responsible Party for Content.** You acknowledge that all content is the sole responsibility of the party from whom such content originated. This means that each user is entirely responsible for all content that that user makes available through the Services ("**User Content**"). SkyHi has no obligation to pre-screen any content. You use all User Content and interact with other users at your own risk. Without limiting the foregoing, SkyHi reserves the right in its sole discretion to pre-screen, refuse, or remove any content. SkyHi shall have the right to remove any content that violates this Agreement or is otherwise objectionable.

5.2. **Ownership of Your Content.** SkyHi does not claim ownership of any User Content you make available on the Services ("**Your Content**"). However, when you as a user post or publish Your Content on or in the Services, you represent that you have all of the necessary rights to grant SkyHi the license set forth in Section 5.3. Except with respect to Your Content, you agree that you have no right or title in or to any content that appears on or in the Services.

5.3. **License to Your Content.** Subject to any applicable Account settings that you select, you grant SkyHi a right to use and display Your Content (in whole or in part) for the purposes of operating and providing the Services. Note that other users may search for, see, use, modify and reproduce any of Your Content that you submit to any "public" area of the Services.

5.4. **Restrictions on User Conduct.** You agree not to use the Services for any purpose prohibited by this Agreement or by applicable law. You shall not (and shall not permit any third-party to) (a) take any action or (b) make available any content on or through the Services that: (i) infringes any patent, trademark, trade secret, copyright, right of publicity or other right of any person or entity; (ii) is unlawful, threatening, abusive, harassing, defamatory, libelous, deceptive, fraudulent, invasive of another's privacy, tortious, obscene, offensive, or profane; (iii) constitutes unauthorized or unsolicited advertising, junk or bulk e-mail; (iv) involves commercial activities and/or sales without SkyHi's prior written consent, such as contests, sweepstakes, barter, advertising, or pyramid schemes; or (v) impersonates any person or entity, including any employee or representative of SkyHi.

5.5. **User Responsibility.** You are solely responsible for your interactions with other users and any other parties with whom you interact; provided, however, that SkyHi reserves the right, but has no obligation, to intercede in such disputes. You agree that SkyHi will not be responsible for any liability incurred as the result of such interactions.

5.6. **Feedback.** You agree that your submission of any ideas, suggestions, documents, and/or proposals to SkyHi (“**Feedback**”) is at your own risk and that SkyHi has no obligations with respect to such Feedback. You represent and warrant that you have all rights necessary to submit the Feedback. You hereby grant to SkyHi the right to use any Feedback in any way at any time without any additional approval or compensation.

6. **Ownership and License to Use SkyHi Properties.**

6.1. **Ownership of SkyHi Properties.** Except with respect to Your Content and User Content, you agree that SkyHi and its suppliers own all rights, title and interest in SkyHi Properties. You will not remove, alter or obscure any copyright, trademark, service mark or other proprietary rights notices incorporated in or accompanying the SkyHi Properties.

6.2. **Trademarks.** SkyHi’s stylized name and other related graphics, logos, service marks and trade names used on or in connection with SkyHi Properties or in connection with the Services are the trademarks of SkyHi and may not be used without permission in connection with any third-party products or services. Other trademarks, service marks and trade names that may appear on or in SkyHi Properties are the property of their respective owners.

6.3. **Use of the SkyHi Properties.** The SkyHi Properties are protected by copyright laws throughout the world. Subject to the Terms, SkyHi grants you a limited license to reproduce portions of SkyHi Properties for the sole purpose of using the Services for your personal purposes. Unless otherwise specified by SkyHi in a separate license, your right to use any SkyHi Properties is subject to the Terms.

(a) **Application License.** Subject to your compliance with the Terms, SkyHi grants you a limited non-exclusive, non-transferable, non-sublicensable, revocable license to download, install and use a copy of the Application on mobile devices that you own or control and to run such copy of the Application solely for your own personal purposes. Furthermore, with respect to any Application accessed through or downloaded from the Apple App Store (an “**App Store Sourced Application**”), you will only use the App Store Sourced Application (i) on an Apple-branded product that runs the iOS (Apple’s proprietary operating system) and (ii) as permitted by the “Usage Rules” set forth in the Apple App Store Terms of Service.

(b) **Updates.** You understand that SkyHi Properties are evolving. As a result, SkyHi may require you to accept updates to SkyHi Properties that you have installed on your mobile device. You acknowledge and agree that SkyHi may update SkyHi Properties with or without notifying you. You may need to update third-party software from time to time in order to use SkyHi Properties.

(c) **Restrictions on Use of Services.** The rights granted to you in the Terms are subject to the following restrictions: (a) you shall not license, sell, rent, lease, transfer, assign, reproduce, distribute, host or otherwise commercially exploit SkyHi Proper-

ties or any portion of SkyHi Properties; (b) you shall not frame or utilize framing techniques to enclose any trademark, logo, or other SkyHi Properties (including images, text, page layout or form) of SkyHi; (c) you shall not use any metatags or other “hidden text” using SkyHi’s name or trademarks; (d) you shall not modify, translate, adapt, merge, make derivative works of, disassemble, decompile, reverse compile or reverse engineer any part of SkyHi Properties except to the extent the foregoing restrictions are expressly prohibited by applicable law; (e) you shall not use any manual or automated software, devices or other processes (including but not limited to spiders, robots, scrapers, crawlers, avatars, data mining tools or the like) to “scrape” or download data from any web pages contained in the Website (except that we grant the operators of public search engines revocable permission to use spiders to copy materials from the Website for the sole purpose of and solely to the extent necessary for creating publicly available searchable indices of the materials, but not caches or archives of such materials); (f) you shall not access SkyHi Properties in order to build a similar or competitive website, application or service; (g) except as expressly stated herein, no part of SkyHi Properties may be copied, reproduced, distributed, republished, downloaded, displayed, posted or transmitted in any form or by any means; and (h) you shall not remove or destroy any copyright notices or other proprietary markings contained on or in SkyHi Properties. Any unauthorized use of SkyHi Properties terminates the licenses granted by SkyHi pursuant to the Terms.

7. **Third-Party Services.**

7.1. **Third-Party Websites & Applications.** SkyHi Properties may contain links to third-party websites (“**Third-Party Websites**”) and applications (“**Third-Party Applications**”). When you click on a link to a Third-Party Website or Third-Party Application, we will not warn you that you have left SkyHi Properties and are subject to the terms and conditions (including privacy policies) of another website or destination. Such Third-Party Websites and Third-Party Applications are not under the control of SkyHi. SkyHi is not responsible for any Third-Party Websites or Third-Party Applications. SkyHi provides these Third-Party Websites and Third-Party Applications only as a convenience and does not review, approve, monitor, endorse, warrant, or make any representations with respect to Third-Party Websites, Third-Party Applications, or their products or services. You use all links in Third-Party Websites and Third-Party Applications at your own risk. When you leave our Website, our Terms and policies no longer govern. You should review applicable terms and policies, including privacy and data gathering practices, of any Third-Party Websites or Third-Party Applications, and should make whatever investigation you feel necessary or appropriate before proceeding with any transaction with any third party.

7.2. **App Stores.** You acknowledge and agree that the availability of the Application and the Services is dependent on the third party from whom you received the Application license, e.g., the Apple App Store or Google Play (“**App Store**”). You acknowledge that the Terms are between you and SkyHi and not with the App Store. SkyHi, not the App Store, is solely responsible for SkyHi Properties, including the Application, the content thereof, maintenance, support services, and warranty therefor, and addressing any claims relating thereto (e.g., product liability, legal compliance or intellectual property infringement). In order to use the Application, you must have access to a wireless network, and you agree to pay all fees associated with such access. You also agree to pay all fees (if any) charged by the App Store in connection with SkyHi Properties, including the Application. You agree to comply with, and your license to use the Application is

conditioned upon your compliance with, all applicable third-party terms of agreement (e.g., the App Store's terms and policies) when using SkyHi Properties, including the Application. You acknowledge that the App Store (and its subsidiaries) are third-party beneficiaries of the Terms and will have the right to enforce them.

7.3. **Accessing and Download the Application from iTunes.** The following applies to any App Store Sourced Application accessed through or downloaded from the Apple App Store:

(a) You acknowledge and agree that (i) the Terms are concluded between you and SkyHi only, and not Apple, and (ii) SkyHi, not Apple, is solely responsible for the App Store Sourced Application and content thereof. Your use of the App Store Sourced Application must comply with the App Store Terms of Service.

(b) You acknowledge that Apple has no obligation whatsoever to furnish any maintenance and support services with respect to the App Store Sourced Application.

(c) In the event of any failure of the App Store Sourced Application to conform to any applicable warranty, you may notify Apple, and Apple will refund the purchase price for the App Store Sourced Application to you and to the maximum extent permitted by applicable law, Apple will have no other warranty obligation whatsoever with respect to the App Store Sourced Application. As between SkyHi and Apple, any other claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to any warranty will be the sole responsibility of SkyHi.

(d) You and SkyHi acknowledge that, as between SkyHi and Apple, Apple is not responsible for addressing any claims you have or any claims of any third party relating to the App Store Sourced Application or your possession and use of the App Store Sourced Application, including, but not limited to: (i) product liability claims; (ii) any claim that the App Store Sourced Application fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection or similar legislation.

(e) You and SkyHi acknowledge that, in the event of any third-party claim that the App Store Sourced Application or your possession and use of that App Store Sourced Application infringes that third party's intellectual property rights, as between SkyHi and Apple, SkyHi, not Apple, will be solely responsible for the investigation, defense, settlement and discharge of any such intellectual property infringement claim to the extent required by the Terms.

(f) You and SkyHi acknowledge and agree that Apple, and Apple's subsidiaries, are third-party beneficiaries of the Terms as related to your license of the App Store Sourced Application, and that, upon your acceptance of the terms and conditions of the Terms, Apple will have the right (and will be deemed to have accepted the right) to enforce the Terms as related to your license of the App Store Sourced Application against you as a third-party beneficiary thereof. Without limiting any other terms of the Terms, you must comply with all applicable third-party terms of agreement when using the App Store Sourced Application.

8. **Referral Program.** These are the terms and conditions applicable to SkyHi's referral program (the "**Referral Program**"). Under the Referral Program, we offer our users the opportunity to provide their friends, family or other individuals with a unique referral ID

link that a prospective member can use to sign up for the Services. TO PARTICIPATE IN THIS REFERRAL PROGRAM, YOU MUST AGREE TO THESE REFERRAL PROGRAM TERMS AND CONDITIONS (“**REFERRAL TERMS**”), AS WELL AS THE OTHER TERMS AND CONDITIONS OF THESE TERMS AND THE PRIVACY POLICY.

8.1. **Right to Suspend or Terminate Referral Terms.** SkyHi reserves the right to suspend or terminate the Referral Program or a user’s ability to participate in the Referral Program at any time for any reason. Without limiting the foregoing rights, we reserve the right to disqualify you from participating in this Referral Program at any time at our discretion if you fail to comply with these Referral Terms. Violations of these Referral Terms may also result in the forfeiture of all Referral Credits you previously earned through this Referral Program. We reserve the right to review and investigate all referral activities and to suspend accounts or modify rewards in our sole discretion, as we deem fair and appropriate.

8.2. **Eligibility.** Eligibility to participate in this Referral Program is limited to individual consumers who are eligible to use the Services. This Referral Program cannot be used by businesses for affiliate lead generation or other commercial purposes. Employees, officers, directors, contractors, agents, and representatives of SkyHi are not eligible to participate in the Referral Program.

8.3. **Qualifying Referrals.** You can earn thirty-five dollars (US \$35) of credit (“**Referral Credit**”) to use toward your future bookings on the Website or Application each time you refer a potential customer (each, a “**Referred Customer**”) to register and claim a seat on a flight through the Website or Application by sending such Referred Customer your unique referral link via email, text message, Twitter, Facebook, or another method that is permitted by these Referral Terms (“**Referral Link**”). If the potential customer does not click on the Referral Link and complete the registration and subscription purchase process during a Website or Application visit initiated through your Referral Link, then such potential customer will not be considered a Referred Customer, and you will not receive Referral Credit. We will have no liability to you for such Referral Credit, because there is no discernible way to identify that the purchase resulted from your referral.

8.4. **Referral Credits.** Referral Credits are redeemable only for purchases made on the Website or Application, and are issued in increments of thirty-five dollars (US \$35) unless explicitly noted otherwise in an offer. Referral Credits have no cash value, can only be redeemed for booking fees in connection with claiming a seat on a flight through the Website or Application, may be subject to expiration dates or other restrictions in our sole discretion, and may be revoked at any time. Referral Credits cannot, under any circumstances, be redeemed for cash or any cash equivalent including, without limitation, gift cards or refunds. Referral Credits are not transferable and may not be auctioned, traded, bartered or sold. Please allow up to three (3) business days for Referral Credit to be added to your account after your Referred Customer completes a qualifying order. You are responsible for any and all tax liability resulting from Referral Credits. You are limited to one Referral Credit per Referred Customer. For clarity, additional or repeat purchases made by a Referred Customer are *not* counted as additional Referred Customers and will not earn Referral Credits.

8.5. **Sharing Referral Links.** This Referral Program may be used only for personal purposes and you may share your Referral Link only with your personal connections. We

reserve the right to revoke or refuse to issue any Referral Credits for Referred Customers we suspect were generated through improper channels or otherwise in violation of these Referral Terms.

8.6. **No Spam.** If you share your Referral Link to friends or potential customers via email, your emails must: be created and distributed in a personal manner, not be distributed in a bulk manner, and not be an unsolicited commercial email or a 'spam' message under any applicable law or regulation. Any messages that do not abide by the requirements set forth in the previous sentence are expressly prohibited and constitute grounds for immediate termination of your customer account and exclusion from this Referral Program. Purchases on the Website or Application made through a Referral Link that was distributed through an unauthorized channel will not result in Referred Customers, and, if discovered, any Referral Credits issued in connection with such transactions may be revoked.

8.7. **Termination and Changes.** We reserve the right to deactivate your customer account and a Referred Customer's account, cancel all related Referral Credits, and request proper payment if we determine, in our sole discretion, that you or the Referred Customer:

- (a) has tampered with this Referral Program;
- (b) has used (or attempted to use) this Referral Program in a fraudulent, abusive, unethical, unsportsmanlike or otherwise questionable or suspicious manner;
- (c) has breached any of these Referral Terms; or
- (d) has violated any law, statute, or governmental regulation.

We also reserve the right to cancel this Referral Program or change these Referral Terms at any time and for any reason in our sole discretion. If we cancel our Referral Program, any unused Referral Credits will be forfeited at that time.

8.8. **Release.** By participating in the Referral Program, you agree to release and hold harmless SkyHi, and its affiliates, suppliers, partners, parent companies, subsidiaries, employees, contractors, directors, officers, agents, and representatives, from any and all economic liabilities, claims, damages, loss, harm, costs or expenses, including without limitation property damage, that arise from or relate to in any way the Referral Program and/or use or misuse of Referral Credits. THIS SECTION 8 APPLIES ONLY TO ECONOMIC DAMAGES AND DOES NOT APPLY TO CLAIMS OF FRAUD OR PERSONAL INJURY.

8.9. **Questions.** If you have any questions about these Referral Terms or our Referral Program, please contact us at support@flyskyhi.com.

9. **Promotional Credits.** From time to time, SkyHi may choose to issue a certain number of credits ("**Credits**") to your account. In addition to any specific rules and descriptions for each issuance of Credits, which are incorporated herein, the following terms apply. Credits, the number of Credits, and the redemption value of Credits and any restrictions on the use of Credits, are issued at SkyHi's sole discretion to the fullest extent of the law. Any Credits issued shall be automatically redeemed at checkout the next time you are

charged a booking fee for claiming a seat on a flight through the Website or Application. To the fullest extent of the law, Credits automatically expire and are forfeited at the date that is one (1) year after the date such Credits are issued AND THERE IS NO DORMANCY FEE. Credits are only valid for redemption on booking fees in connection with the Services and are void where prohibited or restricted by law. Credits are promotional in nature and are not legal tender. Credits are non-transferable, non-exchangeable, have no value and cannot be used for cash back or sold. SkyHi reserves the right, in its sole discretion at any time, to void any Credits, or to cancel, suspend, terminate or modify any aspect of Credits, with or without notice to you. By accepting Credits, you agree to release and hold harmless SkyHi, and its affiliates, suppliers, partners, parent companies, subsidiaries, employees, contractors, directors, officers, agents, and representatives, from any and all economic liabilities, claims, damages, loss, harm, costs or expenses, including without limitation property damage, that arise from or relate to in any way the Credits and/or use or misuse of Credits. THIS SECTION 9 APPLIES ONLY TO ECONOMIC DAMAGES AND DOES NOT APPLY TO CLAIMS OF FRAUD OR PERSONAL INJURY.

- 10. Indemnification.** You agree to indemnify and hold SkyHi, its parents, subsidiaries, affiliates, officers, employees, agents, partners and licensors (collectively, the “**SkyHi Parties**”) harmless from any losses, costs, liabilities and expenses (including reasonable attorneys’ fees) relating to or arising out of: (a) Your Content; (b) your use of, or inability to use, SkyHi Properties; (c) your violation of the Terms; (d) your violation of any rights of another party, including any users; or (e) your violation of any applicable laws, rules or regulations. SkyHi reserves the right, at its own cost, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you, in which event you will fully cooperate with SkyHi in asserting any available defenses. This provision does not require you to indemnify any of the SkyHi Parties for any unconscionable commercial practice by such party or for such party’s fraud, deception, false promise, misrepresentation or concealment, suppression or omission of any material fact in connection with the SkyHi Properties. You agree that the provisions in this section will survive any termination of your Account, the Terms or your access to SkyHi Properties.

11. Disclaimer of Warranties and Conditions.

11.1. **As Is.** YOU EXPRESSLY UNDERSTAND AND AGREE THAT TO THE EXTENT PERMITTED BY APPLICABLE LAW, YOUR USE OF SKYHI PROPERTIES IS AT YOUR SOLE RISK, AND SKYHI PROPERTIES ARE PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS, WITH ALL FAULTS. SKYHI PARTIES EXPRESSLY DISCLAIM ALL WARRANTIES, REPRESENTATIONS, AND CONDITIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT. SKYHI PARTIES MAKE NO WARRANTY, REPRESENTATION OR CONDITION THAT: (1) SKYHI PROPERTIES WILL MEET YOUR REQUIREMENTS OR (2) YOUR USE OF SKYHI PROPERTIES WILL BE UNINTERRUPTED, TIMELY, SECURE OR ERROR-FREE. THE SERVICES MAY BE SUBJECT TO DELAYS, CANCELLATIONS AND OTHER DISRUPTIONS. SKYHI MAKES NO WARRANTY, REPRESENTATION OR CONDITION WITH RESPECT TO SERVICES, INCLUDING BUT NOT LIMITED TO, THE QUALITY, EFFECTIVENESS, REPUTATION AND OTHER CHARACTERISTICS OF SERVICES.

11.2. **No Liability for Conduct of Third Parties.** YOU ACKNOWLEDGE AND AGREE THAT SKYHI PARTIES ARE NOT LIABLE, AND YOU AGREE NOT TO SEEK TO HOLD SKYHI PARTIES LIABLE, FOR THE CONDUCT OF THIRD PARTIES, INCLUDING WITHOUT LIMITATION, AIR CARRIERS.

11.3. **No Liability for Conduct of Other Users.** YOU ARE SOLELY RESPONSIBLE FOR ALL OF YOUR COMMUNICATIONS AND INTERACTIONS WITH OTHER USERS OF SKYHI PROPERTIES. YOU UNDERSTAND THAT SKYHI DOES NOT MAKE ANY ATTEMPT TO VERIFY THE STATEMENTS OF USERS OF SKYHI PROPERTIES.

12. **Limitation of Liability.**

12.1. **Disclaimer of Certain Damages.** YOU UNDERSTAND AND AGREE THAT IN NO EVENT SHALL SKYHI PARTIES BE LIABLE FOR ANY LOSS OF PROFITS, REVENUE OR DATA, INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH SKYHI PROPERTIES, OR DAMAGES OR COSTS DUE TO LOSS OF PRODUCTION OR USE, BUSINESS INTERRUPTION, PROCUREMENT OF SUBSTITUTE SERVICES, WHETHER OR NOT SKYHI HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, ARISING OUT OF OR IN CONNECTION WITH THE TERMS, OR FROM ANY COMMUNICATIONS, INTERACTIONS OR MEETINGS WITH OTHER USERS OF SKYHI PROPERTIES, ON ANY THEORY OF LIABILITY, RESULTING FROM: (1) THE USE OR INABILITY TO USE SKYHI PROPERTIES; (2) THE COST OF PROCUREMENT OF SUBSTITUTE SERVICES, INCLUDING WITHOUT LIMITATION, ANY ADDITIONAL ACCOMMODATIONS OR TRAVEL ARRANGEMENTS; (3) UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR TRANSMISSIONS OR DATA; (4) STATEMENTS OR CONDUCT OF ANY THIRD PARTY; OR (5) ANY OTHER MATTER RELATED TO SKYHI PROPERTIES, WHETHER BASED ON WARRANTY, COPYRIGHT, CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR ANY OTHER LEGAL THEORY.

12.2. **Cap on Liability.** UNDER NO CIRCUMSTANCES WILL SKYHI PARTIES BE LIABLE TO YOU FOR MORE THAN THE GREATER OF (A) THE TOTAL AMOUNT PAID TO SKYHI BY YOU DURING THE ONE-MONTH PERIOD PRIOR TO THE ACT, OMISSION OR OCCURRENCE GIVING RISE TO SUCH LIABILITY AND (B) THE REMEDY OR PENALTY IMPOSED BY THE STATUTE UNDER WHICH SUCH CLAIM ARISES.

12.3. **Liability Limitation.** THE FOREGOING CAP ON LIABILITY SHALL NOT APPLY TO LIABILITY OF A SKYHI PARTY FOR (A) DEATH OR PERSONAL INJURY CAUSED BY A SKYHI PARTY'S NEGLIGENCE OR FOR (B) ANY INJURY CAUSED BY A SKYHI PARTY'S FRAUD OR FRAUDULENT MISREPRESENTATION.

12.4. **User Content.** EXCEPT FOR SKYHI'S OBLIGATIONS TO PROTECT YOUR PERSONAL DATA AS SET FORTH IN THE SKYHI'S PRIVACY POLICY, SKYHI ASSUMES NO RESPONSIBILITY FOR THE TIMELINESS, DELETION, MIS-DELIVERY OR FAILURE TO STORE ANY CONTENT, USER COMMUNICATIONS OR PERSONALIZATION SETTINGS.

12.5. **Basis of the Bargain.** THE LIMITATIONS OF DAMAGES SET FORTH ABOVE ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN SKYHI AND YOU.

13. **Procedure for Making Claims of Copyright Infringement.** If you believe that your work has been copied and posted on SkyHi Properties in a way that constitutes copyright infringement, please provide our Copyright Agent with the following information: (1) an electronic or physical signature of the person authorized to act on behalf of the owner of the copyright interest; (2) a description of the copyrighted work that you claim has been infringed; (3) a description of the location on SkyHi Properties of the material that you claim is infringing; (4) your address, telephone number and e-mail address; (5) a written statement by you that you have a good faith belief that the disputed use is not authorized by the copyright owner, its agent or the law; and (6) 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. Contact information for SkyHi's Copyright Agent for notice of claims of copyright infringement is as follows: Copyright Agent, 13614 Sunset Drive, Apple Valley, CA 92308.
14. **Termination.** At its sole discretion, SkyHi may modify or discontinue the Website, Application, and/or Services, or may modify, suspend or terminate your access to the foregoing, for any reason, with or without notice to you and without liability to you or any third party. In addition to suspending or terminating your access, SkyHi reserves the right to take appropriate legal action, including without limitation, cooperating with legal authorities and pursuing civil, criminal or injunctive redress. Even after your right to use the Website, Application, and/or Services is terminated, these Terms will remain enforceable against you and unpaid amounts you owe to SkyHi for subscriptions purchased will remain due.
15. **International Users.** SkyHi Properties can be accessed from countries around the world and may contain references to Services that are not available in your country. These references do not imply that SkyHi intends to announce such Services in your country. SkyHi Properties are controlled and offered by SkyHi from its facilities in the United States of America. SkyHi makes no representations that SkyHi Properties are appropriate or available for use in other locations. Those who access or use SkyHi Properties from other countries do so at their own volition and are responsible for compliance with local law.
16. **Dispute Resolution.** *Please read the following arbitration agreement in this Section ("Arbitration Agreement") carefully. It requires you to arbitrate disputes with SkyHi and limits the manner in which you can seek relief from us.*

16.1. Applicability of Arbitration Agreement. You agree that any dispute or claim relating in any way to your access or use of the SkyHi Properties or to any aspect of your relationship with SkyHi, will be resolved by binding arbitration, rather than in court, except that (1) you may assert claims in small claims court if your claims qualify, so long as the matter remains in such court and advances only on an individual (non-class, non-representative) basis; and (2) you or SkyHi may seek equitable relief in court for infringement or other misuse of intellectual property rights (such as trademarks, trade dress, domain names, trade secrets, copyrights, and patents). **This Arbitration Agreement shall apply, without limitation, to all claims that arose or were asserted before the effective date of this Terms of Use or any prior version of this Terms of Use.**

IF YOU AGREE TO ARBITRATION WITH SKYHI, YOU ARE AGREEING IN ADVANCE THAT YOU WILL NOT PARTICIPATE IN OR SEEK TO RECOVER MONETARY OR OTHER RELIEF IN ANY LAWSUIT FILED AGAINST SKYHI ALLEGING CLASS,

COLLECTIVE, AND/OR REPRESENTATIVE CLAIMS ON YOUR BEHALF. INSTEAD, BY AGREEING TO ARBITRATION, YOU MAY BRING YOUR CLAIMS AGAINST THE SKYHI IN AN INDIVIDUAL ARBITRATION PROCEEDING. IF SUCCESSFUL ON SUCH CLAIMS, YOU COULD BE AWARDED MONEY OR OTHER RELIEF BY AN ARBITRATOR. YOU ACKNOWLEDGE THAT YOU HAVE BEEN ADVISED THAT YOU MAY CONSULT WITH AN ATTORNEY IN DECIDING WHETHER TO ACCEPT THIS AGREEMENT, INCLUDING THIS ARBITRATION AGREEMENT.

16.2. Arbitration Rules and Forum. The Federal Arbitration Act governs the interpretation and enforcement of this Arbitration Agreement. To begin an arbitration proceeding, you must send a letter requesting arbitration and describing your claim to our registered agent, The Company Corporation, 2711 Centerville Road, Suite 400, Wilmington, New Castle County, Delaware 19808. The arbitration will be conducted by JAMS, an established alternative dispute resolution provider. Disputes involving claims and counter-claims under \$250,000, not inclusive of attorneys' fees and interest, shall be subject to JAMS's most current version of the Streamlined Arbitration Rules and procedures available at <http://www.jamsadr.com/rules-streamlined-arbitration/>; all other claims shall be subject to JAMS's most current version of the Comprehensive Arbitration Rules and Procedures, available at <http://www.jamsadr.com/rules-comprehensive-arbitration/>. JAMS's rules are also available at www.jamsadr.com or by calling JAMS at 800-352-5267. If JAMS is not available to arbitrate, the parties will select an alternative arbitral forum. If the arbitrator finds that you cannot afford to pay JAMS's filing, administrative, hearing and/or other fees and cannot obtain a waiver from JAMS, SkyHi will pay them for you. In addition, SkyHi will reimburse all such JAMS's filing, administrative, hearing and/or other fees for claims totaling less than \$10,000 unless the arbitrator determines the claims are frivolous. Likewise, SkyHi will not seek attorneys' fees and costs in arbitration unless the arbitrator determines the claims are frivolous.

You may choose to have the arbitration conducted by telephone, based on written submissions, or in person in the country where you live or at another mutually agreed location. Any judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction.

16.3. Authority of Arbitrator. The arbitrator, and not any federal, state or local court or agency shall have exclusive authority to resolve any dispute related to the interpretation, applicability, enforceability or formation of this Arbitration Agreement including, but not limited to any claim that all or any part of this Arbitration Agreement is void or voidable. The arbitration will decide the rights and liabilities, if any, of you and SkyHi. The arbitration proceeding will not be consolidated with any other matters or joined with any other cases or parties. The arbitrator shall have the authority to grant motions dispositive of all or part of any claim. The arbitrator shall have the authority to award monetary damages and to grant any non-monetary remedy or relief available to an individual under applicable law, the arbitral forum's rules, and the Agreement (including the Arbitration Agreement). The arbitrator shall issue a written award and statement of decision describing the essential findings and conclusions on which the award is based, including the calculation of any damages awarded. The arbitrator has the same authority to award relief on an individual basis that a judge in a court of law would have. The award of the arbitrator is final and binding upon you and us.

16.4. Waiver of Jury Trial. YOU AND SKYHI HEREBY WAIVE ANY CONSTITUTIONAL AND STATUTORY RIGHTS TO SUE IN COURT AND HAVE A TRIAL IN FRONT OF A JUDGE OR A JURY. You and SkyHi are instead electing that all claims and disputes shall be resolved by arbitration under this Arbitration Agreement, except as specified in Section 16.1 above. An arbitrator can award on an individual basis the same damages and relief as a court and must follow this Terms of Use as a court would. However, there is no judge or jury in arbitration, and court review of an arbitration award is subject to very limited review.

16.5. Waiver of Class or Consolidated Actions. ALL CLAIMS AND DISPUTES WITHIN THE SCOPE OF THIS ARBITRATION AGREEMENT MUST BE ARBITRATED ON AN INDIVIDUAL BASIS AND NOT ON A CLASS BASIS, ONLY INDIVIDUAL RELIEF IS AVAILABLE, AND CLAIMS OF MORE THAN ONE CUSTOMER OR USER CANNOT BE ARBITRATED OR CONSOLIDATED WITH THOSE OF ANY OTHER CUSTOMER OR USER. In the event that this subparagraph is deemed invalid or unenforceable neither you nor we are entitled to arbitration and instead claims and disputes shall be resolved in a court as set forth in Section 17.6.

16.6. 30-Day Right to Opt Out. You have the right to opt out of the provisions of this Arbitration Agreement by sending written notice of your decision to opt out to the following address: SkyHi Travel, Inc., 13614 Sunset Drive, Apple Valley, CA 92308, Attn: Support or support@flyskyhi.com, within 30 days after first becoming subject to this Arbitration Agreement. Your notice must include your name and address, the email address you used to set up your SkyHi account (if you have one), and an unequivocal statement that you want to opt out of this Arbitration Agreement. If you opt out of this Arbitration Agreement, all other parts of this Agreement will continue to apply to you. Opting out of this Arbitration Agreement has no effect on any other arbitration agreements that you may currently have, or may enter in the future, with us.

16.7. Severability. If any part or parts of this Arbitration Agreement are found under the law to be invalid or unenforceable, then such specific part or parts shall be of no force and effect and shall be severed and the remainder of the Arbitration Agreement shall continue in full force and effect.

16.8. Survival of Agreement. This Arbitration Agreement will survive the termination of your relationship with SkyHi.

16.9. Modification. Notwithstanding any provision in this Terms of Use to the contrary, we agree that if SkyHi makes any future material change to this Arbitration Agreement, it will not apply to any individual claim(s) that you had already provided notice of to SkyHi.

17. **General Provisions.**

17.1. **Electronic Communications.** The communications between you and SkyHi use electronic means, whether you visit SkyHi Properties or send SkyHi e-mails, or whether SkyHi posts notices on SkyHi Properties or communicates with you via e-mail. For contractual purposes, you (1) consent to receive communications from SkyHi in an electronic form; and (2) agree that all terms and conditions, agreements, notices, disclosures, and other communications that SkyHi provides to you electronically satisfy any legal requirement that such communications would satisfy if it were to be in writing. The foregoing does not affect your statutory rights.

17.2. **Release.** You hereby release SkyHi Parties and their successors from claims, demands, any and all losses, damages, rights, and actions of any kind, including personal injuries, death, and property damage, that is either directly or indirectly related to or arises from your use of SkyHi Properties, including but not limited to, any interactions with or conduct of other users or third-party websites of any kind arising in connection with or as a result of the Terms or your use of SkyHi Properties. If you are a California resident, you hereby waive California Civil Code Section 1542, which states, "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which, if known by him or her must have materially affected his or her settlement with the debtor." The foregoing release does not apply to any claims, demands, or any losses, damages, rights and actions of any kind, including personal injuries, death or property damage for any unconscionable commercial practice by a SkyHi Party or for such party's fraud, deception, false, promise, misrepresentation or concealment, suppression or omission of any material fact in connection with the SkyHi Properties.

17.3. **Assignment.** The Terms, and your rights and obligations hereunder, may not be assigned, subcontracted, delegated or otherwise transferred by you without SkyHi's prior written consent, and any attempted assignment, subcontract, delegation, or transfer in violation of the foregoing will be null and void.

17.4. **Force Majeure.** SkyHi shall not be liable for any delay or failure to perform resulting from causes outside its reasonable control, including, but not limited to, acts of God, war, terrorism, riots, embargos, acts of civil or military authorities, fire, floods, accidents, strikes or shortages of transportation facilities, fuel, energy, labor or materials.

17.5. **Questions, Complaints, Claims.** If you have any questions, complaints or claims with respect to SkyHi Properties, please contact us at SkyHi, Inc., 13614 Sunset Drive, Apple Valley, CA 92308, Attn: Support; (844) 467-5944; or support@flyskyhi.com. We will do our best to address your concerns. If you feel that your concerns have been addressed incompletely, we invite you to let us know for further investigation.

17.6. **Exclusive Venue.** To the extent the parties are permitted under this Agreement to initiate litigation in a court, both you and SkyHi agree that all claims and disputes arising out of or relating to the Agreement will be litigated exclusively in the state courts located in San Bernardino County, California and the federal courts located in the Central District of California.

17.7. **Governing Law.** THE TERMS AND ANY ACTION RELATED THERETO WILL BE GOVERNED AND INTERPRETED BY AND UNDER THE LAWS OF THE STATE OF CALIFORNIA, CONSISTENT WITH THE FEDERAL ARBITRATION ACT, WITHOUT GIVING EFFECT TO ANY PRINCIPLES THAT PROVIDE FOR THE APPLICATION OF THE LAW OF ANOTHER JURISDICTION.

17.8. **Choice of Language.** It is the express wish of the parties that these Terms, and any contract between us, are only in the English language. C'est la volonté expresse des parties que la presente convention ainsi que les documents qui s'y rattachent soient rediges en anglais.

17.9. **Notice.** Where SkyHi requires that you provide an e-mail address, you are responsible for providing SkyHi with your most current e-mail address. In the event that

the last e-mail address you provided to SkyHi is not valid, or for any reason is not capable of delivering to you any notices required/ permitted by the Terms, SkyHi's dispatch of the e-mail containing such notice will nonetheless constitute effective notice. You may give notice to SkyHi at the following address: SkyHi Travel, Inc., 13614 Sunset Drive, Apple Valley, CA 92308, Attn: Support. Such notice shall be deemed given when received by SkyHi by letter delivered by nationally recognized overnight delivery service or first class postage prepaid mail at the above address.

17.10. **Waiver.** Any waiver or failure to enforce any provision of the Terms on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

17.11. **Severability.** Subject to Section 16.7, if any portion of this Agreement is held invalid or unenforceable, that portion shall be construed in a manner to reflect, as nearly as possible, the original intention of the parties, and the remaining portions shall remain in full force and effect.

17.12. **Export Control.** You may not use, export, import, or transfer SkyHi Properties except as authorized by U.S. law, the laws of the jurisdiction in which you obtained SkyHi Properties, and any other applicable laws. In particular, but without limitation, SkyHi Properties may not be exported or re-exported (a) into any United States embargoed countries, or (b) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce's Denied Person's List or Entity List. By using SkyHi Properties, you represent and warrant that (i) you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country and (ii) you are not listed on any U.S. Government list of prohibited or restricted parties. You also will not use SkyHi Properties for any purpose prohibited by U.S. law, including the development, design, manufacture or production of missiles, nuclear, chemical or biological weapons. You acknowledge and agree that products, services or technology provided by SkyHi are subject to the export control laws and regulations of the United States. You shall comply with these laws and regulations and shall not, without prior U.S. government authorization, export, re-export, or transfer SkyHi products, services or technology, either directly or indirectly, to any country in violation of such laws and regulations.

17.13. **Consumer Complaints.** In accordance with California Civil Code §1789.3, you may report complaints to the Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs by contacting them in writing at 400 R Street, Sacramento, CA 95814, or by telephone at (800) 952-5210.

17.14. **Entire Agreement.** The Terms are the final, complete and exclusive agreement of the parties with respect to the subject matter hereof and supersedes and merges all prior discussions between the parties with respect to such subject matter.

18. Terms specific to users in Europe.

a) **General.** These Terms shall apply to you only insofar as they are enforceable under the applicable laws of the jurisdiction in which you use the SkyHi Properties or are ordinarily resident.

b) **Disappplied clauses.** To the extent that they are not enforceable under the applicable laws of the jurisdiction in which you use the SkyHi Properties or are ordinarily resident, the following Sections of the Terms shall not apply to you:

i.Paragraphs 2 and 3 of the Preamble to the Terms;

ii.Section 10 (*Indemnification*);

iii.Section 16 (*Dispute Resolution*);

iv.Sub-section 17.2 (*Release*) of Section 17 (*General Provisions*); and

v.Sub-section (17.14) (*Entire Agreement*) of Section 17 (*General Provisions*).

c) **Revised clauses.** The Sections of the Terms listed below shall be deleted and replaced as follows:

i.Section 11 (*Disclaimer of Warranties and Conditions*) shall be deleted in its entirety and replaced with the following:

"9. Disclaimer of Warranties. You expressly understand and agree that to the extent permitted by applicable law your use of the SkyHi Properties is at your sole risk, and the SkyHi Properties are provided on an "as is" and "as available" basis and they have not been developed to meet your individual requirements, and that it is therefore your responsibility to ensure that the facilities and functions of SkyHi meet your requirements. To the extent you deal with us as, or on behalf of a business, SkyHi expressly disclaim all warranties, representations, and conditions of any kind, whether express or implied, including, but not limited to, the implied warranties or conditions of satisfactory quality, fitness for a particular purpose and non-infringement."

ii. Sub-section 1.1 of Section 1 (*Subscription Fee Terms*) shall be deleted and replaced with the following:

“1.1 Automatic Renewal. Unless you notify us before renewal that you want to cancel or you set your account to not auto renew by logging into and going to the “Change/Cancel Membership” page of your “Account Settings” page or by contacting SkyHi at support@flyskyhi.com or (844) 467-5944, your subscription will continue indefinitely until terminated in accordance with the Terms and you authorize us to collect the then-applicable fee (including any taxes) for the renewal plan, using any payment method we have on record for you. We will send you a reminder at least 30 days before the renewal date. Our reminder to you will set out the fees for your membership that will apply following the renewal, as well as other key information. Your renewal plan will be the one we choose as being closest to your current subscription. **After your initial monthly subscription period, and again after any subsequent monthly subscription period, your subscription will automatically commence on the first day following the end of such period (each a “Renewal Commencement Date”) and continue for an additional month, at SkyHi’s then-current price for such subscription.** If you cancel your subscription, you may use your subscription until the end of the then-current month; your subscription will not be renewed after the end of such month. However, you will not be eligible for a prorated refund of any portion of the subscription fee paid for the then-current month. By subscribing, you authorize SkyHi to charge your Payment Provider (as defined in Section 1.3 below) now, and again at the beginning of any subsequent month. Upon renewal of your subscription, if SkyHi does not receive payment from your Payment Provider, (i) you agree to pay all amounts due on your Account upon demand, and/or (ii) you agree that SkyHi may either terminate or suspend your subscription and continue to attempt to charge your Payment Provider until payment is received (upon receipt of payment, your Account will be activated and for purposes of automatic renewal, your new subscription commitment period will begin as of the day payment was received).

iii. Section 12 (*Limitation of Liability*) shall be deleted in its entirety and replaced with the following:

"12. Limitation of liability.

a) **Commercial loss excluded.** Subject to sub-section (d), below, we have no liability to you for any loss of profit, loss of business, business interruption, or loss of business opportunity arising as a result, or in the course, of your use of the SkyHi Properties for any commercial, business or resale purposes.

b) **Only foreseeable loss covered.** To the extent that we may be liable to you for loss you suffer as a result of your non-commercial use of the SkyHi Properties, we are only responsible for loss or damage you suffer that is a foreseeable result of our breach of the Terms or our negligence up to the limit specified in sub-section (c), below. We are not responsible for any unforeseeable loss or damage you may suffer.

c) **Cap on liability.** Subject to sub-section (d), below, our maximum aggregate liability under or in connection with the Terms whether in contract, tort (including negli-

gence) or otherwise, shall in all circumstances be limited to one hundred US Dollars (US \$100).

d) **What we do not exclude**. Nothing in the Terms shall limit or exclude SkyHi liability for:

- our willful misconduct;
- death or personal injury resulting from our negligence;
- fraud or fraudulent misrepresentation;
- our breach of any terms implied by section 46 (*remedy for damage to device or to other digital content*) of the UK Consumer Rights Act 2015 or any equivalent provision of consumer-protection law implemented elsewhere in the European Union; or
- any other liability that cannot be excluded or limited by applicable law.”

e) **Additional Provisions**. The following terms shall be added in replacement of Sections 17.6 and 17.7:

Choice of Law and Venue. Please note that the Terms, their subject matter and their formation, are governed by English law. We both agree that the courts of England will have non-exclusive jurisdiction. However, if you are a resident of a country elsewhere in Europe, nothing in this section will prevent you from bringing proceedings in the jurisdiction in which you are ordinarily resident.”

19. Terms specific to users in Canada.

a) **General**. These Terms shall apply to you only insofar as they are enforceable under the applicable laws of the province in which you are located when you use the SkyHi Properties.

b) **Disappplied clauses**. To the extent that they are not enforceable under the applicable laws of the province in which you are located when you use the SkyHi Properties (which may include the Province of Quebec), the following Sections of the Terms shall not apply to you:

i. Paragraphs 2 and 3 of the Preamble to the Terms; and

ii. Section 16 (*Dispute Resolution*);

c) **Revised clauses**. The Sections of the Terms listed below shall be deleted and replaced as follows:

i. Section 11.1 (*As Is*) shall be deleted in its entirety and replaced with the following:

"11. **As Is**. YOU EXPRESSLY UNDERSTAND AND AGREE THAT TO THE EXTENT PERMITTED BY APPLICABLE LAW (which may exclude the Province of Quebec), YOUR USE OF SKYHI PROPERTIES IS AT YOUR SOLE RISK, AND SKYHI PROPERTIES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITH ALL FAULTS. TO THE EXTENT PERMITTED BY APPLICABLE LAW (WHICH MAY EXCLUDE THE PROVINCE OF QUEBEC), SKYHI PARTIES EXPRESSLY DISCLAIM ALL WARRANTIES, REPRESENTATIONS, AND CONDITIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT. SKYHI PARTIES MAKE NO WARRANTY, REPRESENTATION OR CONDITION THAT: (1) SKYHI PROPERTIES WILL MEET YOUR REQUIREMENTS OR (2) YOUR USE OF SKYHI PROPERTIES WILL BE UNINTERRUPTED, TIMELY, SECURE OR ERROR-FREE. THE SERVICES MAY BE SUBJECT TO DELAYS, CANCELLATIONS AND OTHER DISRUPTIONS. SKYHI MAKES NO WARRANTY, REPRESENTATION OR CONDITION WITH RESPECT TO SERVICES, INCLUDING BUT NOT LIMITED TO, THE QUALITY, EFFECTIVENESS, REPUTATION AND OTHER CHARACTERISTICS OF SERVICES. Some jurisdictions do not allow the disclaimer of warranties or conditions so such disclaimers may not apply to you."

ii. Sub-section 1.1 of Section 1 (*Subscription Fee Terms*) shall be deleted and replaced with the following:

“1.1 Automatic Renewal. Unless you notify us before renewal that you want to cancel or you set your account to not auto renew by logging into and going to the “Change/Cancel Membership” page of your “Account Settings” page or by contacting SkyHi at support@flyskyhi.com or (844) 467-5944, your subscription will continue indefinitely until terminated in accordance with the Terms and you authorize us to collect the then-applicable fee (including any taxes) for the renewal plan, using any payment method we have on record for you. We will send you a reminder at least 30 days before the renewal date. Our reminder to you will set out the fees for your membership that will apply following the renewal, as well as other key information. **After your initial monthly subscription period, and again after any subsequent monthly subscription period, your subscription will automatically commence on the first day following the end of such period (each a “Renewal Commencement Date”) and continue for an additional month, at SkyHi’s then-current price for such subscription.** If you cancel your subscription, you may use your subscription until the end of the then-current month; your subscription will not be renewed after the end of such month. However, you will not be eligible for a prorated refund of any portion of the subscription fee paid for the then-current month. By subscribing, you authorize SkyHi to charge your Payment Provider (as defined in Section 1.3 below) now, and again at the beginning of any subsequent month. Upon renewal of your subscription, if SkyHi does not receive payment from your Payment Provider, (i) you agree to pay all amounts due on your Account upon demand, and/or (ii) you agree that SkyHi may either terminate or suspend your subscription and continue to attempt to charge your Payment Provider until payment is received (upon receipt of payment, your Account will be activated and for purposes of automatic renewal, your new subscription commitment period will begin as of the day payment was received).

iii. Section 16 (*Disputes*) shall be deleted in its entirety and replaced with the following:

b) **Disputes.** You must notify us in writing within seven (7) days after receiving your credit card statement (or follow such procedure as may be established by your applicable credit card issuer), if you dispute any of our charges on that statement or such dispute will be deemed waived. Billing disputes should be notified to the following address: SkyHi, Inc., 13614 Sunset Drive, Apple Valley, CA 92308.

i. Section 6.3(b) (*Updates*) shall be deleted in its entirety and replaced with the following:

b) **Updates.** You understand that SkyHi Properties are evolving. As a result, SkyHi may require you to accept updates or upgrades to continue using the Application installed on your mobile device. You acknowledge and agree that SkyHi may update or upgrade the Application with or without notifying you. The Application (and any updates and upgrades) may (i) affect or erase data, preferences or settings on your mobile device; (ii) collect personal information (as described in the Privacy Policy or as separately disclosed at the time of update/up-

grade); or (iii) cause a system to communicate with SkyHi's servers automatically to collect information about your mobile device, identify if updates or upgrades are available, or to deliver updates or upgrades. You may need to update third-party software from time to time in order to use SkyHi Properties.

ii. Section 2.4 (*Order Cancellation*) shall be deleted in its entirety and replaced with the following:

c) **Order Cancellation.** The receipt of an order number or an email order confirmation does not constitute the acceptance of an order or a confirmation of an offer to sell. If there is an error on the Services pertaining to the order (e.g. an error pertaining to the price and/or description of a subscription), then SkyHi may cancel the order and refund any fees you have prepaid for the order. If this occurs, then SkyHi will contact you so that you are aware of the situation. Your subscription will continue the following month unless you are otherwise notified by SkyHi or you cancel your subscription. Prices and availability of Services on the Website are subject to change without notice. Errors will be corrected when discovered and SkyHi reserves the right to revoke any stated offer and to correct any error, inaccuracy, or omission (including after an order has been submitted).

i. Sections 17.6 and 17.7 (*Exclusive Venue and Governing Law*) shall be deleted in their entirety and replaced with the following:

Choice of Law and Venue. Except as restricted by applicable law (which may include the Province of Quebec), these Terms are governed by the laws of the State of California. Except as restricted by applicable law (which may include the Province of Quebec), both you and SkyHi agree that all claims and disputes arising out of or relating to the Agreement will be litigated exclusively in the state courts located in San Bernardino County, California and the federal courts located in the Central District of California.

ii. Section 12.1 (*Disclaimer of Certain Damages*) shall be deleted in its entirety and replaced with the following:

"12.1 Disclaimer of Certain Warranties. YOU UNDERSTAND AND AGREE THAT IN NO EVENT SHALL SKYHI PARTIES BE LIABLE FOR ANY LOSS OF PROFITS, OPPORTUNITY, REVENUE OR DATA, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH SKYHI PROPERTIES, OR DAMAGES OR COSTS DUE TO LOSS OF PRODUCTION OR USE, BUSINESS INTERRUPTION, PROCUREMENT OF SUBSTITUTE SERVICES, WHETHER OR NOT SKYHI HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, ARISING OUT OF OR IN CONNECTION WITH THE TERMS, OR FROM ANY COMMUNICATIONS, INTERACTIONS OR MEETINGS WITH OTHER USERS OF SKYHI PROPERTIES, ON ANY THEORY OF LIABILITY, RESULTING FROM: (1) THE USE OR INABILITY TO USE SKYHI PROPERTIES; (2) THE COST OF PROCUREMENT OF SUBSTITUTE SERVICES, INCLUDING WITHOUT LIMITATION, ANY ADDITIONAL ACCOMMODATIONS OR TRAVEL ARRANGEMENTS; (3) UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR TRANSMISSIONS OR DATA; (4) STATEMENTS OR CONDUCT OF ANY THIRD PARTY; OR (5) ANY OTHER MATTER RELATED TO SKYHI PROPERTIES, WHETHER BASED ON WARRANTY, COPYRIGHT, CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR ANY OTHER LEGAL THEORY.

End of Terms