



FlyDoc Service Agreement

This FLYDOC AGREEMENT (the "Agreement") is made and entered into by and between Esker S.A. (and any of its applicable affiliates) ("Esker") and you ("Licensee") the individual or entity who agrees and accepts the following terms and conditions by checking the box indicating such agreement on the FlyDoc website and purchasing the FlyDoc Service.

1.0 TERM

1.1 This Agreement shall become effective on the date that Licensee registers for FlyDoc and shall continue until FlyDoc is terminated by either of the parties as provided herein (the "Term").

2.0 GRANT OF LICENSE

2.1 In consideration of Licensee's payment for the prepaid usage pack ("FlyDoc Pack") and during the Term of this Agreement, Esker grants to Licensee a limited, non-exclusive license to use FlyDoc as instructed by Esker to send Licensee's Documents to Recipients via the licensed FlyDoc transport (fax, mail, email or Short Messaging Service ("SMS") (in limited areas)). "Document" as used herein means Licensee's correspondence (e.g. letter, fax, or email message) as formatted and sent to Esker by Licensee for delivery to a Recipient. "Recipient" means the Licensee-designated addressee or intended entity to whom Esker sends a Document on behalf of Licensee. This license includes the right to download and install specified computer software used in connection with FlyDoc as applicable. In the event Licensee has installed any such software, Licensee has the right to make a reasonable number of copies of it for backup, archival and disaster recovery purposes.

2.2 Esker shall provide Licensee with a username and password that will grant Licensee access to FlyDoc upon Licensee's proper registration and payment. Each FlyDoc username and password is considered the confidential information of Esker. Licensee and/or its representatives are responsible for undertaking safeguards to prevent unauthorized disclosure of any FlyDoc username or password issued to it or any of its users and recognize that this confidential information must remain under Licensee's control at all times.

3.0 FEES AND PAYMENT

3.1 All applicable fees are debited from the total amount of Licensee's purchased FlyDoc Pack during the Term and provided Licensee's FlyDoc Pack has not expired. "Usage Fees" are the per Document fees and do not include postage or taxes which are charged separately.

3.2 Documents that Licensee subsequently requests not be delivered and Undeliverable Documents are both subject to Usage Fees and the cost of postage, if applicable. "Undeliverable Document" means a Document that Esker is not able to deliver through no fault of its own.

3.3 Upon the expiration of the applicable month range associated with Licensee's purchased prepaid pack, any unused funds are forfeited to Esker. Licensee is solely responsible for purchasing FlyDoc Packs in a total amount that will permit Licensee to experience uninterrupted use of FlyDoc.

3.4 When applicable, Licensee shall pay, in addition to the other amounts payable under this Agreement, all local, state and federal excise, sales, use or similar legal taxes (but excluding any Esker income taxes) levied or imposed upon Esker as a result of the transactions under this Agreement.

4.0 FLYDOC SERVICES

4.1 When providing hosted outbound fax services, Esker will use its reasonable commercial efforts to fax the first of Licensee's Documents to Recipients within 45 minutes of receipt provided the fax is received in its entirety and is properly formatted by Licensee. In the event Esker's first attempt to fax a Document fails, Esker will make a minimum of two subsequent fax transmittal attempts. In the event the last attempt fails, the Document will be considered an Undeliverable Document and Licensee will be notified of non-delivery via the FlyDoc Manager if possible. Usage Fees for fax services are based on a one page fax billed in full sixty (60) kb increments. All transmitted fax pages greater than sixty (60) kb in size will be rounded up to the next full sixty (60) kb and invoiced accordingly. Esker shall not accept or transmit any fax Document greater than 10mb in size.

4.2 In the United States of America, when Esker provides hosted postal mail services and it receives Licensee's mail Documents by 7:00 P.M. Central Time, Esker will use its reasonable commercial efforts to deliver

such Documents to a mail collection location the next Esker business day provided Licensee's Documents are received by Esker in their entirety and properly formatted. All mail Documents are subject to local postal holidays. Postage rates are a) charged separate from the Usage Fees, b) subject to change without notice and c) charged to Licensee at the actual current first-class rate on the day of posting. Esker will not accept or mail any document greater than 10mb in size.

4.3 When providing hosted email services, Esker will use its reasonable commercial efforts to email the first of Licensee's email Documents to Recipients within ten (10) minutes of receipt provided it is received in its entirety and is properly formatted by Licensee. Usage Fees for email services are based on 300kb increments. Email Documents greater than 300kb will be rounded up to the next full 300kb. Esker shall not accept or transmit any email Document greater than ten (10) mb in size.

4.4 In the event Esker's processing of Licensee's Documents is delayed due to reasons other than Licensee's request or fault, Esker shall notify Licensee's registered Technical Contacts of the nature of the delay and Esker's planned course of action, Esker shall have no obligation to process Licensee's Documents in the event Licensee's FlyDoc Pack has insufficient funds or expires. Esker is not obligated to provide FlyDoc to Licensee when a) either party has invoked its rights under Force Majeure as defined in this Agreement; b) Licensee has requested changes to any Document(s); c) Licensee has stopped or has caused stoppage of its Documents; and d) during times of emergency or scheduled maintenance to Esker or Esker's supplier's systems.

5.0 LICENSEE'S OTHER OBLIGATIONS

5.1 Licensee is responsible for Documents while in transit to Esker. Esker may refuse to process, and may return to Licensee, any Documents or any other transmitted item(s) that in Esker's sole opinion (a) are not of a quality or condition suitable for processing based on Esker's standard specifications and procedures applicable for the same as provided to Licensee within FlyDoc or during the provision of technical support; (b) do not comply with Esker's applicable standards and procedures; or (c) are otherwise not in proper machine-readable form. Licensee is responsible for correcting rejected Documents and resubmitting the same to Esker for transmission.

5.2 Licensee is solely responsible for utilizing FlyDoc pursuant to all applicable local, state, federal, and foreign laws and regulations, including but not limited to laws and regulations pertaining to telemarketing, facsimile advertising, commercial email and personal data privacy. Licensee acknowledges and agrees that the advertisement of goods, services, or real property via the transmission of unsolicited mail, facsimiles, voice messages, text messages, or email may be in violation of state and federal laws and regulations and may subject the advertiser to penalties. Licensee will include its name and address on each Document and comply with any "do not send" or "do not call" request as applicable to the Documents. Alleged or actual breach of this provision can result in the immediate suspension of any and all FlyDoc services for Licensee or termination of this Agreement, at Esker's sole option.

5.3 Licensee agrees that neither it nor any of its representatives or agents shall transmit to Esker any unlawful, threatening, libelous, defamatory, obscene, scandalous, inflammatory, pornographic, or profane material or any material that could constitute or encourage conduct that would be considered a criminal offense, give rise to civil liability, or otherwise violate any law. Esker will fully cooperate with any law enforcement authorities or court order requesting or directing Esker to disclose the identity of anyone transmitting or posting any such information or materials.

5.4 Licensee is responsible for adopting reasonable measures to limit its exposure with respect to the potential loss and damage of its Documents, including (without limitation) examination and confirmation of Document format prior to Licensee's use of FlyDoc, provision for the identification and correction of errors and omissions, preparation and storage of backup data, replacement of lost or damaged data or media, and reconstruction of data.

6.0 ESKER'S OTHER OBLIGATIONS

6.1 Although Esker may from time-to-time monitor or review Documents, Esker is under no obligation to do so and assumes neither responsibility nor liability arising from the content of any such Documents. Esker shall

neither modify the content nor the format of any Document unless otherwise agreed to in writing by both Licensee and Esker.

6.2 Esker may make changes from time-to-time in its standards and procedures for performing the FlyDoc services at any time without notice. Esker will attempt to schedule maintenance to its systems during non-peak usage hours. Any scheduled maintenance that may result in FlyDoc being unavailable will be communicated to Licensee's Technical Contacts and/or notice will be posted on the FlyDoc website prior to the commencement of the maintenance unless maintenance is being conducted due to an emergency. Esker may subcontract any component of FlyDoc to one of its licensed providers.

7.0 CONFIDENTIAL INFORMATION

7.1 "Confidential Information" as used herein means any information relating to or disclosed in the course of the Agreement, which is or should be reasonably understood to be confidential or proprietary to the disclosing party. Confidential Information shall not include information (a) already lawfully known to the receiving party without obligation of confidentiality, (b) disclosed in published materials without fault of the receiving party, (c) generally known to the public without fault of the receiving party, (d) lawfully obtained from a third party not under any obligation to maintain the confidentiality of either party, (e) required by applicable law or regulations to be released, or (f) independently developed by receiving party, provided the person or persons developing the same have not had access to relevant proprietary information of disclosing party.

7.2 Esker acknowledges that Licensee's Documents may contain proprietary and Confidential Information. Esker agrees to keep the Documents in confidence and to take reasonable precautions to ensure that no unauthorized persons have access to the Documents and that no unauthorized copies are made.

7.3 Each party agrees that it shall not disclose to any third party any Confidential Information of the other party, which it learns during the course of its performance of this Agreement, without the prior written consent of such other party. Notwithstanding the foregoing, the receiving party may make disclosures required by court order, provided the receiving party uses reasonable efforts to limit disclosure and to obtain confidential treatment or protective order and has allowed the disclosing party to participate in the proceeding.

7.4 All of the Confidential Information provided by the disclosing party under this Agreement, including any copies or reproduction thereof, remains the exclusive property of the disclosing party. Immediately upon a request by the disclosing party at any time, the receiving party will turn over to the disclosing party all Confidential Information of the disclosing party and all documents or media containing any such Confidential Information and any and all copies or extracts thereof. In lieu of the return of such items, the disclosing party, at its sole option, may request the receiving party destroy all tangible items containing the Confidential Information and provide written certification of such destruction to the disclosing party.

7.5 Both parties shall have, in addition to other legal remedies that may be available, the right to seek equitable and injunctive relief to prevent any such unauthorized use or disclosure of Confidential Information. In the event Esker seeks relief and is successful in obtaining it, Licensee agrees to be responsible for paying all Esker's expenses in seeking such relief, including all costs of bringing suit and all reasonable attorney's fees. Obligations and rights under this section shall survive any expiration or termination of the Agreement for any reason whatsoever.

8.0 OWNERSHIP

8.1 All programs, services, processes, designs, software, technologies, trademarks, trade names, inventions and materials comprising FlyDoc are wholly owned by Esker, Esker's affiliate(s), and/or Esker's licensors and service providers except where expressly stated otherwise.

9.0 DISCLAIMER OF WARRANTIES

9.1 FLYDOC AND ALL ESKER SERVICES AND PRODUCTS LICENSED HEREIN ARE PROVIDED "AS IS", AND ESKER MAKES NO EXPRESS OR IMPLIED REPRESENTATIONS TO LICENSEE REGARDING THE USABILITY, CONDITION OR OPERATION THEREOF. ESKER DOES NOT WARRANT THAT ACCESS TO OR USE OF FLYDOC WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT FLYDOC WILL MEET ANY PARTICULAR CRITERIA OF PERFORMANCE OR QUALITY. ESKER EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE,

NON-INFRINGEMENT, COMPATIBILITY, SECURITY, OR ACCURACY. FURTHERMORE, LICENSEE WILL NOT RELY ON ANY REPRESENTATION OR WARRANTY, EXPRESSED OR IMPLIED, MADE BY ANY PERSON OTHER THAN AN AUTHORIZED OFFICER OF ESKER.

9.2 Because communication connections between Licensee and Esker are the property and responsibility of a third party, Esker does not warrant the continuity and the quality of such communication connections and no warranty herein shall be subject to the continuity and quality of the provision thereof. Communication connections are subject to suspension without notice for an undeterminable amount of time due to events beyond Esker's control and not due to its fault or negligence.

10.0 LIMITATION OF LIABILITY

10.1 LICENSEE'S USE OF FLYDOC IS AT ITS OWN RISK. LICENSEE ASSUMES FULL RESPONSIBILITY AND RISK OF LOSS RESULTING FROM LICENSEE'S DOWNLOAD AND/OR USE OF FILES OR OTHER MATERIAL (INCLUDING ANY ESKER PRODUCT) OBTAINED EITHER DIRECTLY OR INDIRECTLY FROM ESKER. LICENSEE ACKNOWLEDGES THAT USE OF FLYDOC PRESENTS THE LIKELIHOOD OF SOME HUMAN AND MACHINE ERRORS, OMISSIONS, DELAYS, AND LOSSES, INCLUDING THE INADVERTENT LOSS OF DATA WHICH MAY GIVE RISE TO LOSS OR DAMAGE. ACCORDINGLY, LICENSEE AGREES THAT EXCEPT FOR MATTERS ARISING UNDER THE SECTION ENTITLED "INDEMNIFICATION" HEREIN, UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY, TORT, CONTRACT (INCLUDING NEGLIGENCE, PRODUCT LIABILITY, AND STRICT LIABILITY) OR OTHERWISE, SHALL ESKER OR ESKER'S LICENSORS OR SERVICE PROVIDERS BE LIABLE FOR ANY INDIRECT, SPECIAL, EXEMPLARY, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY CHARACTER INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFIT, ANTICIPATED PROFITS, ANTICIPATED SAVINGS, LOSS OF GODDWILL, LOSS OF USE OF EQUIPMENT, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, DATA PROTECTION, DAMAGE TO BUSINESS OR BUSINESS RELATIONS, OR ANY AND ALL OTHER COMMERCIAL DAMAGES OR LOSSES. IN NO EVENT WILL THE TOTAL AGGREGATE LIABILITY OF ESKER FOR ANY CLAIMS, DIRECT LOSSES, OR DIRECT DAMAGES ARISING UNDER THIS AGREEMENT FOR THE SERVICES PERFORMED HEREUNDER EXCEED THE TOTAL AMOUNT PAID BY LICENSEE TO ESKER DURING THE PRECEDING THREE (3) MONTH PERIOD EVEN IF ESKER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH POTENTIAL CLAIM, LOSS, OR DAMAGE. THE FOREGOING LIMITATION OF LIABILITY AND EXCLUSION OF CERTAIN DAMAGES SHALL APPLY REGARDLESS OF THE SUCCESS OR EFFECTIVENESS OF OTHER REMEDIES. LICENSEE HEREBY RELEASES ESKER AND EACH OF ITS LICENSORS AND SERVICE PROVIDERS FROM ANY AND ALL OBLIGATIONS, LIABILITIES, AND CLAIMS IN EXCESS OF THE AFOREMENTIONED LIMITATION.

11.0 INDEMNIFICATION

11.1 Licensee shall indemnify and hold Esker its subsidiaries, affiliates, and officers harmless from and against any and all liabilities, expenses, damages, or penalties (including without limitation reasonable attorneys' fees) arising from claims based upon use of Licensee's FlyDoc account, including any violation of this Agreement by Licensee or any person using Licensee's account. Such indemnification shall include claims of: (a) libel, (b) defamation, (c) violation of privacy or publicity rights, (d) any loss of service by other FlyDoc customers, (e) any infringement of intellectual property rights by licensee or any person using Licensee's account, (f) any violation of any laws or regulations prohibiting the transmission of unsolicited faxes, mail, or email, (g) use, operation, or combination of FlyDoc with non-Esker recommended programs, data, equipment, or documentation if such infringement would have been avoided but for such use, operation or combination, or (h) Licensee or Licensee's agent's activities after Esker has notified Licensee that Esker believes such activities may result in infringement.

11.2 Esker will indemnify and hold Licensee harmless against any damages, arising out of any claim asserting that any Esker Product supplied to Licensee under this Agreement infringes any U.S. trademark, copyright, patent, trade secret, or proprietary right ("Claim"). Esker's indemnification obligation in this section shall be effective only if: (1) Licensee is not substantially in default of its payment obligations; (2) Licensee has given prompt notice of the Claim; (3) Licensee has given sole control of the defense of the Claim and all related settlement negotiations to Esker; (4) Licensee has made no admission(s) or has in

any other way prejudiced Esker's defense of the Claim; and (5) Licensee has reasonably cooperated with Esker in the defense of the Claim.

12.0 TERMINATION

12.1 Either party may terminate this Agreement for convenience by providing the other party with a minimum of forty-five (45) days advance written notice. In the event Esker terminates this Agreement and Licensee has \geq \$25.00 in unused funds in its FlyDoc Pack account such funds will be refunded to Licensee within thirty (30) days of the termination date.

12.2 If either party defaults in any of its obligations under this Agreement, the non-defaulting party, at its option shall have the right to terminate this Agreement by written notice unless, within thirty (30) calendar days after written notice of such default, the defaulting party remedies the default.

12.3 Either party shall have the right to terminate this Agreement if the other party ceases to do business in the normal course, becomes, or is declared, insolvent or bankrupt, is the subject of any liquidation or insolvency which is not dismissed within ninety (90) calendar days, or makes an assignment for the benefit of its creditors.

12.4 Upon termination or expiration of this Agreement, Licensee will cease use of, de-install, and return all of copies of the FlyDoc components under Licensee's control, if applicable. In lieu of the return of such items, Esker, at its sole option, may request Licensee destroy all such items and provide written certification of such destruction to Esker.

13.0 GENERAL PROVISIONS

13.1 Headings. Headings and titles of sections and clauses herein are for reference purposes only and are not part hereof and are not intended to be used in the interpretation hereof.

13.2 Notices. Except as otherwise noted herein, all notices, requests, reports, and other communications permitted or required to be given under this Agreement shall be deemed to have been duly given if such notice or communication shall be in writing and delivered to the parties at their addresses set forth below by one of the following methods: in person, United States certified mail (return receipt requested), facsimile with a successful transmission report, or by overnight express carrier.

13.3 No Waiver. The failure of either party to exercise any right or the waiver by either party of any breach shall not prevent a subsequent exercise of such right or be deemed a waiver of any subsequent breach of the same or any other term of the Agreement.

13.4 Assignment. Neither party may assign or otherwise transfer its rights or delegate its obligations under this Agreement without the other party's express written consent. Notwithstanding the foregoing, either party may assign this Agreement pursuant to the sale, transfer, or merger of such party's business, or that portion of such party's business corresponding to the Software or the Product; provided that the assignee agrees to be bound by all of the terms and conditions of this Agreement. The party seeking to assign this Agreement shall provide the other party written notice at least thirty (30) days prior to any proposed assignment or encumbrance. Any attempted assignment of rights or delegation of duties to a competitor of the other party is prohibited and shall be null and void.

13.5 Relationship of the Parties. No agency, partnership, joint venture, or employment is created as a result of this Agreement and neither party has any authority of any kind to bind the other in any respect whatsoever or to take any action which shall be binding on the other, except as provided herein or authorized in writing by the party to be bound.

13.6 Severability. If any provision of this Agreement shall be held to be invalid, illegal, or unenforceable by any court of competent jurisdiction, then such provision shall be enforced to the fullest extent permitted by applicable law, and the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

13.7 Force Majeure. Neither party shall be deemed in default of the Agreement to the extent that performance of their obligation or attempts to cure any breach are delayed or prevented by reason of any act of God, fire, natural disaster, accident, act of government, shortages of materials or supplies or any other cause beyond the control of such party ("Force Majeure") provided that such party gives the other party written notice thereof promptly and, in any event, within fifteen (15) business days of discovery thereof and uses its best efforts to cure the delay. In the event of such Force Majeure, the time for performance or cure shall be extended for a period equal to the duration of the Force Majeure but not in excess of three (3) months.

13.8 Governing Law. This Agreement shall be deemed to have been entered into and shall be construed, governed, and interpreted in accordance with the laws of the State of Wisconsin, without giving effect to principles of conflict of law. No provision or ambiguity shall be strictly construed against any party by virtue of having drafted or prepared the same.

13.9 Dispute Resolution. All disputes arising out of or relating to this Agreement will be submitted to binding arbitration under the Commercial Arbitration Rules (the "Rules") of the American Arbitration Association ("AAA"). One impartial arbitrator will conduct the arbitration by mutual agreement. The proceedings will be held in Madison, Wisconsin. A court reporter will record the arbitration hearing, and the reporter's transcript will be the official transcript of the proceeding. The arbitrator will have no power to add or detract from the agreements of the parties and may not make any ruling or award that does not conform to the terms and conditions of this Agreement. The award of the arbitrator will include a written explanation of the decision and specify the basis for any damage award and the types of damages awarded. The decision of the arbitrator will be final and binding on the parties and may be entered and enforced in any court of competent jurisdiction by either party. The foregoing, however, will not prevent nor limit Esker's right to apply to a court of competent jurisdiction for a temporary restraining order, preliminary or permanent injunction, or other similar equitable relief. If Esker is successful in obtaining injunctive relief, Licensee agrees to be responsible for paying all Esker's expenses in seeking such relief, including all costs of bringing suit and all reasonable attorney's fees. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES ALL RIGHT OF TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER OR NOT RELATING TO OR ARISING OUT OF THIS AGREEMENT). ANY LITIGATION ARISING OUT OF ANY DISPUTE OR CONTROVERSY BETWEEN THE PARTIES TO THIS AGREEMENT MUST BE BROUGHT WITHIN ONE (1) YEAR FROM THE FIRST DATE SUCH ACTION COULD HAVE BEEN BROUGHT. IF A LONGER PERIOD IS PROVIDED BY STATUTE, THE PARTIES HEREBY EXPRESSLY WAIVE IT.

13.10 No Third Party Beneficiaries. Esker and Licensee do not intend that this Agreement benefit or create any right or cause of action in any third person.

13.11 Survival. The following Sections, along with any other Sections that by their nature survive expiration or termination of this Agreement, will survive expiration or termination: 7.0-7.5, 9.0-9.2, 10.0, 10.1, and 11.0-11.2; and termination or expiration shall not relieve either party of the obligation to pay any amount due to the other party.

13.12 Entire Agreement. This Agreement states the entire agreement between the parties on this subject and supersedes all prior negotiations, understandings and agreements between the parties concerning the subject matter. This Agreement contains all of Esker's and Licensee's agreements, warranties, understandings, conditions, covenants, and representations with respect to the subject matter. Neither Licensee nor Esker shall be liable for any agreements, warranties, understandings, conditions, covenants, or representations not expressly set forth or referenced in this Agreement. No amendment or modification of this Agreement shall be made except by a writing signed by both parties. All Services supplied pursuant to this Agreement will be provided pursuant to the terms and conditions hereof, which will supersede and override any and all preprinted terms and conditions on any documents provided by Licensee in connection with its obligations hereunder, including but not limited to, sales order acknowledgement forms, statement of work forms, packing slips, bills of lading and invoices.