



## **SKYPE SKY / BLEECKER CONSULTING GROUP: TERMS & CONDITIONS**

IMPORTANT: THIS USER AGREEMENT (THIS "AGREEMENT") IS A LEGALLY BINDING AGREEMENT BETWEEN YOU, AN INDIVIDUAL OR An official representative of a Corporation, as such duly accredited to engage your organization to this agreement ("YOU" or "YOUR"), AND THE BLEECKER CONSULTING GROUP, LLC ("BCG"), THAT SETS FORTH THE TERMS AND CONDITIONS FOR THE USE BY YOU OF BCG HOSTING SERVICE AND/OR OTHER DOCUMENTATION PROVIDED THEREWITH (THE "SERVICE"). BCG LICENSES THE SERVICE TO YOU UPON THE EXPRESS CONDITION THAT YOU ACCEPT ALL OF THE TERMS AND CONDITIONS IN THIS AGREEMENT. **PLEASE READ THE AGREEMENT CAREFULLY BEFORE USING THE SERVICE.** BY PAYMENT OF YOUR SERVICE, YOU ACCEPT THE TERMS AND CONDITIONS OF THIS AGREEMENT. EACH TIME YOU ACCESS THE SERVICE, YOU AFFIRMATIVELY STATE THAT YOU ACCEPT THE TERMS AND CONDITIONS OF THIS AGREEMENT. **BCG IS UNWILLING TO PROVIDE YOU WITH ACCESS TO THE SERVICE UNLESS YOU ACCEPT THE TERMS AND CONDITIONS OF THIS AGREEMENT.**

BCG and You are the only parties to this Agreement and are sometimes referred to singularly as a "Party" or collectively as the "Parties."

**Each of the foregoing are expressly incorporated herein by reference and may updated from time-to-time by BCG. Current copies of the Privacy Policy, SLA, AUP and MSA are located at <http://www.skypesky.com/legal>. Customers using BCG Hosted Services and/or billed by BCG for BCG Partners' Hosted Services are also subject to Privacy Policy, SLA, AUP, Terms and Conditions of BCG Partners, including the Microsoft Cloud Agreement found here: <http://www.skypesky.com/legal/terms/mca>.**

1. **Intellectual Property Rights.** It is hereby understood and agreed that as between BCG and You, BCG is the owner of all rights, title and interest, including all Intellectual Property Rights (as defined below), to the Service, the Site, and any comments, suggestions, ideas, graphics, questions or other information submitted by You through the Site or the Service ("**Submissions**"). BCG shall be entitled to use such Submissions for any commercial or other purpose whatsoever without compensation to you or anyone else. For the purposes of this Agreement, "**Intellectual Property Rights**" shall mean any and all of the following: (a) rights associated with works of authorship throughout the universe, including but not limited to copyrights, moral rights, and mask-works; (b) Trademark and trade name rights and similar rights; (c) Trade secret rights; (d) Patents, designs, algorithms and other industrial property rights; (e) All other

intellectual and industrial property rights (of every kind and nature and however designated, including, but not limited to logos, "rental" rights, rights of publicity, and rights to remuneration), whether arising by operation of law, contract, license, or otherwise; and (f) All registrations, initial applications, renewals, extensions, continuations, divisions or reissues hereof now or hereafter in force (including any rights in any of the foregoing).

Except as expressly provided herein, You do not acquire any rights to the Service through the purchase of licenses to the Service or the Site. You may not reverse engineer, decompile, disassemble, or otherwise attempt to discern the source code (i.e., the human-readable form of any computer programming code) ("Source Code") of the components of the Service, or create derivative works based thereon. You also may not download, republish, reproduce, copy, post, transmit, or in any way distribute any material from the Site unless such activities are in direct furtherance of Your permitted use of the Service and do not in any way violate this Agreement or any Licensing Documents.

2. **Privacy.** BCG will not disclose any personal information about Your use of the Service in violation of the BCG **Privacy Policy**.

3. **Payment.** You are responsible for paying all fees and charges (plus applicable taxes) associated with your use of the Service (the "Service Fee") as such fees become due. Unless otherwise stated in writing from BCG, You agree to be billed monthly via your credit card or debit card for all recurring and one-time charges, including but not limited to late and termination charges, for any services ordered by You and any fees You owe to BCG. Except as otherwise provided in this Agreement, all fees and charges are non-refundable. **Taxes and other service-related fees:** BCG shall not be liable for any taxes, governmental fees or any other fees to be paid in relation to the services provided therein. You agree that You shall be responsible for all taxes and fees on any nature associated with products and services provided to You by BCG.

4. **Billing.** Unless otherwise stated in writing from BCG, BCG bills on a monthly (roughly 30 day) schedule. If a free trial period has been provided, with duration and scope provided by BCG, you can cancel your account at any time and you will not be charged. After the trial period is over, all payments are final. Any users added to the system after this trial period, will not be eligible for the free trial, and will be subject to the normal fees.

5. **Term.** The initial term of this agreement is equal to the "minimum term" specified for each respective subscribed service provided by BCG and is equal to one year, unless otherwise stated in writing from BCG. Automatic renewal, unless terminated pursuant to Article 6 below, this agreement shall renew

automatically for periods equal to the initial term. Further, customers using BCG Partners' Hosted Services and/or billed by BCG for BCG Partners' Hosted Services are also subject to Terms and Conditions of those Partners in regards to Your Term.

## **6. Termination.**

6.1. **Termination without cause.** Unless otherwise stated in writing from BCG, You may terminate this Agreement at any time by canceling the account via your provided Admin Portal or via Email to your assigned BCG contact. No service termination can be processed by phone.

(a) Yearly Plan Agreement Term. For a Yearly Plan, the Initial Term is the period from the date of Your initial payment or acceptance of this Agreement, whichever occurs earlier, through the remainder of that calendar month. A Renewal Term for a Yearly Plan is defined as one calendar year beginning at the end of the Initial Term and each subsequent calendar year thereafter.

(b) Automatic Renewal. This Agreement will renew automatically at the end of the then-current Term for a Renewal Term unless terminated in accordance with this Agreement by either You or BCG.

ALL CUSTOMER DATA AND ACCOUNT SETTINGS INCLUDING, BUT NOT LIMITED TO, CONTENT IN PUBLIC AND PRIVATE INFORMATION STORES ARE IRREVOCABLY DELETED UPON ACCOUNT TERMINATION.

### **6.11 Termination by You.**

(a) All Plans. All plans (e.g. 3 year, Annual, Quarterly, etc.) require that you submit a two-month or sixty-day notice whichever is greater prior to the beginning of any Renewal Term. If You terminate your plan prior to the end of the then current Term, BCG will not be required to refund to You any fees already paid and you are liable for all applicable charges remaining in the term. You may terminate this Agreement for any reason by removing all services from your account via the administrative control panel to cancel automatic renewal, and then by submitting a request to terminate your account to the billing department via the administrative control panel ticket system and/or email to your assigned BCG contact prior to the beginning of any Renewal Term. If you fail to remove services from your account prior to the automatic renewal date, you will not be entitled to a refund.

(b) Yearly Plan. For a Yearly (Annual) Plan, You may terminate this Agreement for any reason submitting a 60-day termination notice via BCG ticketing system in the administrative control panel online and/or email to your assigned BCG contact 30-days prior to the beginning of any Renewal Term. If You terminate a

Yearly Plan prior to the end of the then current Term, BCG will not be required to refund to You any fees already paid and you are liable for all applicable charges remaining in the term. All Office 365 and Skype for Business plans require a minimum one (1) year term.

(c) Refunds/Fees for Termination by You. Fees for non-recurring Services and set up fees will not be refunded. Any fees previously waived or discounts applied may be reinstated if You terminate the account during the Term or if You breach this Agreement.

6.2. **Termination for cause.** Notwithstanding the foregoing, BCG may immediately terminate this Agreement and Your Account upon (a) Your breach of any provision of this Agreement, (b) any action by you that BCG determines, in its sole judgment, to interfere with the operation or use of the Service or (c) failure to maintain current contact information for your account. In the event of immediate termination for cause, BCG shall be entitled to the entire Service Fee for the month in which such termination occurred and you shall not be entitled to any refund or credit thereof.

Any provision of this Agreement which may reasonably be interpreted or construed as surviving the termination of the Agreement, shall survive such termination of this Agreement for any reason.

7. **Hyperlinked Material.** The Site may contain hyperlinks to other sites on the Internet which are not owned or controlled by BCG. BCG cannot assume any responsibility for any material on such sites, or any other material outside of the Site, which is accessed directly or indirectly by any such hyperlink.

8. **Security and Data Storage.** You shall not permit or allow other persons to have access to or to use Your Account Information other than Your employees, consultants or agents who have been notified of the restrictions set forth in this Agreement, absent BCG's prior express written consent. You agree to maintain the confidentiality of all of Your Account Information and agree to be primarily responsible for all activity pursuant to Your Account. Although BCG has taken significant measures to ensure the security of information submitted by You in using the Service, BCG cannot guarantee the security of information collected during Your use of the Service and shall not be liable in any way for compromise of Your data.

9. **Relationship of the Parties - Independent Contractor.** It is expressly understood and agreed that the relationship between the Parties is as follows: each Party is acting as an independent contractor and is not an agent, partner, or joint venture with the other Party for any purpose. The Parties have no authority to assume or create any obligation for or on behalf of the other Party, express or implied, with respect to this Agreement or otherwise.

10. **BCG Limited Liability.** You agree that the liability limit of BCG, shall in no event exceed the total dollar amount which you have paid during the term of this agreement, including any reasonable attorneys' fees and court costs. Further, BCG expressly limits its damages for any non-accessibility time or other downtime to the service to no greater than the total dollar amount for the period that the downtime occurred. You acknowledge that the operation and availability of the communications systems, including, without limitation, telephone service, computer networks and the Internet, used for accessing and interacting with the Service can be unpredictable and may, from time to time, interfere with or prevent access to or operation of the Service. You acknowledge that BCG is not responsible for any such interference with or prevention of Your use of or access to the Service.

11. **Indemnification.** You agree to indemnify and hold harmless, BCG, each and every Contributor, and their respective affiliates, officers, directors, employees, consultants, agents, licensees and licensors from any claim, demand, or damages, including reasonable attorneys' fees, asserted by any third party due to, arising out of, or in any way related to, the use of the Service under Your Account. As used in this Agreement, "affiliate" means any entity which controls, is controlled by, or is under common control with the named entity.

12. **Equitable Relief.** You acknowledge that, at the time this Agreement is entered, it would be impossible or inadequate to measure and calculate all of BCG's damages for the breach of certain provisions of this Agreement and that it would require a court of competent jurisdiction to ascertain BCG's damages. Accordingly, if You breach or threaten to breach any of Your obligations, other than payment when due, BCG shall be entitled, without showing or proving any actual damage sustained, to a stipulated temporary restraining order, and shall thereafter be entitled to apply for a preliminary injunction, permanent injunction, and/or order compelling specific performance, to prevent the breach of Your obligations under this Agreement. Nothing in this Agreement shall be interpreted as prohibiting BCG from pursuing or obtaining any other remedies as otherwise available to it for such actual or threatened breach, including recovery of damages.

13. **Notice.** Any notice required by this Agreement or given in connection with it, shall be posted on the BCG website or e-mailed to the User and shall be effective ten (10) business days after it is sent via e-mail or posted on Company website.

14. **Governing Law/Jurisdiction.** This Agreement shall be governed by and construed under the laws of United States, without reference to principles of conflict of laws, and any action brought by the Parties to enforce or interpret any provision of this Agreement shall be brought exclusively in an appropriate court

or federal court in the United States. The Parties hereby consent to such jurisdiction and waive any objection to such venue.

15. **General.** This Agreement sets forth the entire agreement and understanding of the parties relating to the subject matter herein and merges and supersedes all prior agreements, writings, commitments, discussions term had never been included. Failure by BCG to enforce any provision of this Agreement will not be deemed a waiver of future enforcement of that or any other provision. Non-performance of either Party shall be excused to the extent that performance is rendered impossible by strike, fire, flood, governmental acts or orders or restrictions, failure of suppliers, or any other reason where failure to perform is beyond the control and not caused by the negligence of the non performing Party. This Agreement shall be construed within its fair meaning and no inference shall be drawn against the drafting Party in interpreting this Agreement. Headings used in this Agreement are for reference purposes only and in no way define, limit, construe or describe the scope or extent of such section or in any way affect this Agreement. Except as otherwise stated in this Agreement, BCG reserves the right to modify this Agreement or policies regarding the use of the Service at any time and to notify You of such modification by posting a notice of such modification to the Site at least ten (10) days prior to such modification taking effect, and by posting the modified Agreement to the Site. You are responsible for periodically reviewing this Agreement. A printed version of this Agreement and of any notice given in electronic form shall be admissible in judicial or administrative proceedings based upon or relating to this Agreement to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form.

**YOU HEREBY RECOGNIZE THAT YOU HAVE READ AND UNDERSTAND THIS AGREEMENT AND AGREE TO BE BOUND BY THE AGREEMENT'S TERMS AND CONDITIONS.**