



PRICEADVANTAGE SOFTWARE SERVICES AGREEMENT

This **SERVICES AGREEMENT** (this "Agreement") is by and between Skyline Products, Inc., a Colorado corporation, having its principal place of business at 2903 Delta Dr. Colorado Springs, CO 80910 ("Skyline"), and you, or, if you represent an entity or other organization, that entity or organization (in either case "Customer" or "You").

Skyline provides certain services relating to fuel price management (the "Services") through the web site located at <http://sellmoregas.com> and such other sites as may be designated by Skyline (each, the "Site" or collectively, the "Sites").

All access to and use of the Services available through any Site, including any Services provided under a trial basis or free of charge, is subject to the terms of this Agreement. If You wish to access and use the publicly available portions of the Services and the Sites (if available), You may do so only in compliance with the terms of this Agreement. If You have placed or later place an order with Skyline using the registration process provided by Skyline or any other form of request approved by Skyline (the "Order") seeking to access and use certain of the Services requiring registration, Skyline is willing to accept such Order and provide Customer with access to and use of those Services only if Customer uses those Services in compliance with this Agreement.

PLEASE CAREFULLY READ THIS AGREEMENT. BY SUBMITTING AN ORDER OR BY ACCESSING OR USING ANY SITE OR THE SERVICES, YOU AGREE THAT YOU HAVE READ AND AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU ARE A DIRECT COMPETITOR OF SKYLINE, THEN YOU MAY NOT ACCESS THE SERVICES, EXCEPT WITH SKYLINE'S PRIOR WRITTEN CONSENT.

IF YOU DO NOT AGREE TO THIS AGREEMENT, SKYLINE IS NOT WILLING TO PROVIDE YOU WITH ACCESS TO OR USE OF THE SITES OR SERVICES AND YOU MUST NOT ACCESS OR USE ANY SITE OR SERVICES. IF YOU ACCESS OR USE THE SITES OR SERVICES, YOU ACKNOWLEDGE THAT YOU AGREE TO BE BOUND BY THIS AGREEMENT.

This Agreement is entered into as of the earlier of the date Customer first submits an Order relating to the Services or first uses the Services or a Site (the "Effective Date"). This Agreement includes each Order submitted by Customer and accepted by Skyline, each of which is incorporated in and made a part of this Agreement. Unless otherwise amended as provided herein, this Agreement will exclusively govern Customer's access to and use of the Services and the Sites and is the complete and exclusive understanding and agreement between the parties, and supersedes any oral or written proposal, agreement or other communication between the parties, regarding Customer's access to and use of the Services and the Sites. Except as expressly set forth in this Agreement, this Agreement may be amended or modified only by a writing signed by both parties. All waivers under this Agreement must be in writing. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

Skyline reserves the right, at any time, to add to, change, update, or modify any Site, the Services or this Agreement, by posting such addition, change, update, or modification on such Site, through the Services or by providing other notice to Customer. Any such addition, change, update, or modification will be effective immediately upon posting on such Site or such other notice.

1. DEFINITIONS. For purposes of this Agreement, the following initially capitalized terms have the following meanings:

1.1 "Account" means an account allowing access to the Services created for Customer.

1.2 "Fees" means the fees for the Services.

1.3 "Confidential Information" means (a) all nonpublic information disclosed or made available under this Agreement that relates to the provision or receipt of the Services or either party's financial condition, operations or business, and which is clearly identified as confidential at the time of disclosure, (b) the Technology, (c) the Documentation, (d) the User Information, and (e) the User IDs.

1.4 "Documentation" means the online help files and instruction manuals (whether in print or electronic form) that relate to the use of the Services that have been provided or made available by Skyline to Customer.

1.5 “Intellectual Property Rights” means any and all intellectual property rights throughout the world, including, without limitation, any and all copyrights, trademarks, service marks, trade secrets, patents, patent applications, moral rights, contract rights and any and all other legal rights protecting intangible proprietary information.

1.6 “Technology” means the software, hardware and other technology used by or on behalf of Skyline to provide the Services, and all data, information and other content included on or accessible through the Services, except for any User Information.

1.7 “User ID” means each unique User identification name and password used for access to and use of the Services through the Account.

1.8 “User Information” means all data, information or other content entered by or collected from Customer or any other user of the Account while accessing the Services.

1.9 “User” means anyone accessing the Services through Customer’s Account.

2. CUSTOMER’S ACCESS TO AND USE OF THE SERVICES.

2.1 Customer’s Right to Access the Services. Subject to the terms of this Agreement Skyline will provide Customer with the right to access and use the Services during the term of this Agreement, solely for Customer’s own internal business purposes for the number of stores (“Authorized Stores”) set forth on the applicable Order. Customer’s rights are personal, non-transferable and non-sublicensable. Customer may access and use the Services only as permitted by this Agreement. Customer acknowledges that Customer is not receiving any right or license to use, or any ownership interest with respect to, the Sites, Services or any Technology or Intellectual Property related to the Services.

2.2 Certain Restrictions on Customer’s Access. Customer acknowledges that the Sites, Services and Technology and their structure, organization, and underlying source code constitute valuable trade secrets of Skyline. Customer will not, and will not permit any Users or any other party to: (a) alter, modify, reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code of the Sites, Services or Technology; (b) interfere in any manner with the operation or hosting of the Sites, Services or Technology or attempt to gain unauthorized access to the Services or any other services offered by Skyline; (c) sublicense or transfer any of Customer’s rights under this Agreement, including, without limitation, providing outsourcing, service bureau, commercial hosting, application service provider or on-line services to third parties, or otherwise make available the Sites, Services or Technology, or access thereto, to any third party; or (d) otherwise use the Sites, Services or Technology except as explicitly permitted by the Agreement.

2.3 Customer’s Use of the Services.

(a) Accounts/User IDs. Customer will be provided with one or more User IDs to access the Services through the Account. Customer represents and warrants that: (1) all information Customer provides in connection with registering for the Account or placing an Order (“Registration Information”) is true, accurate, current, and complete; and (2) Customer will maintain and promptly update the Registration Information to keep it true, accurate, current, and complete. Failure to comply with the foregoing shall constitute a breach of this Agreement, which may result in immediate termination of your Account. Customer will be responsible for ensuring the security and confidentiality of all User IDs. Customer acknowledges that Customer will be fully responsible for all liabilities incurred through use of any User ID (whether lawful or unlawful) and that any transactions completed under a User ID will be deemed to have been lawfully completed by Customer. In no event will Skyline be liable for the foregoing obligations or the failure by Customer to fulfill such obligations.

(b) User Information. Customer grants to Skyline all necessary intellectual and proprietary rights and licenses in and to any User Information necessary for Skyline to provide the Services. Customer will not, and will not permit any Users to, provide User Information that, and Customer represents and warrants that no User Information: (i) infringes, misappropriates or violates any Intellectual Property Rights, publicity/privacy rights, law or regulation; (ii) contains any viruses or programming routines intended to damage, surreptitiously intercept or expropriate any system, data or personal information; or (iii) is false, misleading or inaccurate. Skyline will not be responsible or liable for any deletion, correction, destruction, damage, loss or failure to store any User Information. Customer will defend, indemnify and hold harmless Skyline from any and all losses, costs, damages, liabilities or expenses (including without limitation reasonable attorneys’ fees) incurred or arising from any claim by a third party arising out of User Information.

(c) **Necessary Equipment.** Customer will be solely responsible, at Customer's own expense, for acquiring, installing and maintaining all hardware, software and other equipment as may be necessary for Customer and Customer's Users to connect to, access, and use the Services.

3. SERVICE LEVEL. Skyline will provide the Services in accordance with the service level terms in this Section 3 only to Customers who have submitted an Order for the Services for an Initial Term of at least one year and made an Initial Payment under such Order. The terms in this Section 3 do not apply to Customers who do not meet the criteria in the first sentence of this Section 3. Skyline will use commercially reasonable efforts to ensure certain Services under the direct control of Skyline experience an uptime percentage of 99.9% every calendar month, excluding Scheduled Downtime. Skyline will use commercially reasonable efforts to provide at least 24 hours' prior notice before implementing any Scheduled Downtime. Scheduled Downtime means the time period identified by Skyline in which it intends to perform any planned upgrades and/or maintenance on the Services or related systems and any overrun beyond the planned completion time. If the applicable Services do not meet the uptime percentage in a certain month, Skyline will provide a remedy in Skyline's discretion. Skyline's obligations under this paragraph do not extend to Service issues caused by: (a) any modification of the Services made by any person other than Skyline; (b) any third party hardware or software used by Customer or its users except as otherwise provided in the then-current documentation; (c) the improper operation of the Services by Customer or its users; (d) the accidental or deliberate damage to, or intrusion or interference with the Services; (e) the use of the Services other than in accordance with any user documentation or the reasonable instructions of Skyline; or (f) circumstances or events beyond the reasonable control of Skyline, including, without limitation, any force majeure events, the performance and/or availability of local ISPs employed by Customer, or any network beyond the demarcation or control of Skyline. **FREE TRIAL.** UPON approval by Skyline, Customer may be provided access to the Services free of charge on a trial basis (the "Free Trial"). During the Free Trial, Skyline may restrict the Services, including but not limited to, the length of time Customer may use the Services, the storage limits for the Services, the number of Authorized Stores and the number of Users. If Customer desires additional Services beyond the scope and limitations of the Services provided during the Free Trial, then Customer may register for the Fee-based Services at any time. All Services provided during the Free Trial are "as is" without warranties of any kind.

4. ADDITIONAL CONSULTING SERVICES. Upon Customer's request and Skyline's agreement, Skyline will provide professional services to Customer as set forth in a separate statement of work signed by both parties. Customer will pay Skyline all applicable Fees for such professional services and will reimburse Skyline for the following costs and expenses: reasonable travel, room and board and per diem expenses incurred by Skyline when providing such professional services on-site at Customer's facility.

5. FEES AND PAYMENT.

5.1 Fees. Commencing on the Effective Date, Customer will pay to Skyline the applicable fees for the Services provided under this Agreement ("Fees"). Skyline may change the Fees upon notice to Customer via the Site or through the Services. Any changes in the Fees will be made effective upon the next billing cycle. Customer may add Services and additional Authorized Stores to Customer's Account through an Order signed by both parties. Any additional Services are subject to the terms and conditions of this Agreement or any other Agreement Customer agrees to when updating Customer's Account. Customer will pay the then-current Fees for each additional Authorized Store and all other Services added to Customer's Account.

5.2 Payment. Unless otherwise specified in **AN ORDER**, Customer will be charged for the applicable Fees for the current month in accordance with this Section 6.2 on the first business day of such month. Customer will make payment by direct withdrawal from a bank account or by credit card. Customer grants Skyline the right to charge the credit card or bank account provided by Customer or specified in the applicable Order for all Fees incurred under this Agreement. Customer will pay all transaction fees charged by Customer's bank or credit card provider. All Fees will be non-refundable once paid to Skyline. Refunds and/or credits cannot be issued for unused partial months or periods Pre-paid in advance. All Fees are payable in U.S. dollars. All amounts payable by Customer under this Agreement will be made without setoff or counterclaim, and without any deduction or withholding. Customer will promptly reimburse Skyline for any cost or expense incurred in connection with any collection efforts undertaken by Skyline in connection with any past due amount owed under this Agreement. At Skyline's discretion, past due amounts may accrue a late fee equal to the lesser of 1.5% per month, or the maximum amount allowed by applicable law.

5.3 Taxes. All Fees will be exclusive of taxes, duties and the like ("Taxes"), which will be paid by Customer. Customer is responsible for paying all Taxes associated with Customer's purchase of the Services hereunder. If Skyline

has the obligation to pay or collect Taxes for which Customer is responsible under this paragraph, the appropriate amount will be invoiced by Skyline and paid by Customer.

6. CONFIDENTIALITY.

6.1 Obligations. Customer agrees to disclose to Skyline only that portion of Customer's Confidential Information that is reasonably necessary to enable Skyline to provide the Services, and Skyline agrees to disclose to Customer only that Confidential Information of Skyline that is reasonably necessary to enable Customer to receive the Services. The party receiving Confidential Information (the "Receiving Party") from the other party (the "Disclosing Party") will not use any Confidential Information of the Disclosing Party for any purpose other than the providing and receipt of Services under this Agreement. The parties agree the use of the Confidential Information will be in accordance with all terms and conditions of this Agreement. Further, the Receiving Party will disclose the Confidential Information of the Disclosing Party only to the employees or contractors of the Receiving Party who have a need to know such Confidential Information for purposes of this Agreement and who are under a duty of confidentiality no less restrictive than the Receiving Party's duty hereunder. The Receiving Party will protect the Disclosing Party's Confidential Information from unauthorized use, access or disclosure in the same manner as the Receiving Party protects its own confidential or proprietary information of a similar nature and with no less than reasonable care.

6.2 Termination of Obligations. The Receiving Party's obligations under this Section 7 with respect to any Confidential Information of the Disclosing Party will terminate if and when the Receiving Party can document that such information: (a) was already lawfully known to the Receiving Party at the time of disclosure by the Disclosing Party; (b) is disclosed to the Receiving Party by a third party who had the right to make such disclosure without any confidentiality restrictions; (c) is, or through no fault of the Receiving Party has become, generally available to the public; or (d) is independently developed by the Receiving Party without access to, or use of, the Disclosing Party's Confidential Information. In addition, the Receiving Party will be allowed to disclose Confidential Information of the Disclosing Party to the extent that such disclosure is: (i) approved in writing by the Disclosing Party; (ii) necessary for the Receiving Party to enforce its rights under this Agreement in connection with a legal proceeding; or (iii) required by law or by the order of a court of similar judicial or administrative body, *provided that* the Receiving Party notifies the Disclosing Party of such required disclosure promptly and in writing and cooperates with the Disclosing Party, at the Disclosing Party's reasonable request and expense, in any lawful action to contest or limit the scope of such required disclosure.

6.3 Return of Confidential Information. The Receiving Party will return to the Disclosing Party or destroy all Confidential Information of the Disclosing Party in the Receiving Party's possession or control and permanently erase all electronic copies of such Confidential Information promptly upon the written request of the Disclosing Party or the expiration or termination of this Agreement, whichever comes first. At the Disclosing Party's request, the Receiving Party will certify in writing that it has fully complied with its obligations under this Section 7.3. For the purposes of this Section 7, Data, as defined in Section 8 below, shall not be considered Customer's Confidential Information.

7. OWNERSHIP.

7.1 Customer's Ownership. With the exception of Data collected pursuant to Section 8, Customer retains all right, title and interest in and to the User Information Customer provides to Skyline. Skyline will use User Information solely to provide the Services under this Agreement and as otherwise specified under this Agreement.

7.2 Skyline's Ownership. Skyline retains all right, title and interest in and to, and all Intellectual Property Rights embodied in or related to the Sites, Services, Technology, and any other information or technology used or made available in connection with the Sites or Services, including without limitation any and all improvements, updates, and modifications thereto, whether or not made in conjunction with this Agreement. Skyline's name, logo, and the product and service names associated with the Services are trademarks of Skyline or third parties, and no right or license is granted to Customer to use them separate from Customer's right to access the Services.

8. DATA PRIVACY. Skyline will have the right to collect, extract, compile, synthesize, and analyze non-personally identifiable data or information resulting from Customer's use of the Services ("Data"). To the extent that any Data is collected by Skyline, the Data will be solely owned by Skyline and may be used by Skyline for any lawful business purpose without a duty of accounting to Customer, provided that the Data is used only in an aggregated form, without specifically identifying Customer as the source of the Data.

9. TERM AND TERMINATION. This Agreement will begin on the Effective Date and will continue for the Initial Term listed on the applicable Order. Thereafter, this Agreement will automatically renew for additional terms of equal duration to the initial term, unless Customer notifies Skyline that Customer does not wish to renew the Agreement at least 30 days



prior to the end of the then-current term. If no initial period is stated in the applicable Order for the Services, this Agreement will continue for an initial period of 1 year, at the then current MSRP price, and will thereafter automatically renew for successive additional 1 month periods. Notwithstanding the foregoing, the Free Trial will be only for 30 days and if the Customer chooses not to pay the Fees for the Services, then this Agreement will terminate upon the end of the Free Trial. Skyline reserves the right, at its sole discretion, to terminate this Agreement or Customer's access to any part of the Services with or without notice to Customer and with or without cause. Customer may terminate this Agreement at any time upon notice to Skyline, provided that any Fees paid by Customer for the remainder of the then-current term will not be refunded to Customer and Customer will pay Skyline all Fees for the Initial Term which Customer has not paid to Skyline. Without limiting Skyline's right to terminate this Agreement, Skyline may also immediately and indefinitely suspend Customer's access to the Sites or Services, with or without notice to Customer, upon any actual, threatened or suspected breach of this Agreement or of applicable law or upon any other conduct deemed inappropriate by Skyline. Upon any termination or expiration of this Agreement: (a) all rights and licenses granted to Customer in this Agreement will immediately cease to exist; (b) Skyline may promptly cease performing all Services; (c) all access by Customer and any Users to the all Sites and the Services (including all User Information) will be immediately suspended; (d) with the exception of Data collected pursuant to Section 9, Skyline will discontinue all use of the User Information; and (e) Skyline will not issue any refunds for any periods pre-paid in advance. The provisions of Sections 1, 6, 7, 8, 9, 10, 11.2, 12, 13 and 14 of this Agreement will survive termination of the Agreement for any reason.

10. WARRANTIES AND DISCLAIMERS.

10.1 Warranties. Customer represents and warrants to Skyline that: (a) Customer has all requisite corporate or other applicable power and authority to execute, deliver and perform its obligations under this Agreement; (b) the execution, delivery and performance of this Agreement by Customer has been duly authorized; and will not conflict with, result in a breach of, or constitute a default under any other agreement to which Customer is a party or by which Customer is bound; and (c) Customer will, in Customer's performance of this Agreement, comply with all applicable laws, rules and regulations in connection with the use of the Services.

10.2 Disclaimers. SKYLINE PROVIDES THE SERVICES "AS IS" AND "AS AVAILABLE" AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, SPECIFICALLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, REGARDING THE SERVICES, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. CUSTOMER ACKNOWLEDGES THAT CUSTOMER HAS RELIED ON NO SUCH WARRANTIES IN ENTERING INTO THIS AGREEMENT. FURTHER, SKYLINE DOES NOT WARRANT, GUARANTEE OR MAKE ANY REPRESENTATION REGARDING THE USE, OR THE RESULTS OF THE USE, OF THE SERVICES IN TERMS OF CORRECTNESS, ACCURACY, RELIABILITY OR OTHERWISE.

11. CERTAIN LIABILITIES. Customer will, at Customer's own expense, indemnify, defend, hold harmless and pay all costs, damages and expenses (including reasonable attorneys' fees) awarded against or incurred by Skyline based on any claims, allegations or lawsuits that may be made or filed against Skyline by any person: (a) based on or relating to any breach by Customer of any representation and warranty under this Agreement; or (b) that use by Skyline under this Agreement of Customer's User Information, Data or Confidential Information infringes or misappropriates the Intellectual Property Rights of, or has caused harm or damage to, a third party.

12. LIMITATION OF LIABILITY. IN NO EVENT WILL SKYLINE OR ANY THIRD PARTY VENDOR BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES (INCLUDING WITHOUT LIMITATION PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, LOSS OF USE, DATA, OR PROFITS, OR BUSINESS INTERRUPTION) HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, WHETHER IN CONTRACT, STRICT LIABILITY OR TORT (INCLUDING NEGLIGENCE OR OTHERWISE), ARISING IN ANY WAY IN CONNECTION WITH OR OUT OF THE USE OF THE SITES OR SERVICES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. SKYLINE'S TOTAL CUMULATIVE LIABILITY IN CONNECTION WITH THIS AGREEMENT, THE SITES OR THE SERVICES, WHETHER IN CONTRACT OR TORT OR OTHERWISE, WILL NOT EXCEED THE FEES PAID TO SKYLINE HEREUNDER. CUSTOMER ACKNOWLEDGES THAT THE FEES REFLECT THE ALLOCATION OF RISK SET FORTH IN THIS AGREEMENT AND THAT SKYLINE WOULD NOT ENTER INTO THIS AGREEMENT WITHOUT THESE LIMITATIONS ON ITS LIABILITY. IN JURISDICTIONS WHERE LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES IS NOT PERMITTED, SKYLINE'S LIABILITY IS LIMITED TO THE MAXIMUM EXTENT PERMITTED BY LAW.



13. GENERAL PROVISIONS. Customer may not assign, delegate or transfer, including by operation of law, sale of assets, merger and otherwise, this Agreement or any of its rights or obligations (in whole or in part) under this Agreement to any third party without Skyline's prior written consent. Skyline may assign this Agreement to an entity that acquires some or all of Skyline's stock, assets or business. Nothing in this Agreement confers or is intended to confer, expressly or by implication, any rights or remedies upon any person or entity not a party to this Agreement. This Agreement shall be governed by and construed in accordance with the laws of Colorado without regard to conflicts of law principles. Customer agrees that it will only bring any action or proceeding arising from or relating to this Agreement in a federal court in the District of Colorado or in state court in El Paso County, Colorado, and Customer irrevocably submits to the personal jurisdiction and venue of any such court in any such action or proceeding or in any action or proceeding brought in such courts by Skyline. The parties hereto are independent parties, not agents, employees or employers of the other or joint venturers, and neither acquires hereunder any right or ability to bind or enter into any obligation on behalf of the other. Except as expressly stated otherwise, any notices to Skyline required or allowed under this Agreement must be delivered in writing by express courier, personal delivery, or by certified mail, postage pre-paid to the address for Skyline listed on the Site. With respect to Skyline's notices to Customer, Skyline may provide notices by posting them on the Site and Customer agrees to check for changes. Any notice provided to Skyline under this Section 13 will be effective immediately. If any provision of this Agreement is held by a court of competent jurisdiction to be unenforceable, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions of this Agreement will continue in full force and effect. Skyline may use Customer's name as a reference and publicize Customer as a customer of Skyline. Customer grants Skyline the right to use Customer's name and logo in advertising and Skyline will follow any brand standards relating to Customer's name and logo provided by Customer in connection with such advertising. Skyline will be excused from performance under this Agreement for any period and to the extent that it is prevented from performing pursuant hereto, in whole or in part, as a result of delays caused by Customer or third parties or an act of God, war, civil disturbance, court order, labor dispute or other cause beyond Skyline's reasonable control, including without limitation telecommunications failures or errors, or actions or inactions of suppliers or service providers, fire, earthquake, flood or similar events. In addition, the services may be subject to limitations, delays, and other problems inherent in the use of the Internet and electronic communications. Skyline is not responsible for any delays, failures, or other damage resulting from such problems. Customer acknowledges that website operations may be affected by numerous factors outside of Skyline's control.

End of Agreement