



groupSPARK Reseller Program Terms and Conditions

Welcome to groupSPARK! groupSPARK is the reseller program owned and operated by the Provider. Participation in the groupSPARK reseller program (“groupSPARK”) requires agreement to, and compliance with these terms and conditions (the “Reseller Terms and Conditions”). By registering as a reseller on any groupSPARK sign-up page or submitting an order for any one or more services to be used by an end-user that is not affiliated with you or your business, you represent to the Provider that:

1. You are over 18 years of age;
2. You are the authorized agent of the person or entity identified as the Reseller on the reseller sign-up page of the Reseller Platform or in each order for services you submit; and
3. Agree, on behalf of each such person or entity, that each person or entity you represent shall participate in groupSPARK as a Reseller solely in compliance with the Reseller Terms and Conditions.

The Provider may revise these Reseller Terms and Conditions and any Provider document attached to or referred to in the Reseller Terms and Conditions, at any time. Reseller’s submission of a Reseller Order after each revision constitutes the Reseller’s agreement to the Reseller Terms and Conditions as revised.

1. Definitions. As used in the Reseller Terms and Conditions:

- a. “Applicable Vendor Terms and Conditions” means all end-user terms and conditions in effect as of the date of each Reseller Order that are required by Provider’s vendors and licensors whose products and services Provider uses to provide the Services specified in that Reseller Order;
- b. “End-User Customer” means either: (i) each person or entity, unaffiliated with Reseller, that is identified in a Reseller Order as the end-user of the Services specified in that order; or (ii) Reseller if Reseller enters into either the groupSPARK End-User Terms and Conditions or Provider’s Standard Terms of Service.
- c. “groupSPARK End-User Terms and Conditions” means the terms and conditions that Reseller is required to include as part of its agreements with each End-User Customer, the current version of which appears as [Attachment A](#) to the Reseller Terms and Conditions;
- d. “groupSPARK SLA” means the service level agreement for Provider’s Services, the current version of which appears as [Attachment B](#) to the Reseller Terms and Conditions;
- e. “Provider” means mindSHIFT Technologies, Inc., the owner and operator of the groupSPARK reseller program.
- f. “Reseller” means the person or entity that is identified as the reseller in a registration to participate in groupSPARK or on one or more orders submitted through groupSPARK, subject to the Reseller Terms and Conditions, for Services to be provided to an End-User Customer.

g. "Reseller Order" means the submission of information through groupSPARK that: (i) specifies the Services to be provided to an End-User Customer; (ii) provides deployment, implementation, scheduling and payment terms for those Services; (iii) reflects or incorporates the End-User Customer's agreement to: a. Provider's Terms of Service; and b. the Applicable Vendor Terms and Conditions; and (iv) any other terms and conditions concerning the Services, if any;

h. "Reseller Platform" means the website, currently located at <https://mycp.groupspark.com>, where groupSPARK resources, pricing information and an online ordering facility are available to authorized Resellers; and

i. "Services" means any one or more services specified in a Reseller Order submitted to Provider in accordance with the Reseller Terms and Conditions.

2. Authorization. a. Provider authorizes Reseller to act as a non-exclusive reseller of Provider services solely: (i) to End-User Customers; (ii) with respect to the services specified on Provider's Reseller Platform; (iii) as the Reseller Terms and Conditions in effect on the date of each Reseller Order permit; (iv) as permitted by each other agreement, if any, between Reseller and as applicable, Ricoh Americas Corporation and any one or more of its affiliates and subsidiaries including Provider; and (v) in accordance with all applicable laws and regulations.

b. Except as Provider otherwise expressly agrees in writing, Reseller's appointment as a groupSPARK Reseller is non-transferable and shall terminate, with no further notice to or communication to Reseller, in the event of any change of control of Reseller's business.

3. Term & Termination. Reseller's authority to participate in groupSPARK continues indefinitely, subject to its compliance with the Reseller Terms and Conditions.

4. Ordering.

a. Qualified End-User Customers. Reseller may submit Reseller Orders solely for End-User Customers that: (i) have entered into groupSPARK End-User Terms of Service and the Applicable Vendor Terms and Conditions; and (ii) are not a customer of Provider or any other authorized groupSPARK reseller (each such End-User Customer, a "Qualified End-User Customer"). Provider shall resolve all conflicts as to which reseller, if any, originated an order for Services for any one or more End-User Customers.

b. By submitting a Reseller Order, taking any other action, or communicating with Provider for or relating to any End-User Customer, Reseller represents that: (i) Reseller is duly authorized to take that action or to communicate on that End-User Customer's behalf; and (ii) the information contained in that order or communication is accurate, current and complete in all material respects.

5. Provision of Services.

a. Reseller shall submit Reseller Orders solely through groupSPARK.

b. Provider shall provide the Services specified in each Reseller Order solely:

(i) To Qualified End-User Customers;

(ii) Pursuant to each of the following, as they exist on the date of the Reseller Order and as

Provider may hereafter revise them:

- a. The groupSPARK End-User Terms and Conditions;
- b. The groupSPARK SLA;
- c. Provider's Acceptable Use Policy (the "AUP"), the current version of which appears at www.groupspark.com/acceptable-use-policy.html
- d. Provider's Privacy Policy, the current version of which appears at www.groupspark.com/Privacy-Policy.html and;

(iii) According to the information contained in that Reseller Order; and

(iv) In compliance with applicable law.

c. End-User Customer Data. Provider shall cooperate with Reseller, as it may reasonably request in writing, subject to the Reseller Terms and Conditions, in transferring, migrating and exporting End-User Customers' data that is within Provider's possession, custody or control (any one or more such Services, "End-User Customer Data Transfer Services"), at no more than Provider's then current undiscounted rate for such services. Reseller shall pay Provider's fees at that rate for all End-User Customer Data Transfer Services Reseller requests.

d. Reseller shall cooperate with Provider, as it may reasonably request, for all purposes related to implementing, providing, maintaining, administering or supporting one or more Services for any one or more End-User Customers.

6. Reseller Licenses.

a. Limited Reseller License. Provider hereby grants Reseller, during its authorized participation in groupSPARK and subject to its compliance with the Reseller Terms and Conditions, to: (i) access and use all groupSPARK systems, services, facilities, and confidential information, as applicable, solely to the extent necessary to promote and resell services to End-User Customers as the Reseller Terms and Conditions permit and for no other purpose; and (ii) use the names, marks, slogans and other branding indicia of Provider (any one or more of the foregoing, the "Provider Branding Indicia") for the sole and limited purpose of promoting and reselling services under the terms of the Reseller Terms and Conditions, provided that Reseller obtains Provider's specific, prior written consent for each such use of Provider Branding Indicia (any one or more of the foregoing licenses and rights of use, the "Limited Reseller License."). The Limited Reseller License shall terminate, with no further notice to Reseller, upon the occurrence of any of the following: (a) Reseller's initial violation of the Reseller Terms and Conditions; (b) any Suspension; or (c) the termination of Reseller's authorization to participate in groupSPARK. After a violation of the Reseller Terms and Conditions or a Suspension, Provider may, but shall have no obligation to, reactivate Reseller's Limited Reseller License by written notice.

b. No Unauthorized Promotions, Statements or Representations. Reseller shall not make any representation or claim concerning any one or more services made available to Reseller through groupSPARK other than those previously approved in writing by Provider, in any form or media, including on any of Reseller's web sites, in its print or electronic publications, on social media platforms, online fora or services. Without limiting the generality of the foregoing, Reseller shall not take any action or make any statement that in Provider's sole discretion, damages or threatens to damage the reputation of groupSPARK, Provider, its corporate parent, their respective affiliates, their vendors or licensors, or their respective names, marks, products, services, directors, officers, employees, customers, vendors, agents

or representatives.

c. Prohibition on Unauthorized Reselling Activity, Reverse Engineering, and Removal of Legal Notices. Reseller shall not: (i) conduct any activity related to right to access and use any groupSPARK facilities or resources or Reseller's appointment as a groupSPARK Reseller, including any promotional activity concerning groupSPARK, Provider, any of its vendors or licensors, or any of their respective products or services that is illegal, unlawful, or infringes or violates any proprietary, contract, intellectual property, privacy, or other legal rights or interests of any person or entity; (ii) traffic in, sell, resell, make available, knowingly permit, or use its access to any one or more groupSPARK facilities or resources, Provider's services, systems or facilities in any manner not specifically permitted by the Reseller Terms and Conditions; (iii) analyze, reverse engineer, decompile, disassemble any one or more items of hardware, software, products, services, systems, functionality, facilities or methodologies provided to Reseller or any End-User Customer through groupSPARK or otherwise by Provider; (iv) alter, obscure or remove all or any part of any name, mark, slogan, or other branding indicia or any legal notice of Provider or any of its vendors or licensors from any hardware, product, service, software, packaging, print document, web page or other electronic, presentation or other materials that Reseller has access to in connection with its appointment as a groupSPARK Reseller; (v) permit any person or entity acting on its behalf to do any of the foregoing; or (vi) attempt or permit any person or entity acting on its behalf to attempt to do any of the foregoing.

d. No Transfers; No Other Licenses. As between Reseller and Provider, all rights, title and interests in and to each of Provider's services, its other intellectual property, including the methodology for making services available to End-Users through resellers (the "Reseller Access Methodology"), systems and facilities are and shall each remain the sole and exclusive property of Provider or its vendors or licensors, including, without limitation, all copyright, trademark and service mark, patent, trade secret, and all other proprietary rights and interests in each of the foregoing. Nothing in the Reseller Terms and Conditions transfers to Reseller any rights, title or interest in or to any Provider service, system, methodology including the Reseller Access Methodology, or to any names, marks, promotional materials, other intellectual property or nonpublic information owned or controlled by Provider or any one or more of its vendors or licensors. Except as expressly set forth in the Reseller Terms and Conditions, Provider does not grant Reseller any license to, or any right to access or use, any Provider service, system, facility, methodology including, the Reseller Access Methodology, names, marks, promotional materials, or any other intellectual property or nonpublic information owned or controlled by Provider or any one or more of its vendors or licensors. Reseller acknowledges and agrees that its right to access or use Provider's services and other intellectual property derives solely from its appointment as a groupSPARK Reseller under the Reseller Terms and Conditions and that Reseller has no other rights, title or interests in or to any product, service, name, mark or other intellectual property or non-public information owned or controlled by Provider or any one or more of its vendors or licensors.

7. Fees & Payment. a. Reseller shall pay Provider the full amount of the fees specified in the Reseller Platform that correspond to each of the Services specified in each Reseller Order submitted to Provider by Reseller (each such fee, a "Reseller Fee"). Reseller may, subject to the Reseller Terms and Conditions and applicable law, set its own prices at which Reseller resells Services to its End-User Customers.

b. Provider shall have no obligation to collect any payment from any one or more of Reseller's End-User Customers. Neither Reseller's pricing or collection policies nor its delay or inability to collect any fee for Services from any one or more of its End-User Customers shall reduce, limit, otherwise alter, or delay the performance of Reseller's obligation to pay Reseller Fees or make any other payment to Provider as the

Reseller Terms and Conditions require.

c. Expenses. Each party shall bear its own expenses with respect to Reseller's appointment as a groupSPARK Reseller, including any expenses Reseller may incur in order to promote one or more Provider Services.

d. Taxes. All payments by Reseller hereunder shall be exclusive of all sales, use, and other taxes that may be imposed upon such payments. Each party shall be responsible for compliance with its own obligations to pay income and other taxes and all related reporting obligations.

e. Provider will send Reseller a groupSPARK monthly invoice itemizing Reseller's Fees and applicable taxes for Services provided by Provider to each of Reseller's End-User Customers during the period reported by that invoice. Reseller shall pay Provider the full amount of all Reseller Fees and applicable taxes stated in each invoice within 30 days of Reseller's receipt of that invoice. Provider may charge, and if charged, Reseller shall pay, interest at the rate of one and one-half percent (1.5%) per month, or at the maximum interest rate allowed by applicable law, whichever is greater, on Reseller's Fees that remain unpaid more than 30 days after Reseller's receipt of Provider's initial invoice for those Reseller Fees.

f. Payment Disputes. (i) Provided that it has a good faith basis for doing so, Reseller may dispute any item on each invoice issued by Provider hereunder by sending a written communication to Provider: (a) specifying each item stated in the invoice that Reseller believes may be incorrect; and (b) setting forth Reseller's good faith basis for its position that each item specified are incorrect. (ii) Reseller: (a) acknowledges that it may not be feasible to verify facts or circumstances pertinent to billing disputes that are initiated more than 30 days after the issuance of the invoice in question ("Delayed Billing Disputes"); and (b) agrees that Provider may decline, in the exercise of its reasonable business judgment, to adjust one or more payments due hereunder on the basis of Reseller's Delayed Billing Disputes. If an invoice contains disputed and undisputed items, Reseller shall pay each undisputed item set forth in that invoice in accordance with the terms of the Reseller Terms and Conditions. Provider may construe objections to unpaid invoices made by Reseller without the information specified above, without payment of undisputed amounts, or in any other manner other than that specified above as a Material Breach of Reseller's obligation to pay for End-User Customer Services as agreed.

8. Reseller Suspension; Continuity of Service to End-User Customers. a. Provider may suspend Reseller's right to participate in groupSPARK and each of its End-User Customer's access to and use of, any one or more Services ("Suspension") in the event that Provider determines, in its sole discretion, that Reseller has violated applicable law and regulations or the Reseller Terms and Conditions in any manner, including by permitting any End-User Customer to use one or more Services without entering into, or in violation of, the groupSPARK End-User Terms and Conditions or Applicable Vendor Terms and Conditions, misrepresenting any one or more Services, or otherwise conducting its business in any manner that causes a material risk of death, physical injury or property damage, damage to Provider's operations, brand, business reputation, one or more of its products or services, or its management or workforce.

b. Notwithstanding any one or more Suspensions: (i) Reseller shall pay Provider all Reseller Fees for Services provided to its End-User Customers as the Reseller Terms and Conditions require; (ii) no obligation of the parties hereunder and no right or obligation Provider has under the Terms of Service shall be altered by reason of any Suspension.

c. In the event that Provider determines that Reseller has failed to comply with the Reseller Terms and

Conditions, regardless of whether a Suspension results, Provider shall so notify Reseller in writing, specifying Reseller's noncompliance (each such notice, a "Notice of Noncompliance"). If Reseller fails to come into compliance with the Reseller Terms and Conditions, as determined in the exercise of Provider's reasonable judgment, within 30 days after receipt of a Notice of Noncompliance, Provider shall have the right, notwithstanding the terms of any agreement between Reseller and any one or more of its End-User Customers, to communicate with, and enter into agreements with, any one or more of Reseller's End-User Customers for the purposes of: (i) providing, supporting, administering or managing any one or more of the Services specified in any Reseller Order for Reseller's End-User Customers with no further involvement of the Reseller; (ii) establishing and conducting a business relationship directly with each such End-User Customer, separate and apart from whatever relationship that Reseller may then have with each such customer; or (iii) both. In the event that Reseller is suspended in accordance with the Reseller Terms and Conditions, Provider may, at Reseller's sole expense, provide any End-User Data Transfer Services necessary to provide Services directly to any one or more of Reseller's End-User Customers, and Reseller shall cooperate with Provider, as it may reasonably request for the purpose of transferring each such End-User Customer's Services and data to Provider.

d. Notwithstanding the terms of any agreement between Reseller in any one or more of its End-User Customers, Provider may suspend any End-User Customer's access to, or use of, any one or more Services in the event that Provider determines, in its sole discretion, that End-User Customer has used one or more Services in violation of applicable law, the groupSPARK End-User Terms and Conditions or Applicable Vendor Terms and Conditions. Provider shall notify Reseller of any such suspension at the earliest reasonable time.

e. Provider's exercise of any one or more of its rights under this Section 8 is and will be without prejudice to whatever other claims, rights and remedies it may have at any time.

9. Confidentiality.

a. Confidential Information. Provider and Reseller (either, as applicable, the "Receiving Party") acknowledges that by reason of its relationship to the other party (the "Disclosing Party") hereunder, the Receiving Party will have access to certain information and materials concerning the Disclosing Party's business, plans, including without limitation, strategic, development and business plans, products and services, financial condition, identities of co-developers or customers, customer lists, data, business records, records of services provided, market reports, employee lists, business manuals, policies and procedures, information relating to processes, technologies or methodologies non-public information concerning the Disclosing Party's corporate parent or affiliates, their respective customers, or vendors or their respective businesses, the terms of the Reseller Terms and Conditions or other agreements, and all other information either party may obtain from the other that is not generally available to the public, or that a reasonable person in the position of the Receiving Party would understand to be confidential and of substantial value to the Disclosing Party, the value of which would be impaired if such information were disclosed ("Confidential Information"). Subject to Section 9(c) of these Reseller Terms and Conditions, the Receiving Party shall not use in any way, for its own account or the account of any other person or entity, nor disclose to any other person or entity (except consultants, accountants and attorneys of the Receiving Party who receive Confidential Information subject to their respective obligations of confidentiality substantially equivalent to those set forth herein), any Confidential Information it obtains from the Disclosing Party, except as expressly permitted by the Reseller Terms and Conditions. The Receiving Party shall take every reasonable precaution to protect the confidentiality of the Disclosing Party's Confidential Information. Upon request by the Receiving Party, the Disclosing Party shall advise whether it considers

any particular information to be Confidential Information. The Receiving Party shall not publish or make available to anyone outside its organization any summary, technical description, or other representation of the Disclosing Party's Confidential Information beyond any summaries, descriptions, or representations published by the Disclosing Party. After the expiration or termination of the Reseller Terms and Conditions, the Receiving Party shall not use or disclose any Confidential Information it obtained from the Disclosing Party, and the Receiving Party shall not develop, or assist any other person or entity in developing, any products, services, software, devices, facilities, or resources utilizing any Confidential Information or intellectual property it obtained from the Disclosing Party. In the event that the Receiving Party reasonably believes that it is or may be required to produce or disclose Confidential Information it obtains from the Disclosing Party pursuant to applicable law, court order, subpoena, disclosure request, or other legal process, it shall, whenever permitted to do so by law, use every reasonable effort to notify the Disclosing Party of that apparent legal requirement at a time and in a manner that permits the Disclosing Party, where appropriate, to seek a protective order or otherwise prevent or limit such disclosure.

b. Exclusions. Confidential Information does not include any information that: (i) was known to the Receiving Party prior to its disclosure hereunder by the Disclosing Party; (ii) is independently developed by the Receiving Party; (iii) is or becomes publicly known by lawful means; (iv) has been lawfully received from a third party; and (v) has been approved for public release by the Disclosing Party's prior written authorization.

c. Reseller may permit each of its End-Users Customers to access Provider's Confidential Information, solely: (i) to the extent necessary to permit each individual End-User Customer to access and use the Services specified in the then-current Reseller Orders for that customer; and (ii) pursuant to an executed agreement for services between Reseller and that End-User Customer that requires the End-User Customer to protect Provider's Confidential Information from unauthorized disclosure and use in terms that are substantially equivalent to, or more restrictive than, Reseller's confidentiality obligations set forth in these Reseller Terms and Conditions.

d. Return of Property. Each party shall, upon the termination of Reseller's appointment as a groupSPARK Reseller return all Confidential Information of the other, including but not limited to all printed and electronic documents that contain or reflect the other party's Confidential Information and all partial and complete copies of those documents.

10. Warranty Disclaimer. EXCEPT AS EXPRESSLY SET FORTH IN THE RESELLER TERMS AND CONDITIONS, PROVIDER MAKES NO REPRESENTATIONS OR WARRANTIES TO RESELLER OR TO ANY OF ITS END-USER CUSTOMERS AND HEREBY EXPRESSLY DISCLAIMS ALL OTHER REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION, WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE.

11. Limitation of Liability. a. SUBJECT TO SECTION 11.b OF THE RESELLER TERMS AND CONDITIONS, PROVIDER WILL NOT BE LIABLE TO RESELLER FOR CONSEQUENTIAL, INDIRECT, EXEMPLARY, SPECIAL, INCIDENTAL, PUNITIVE DAMAGES, OR OTHER DAMAGES ON ANY BASIS WHATSOEVER, IN CONTRACT, TORT OR OTHERWISE, FOR ANY LOSS OF BUSINESS OPPORTUNITY, LOSS OF INCOME, LOSS OF REVENUE, LOSS OF PROFIT OR INTERRUPTION OF RESELLER'S BUSINESS ON ANY THEORY OR BASIS WHATSOEVER, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

b. PROVIDER WILL NOT BE LIABLE TO RESELLER FOR DIRECT DAMAGES ON ANY BASIS WHATEVER, IN CONTRACT OR TORT, INCLUDING ANY LOSS OF BUSINESS OPPORTUNITY, LOSS OF INCOME, LOSS OF REVENUE, LOSS OF PROFIT OR INTERRUPTION OF RESELLER'S BUSINESS ON ANY THEORY OR BASIS WHATEVER IN AN AMOUNT EXCEEDING THE AMOUNT ACTUALLY PAID TO PROVIDER BY RESELLER ON ACCOUNT OF EACH RESELLER ORDER RELATED TO RESELLER'S CLAIM IN THE SIX (6) MONTHS IMMEDIATELY PRIOR TO THE DATE OF OCCURRENCE OF THE EVENT OR CIRCUMSTANCE THAT GAVE RISE TO LIABILITY. TO THE FULLEST EXTENT PERMITTED BY LAW, THIS SECTION STATES RESELLER'S SOLE REMEDY AND PROVIDER'S SOLE LIABILITY FOR ANY CLAIM, MADE ON ANY CONTRACT, TORT OR OTHER BASIS ARISING FROM OR RELATING TO: (I) ANY ONE OR MORE OF PROVIDER'S SERVICES OR TO ANY ONE OR MORE ERRORS, SUSPENSIONS, DISRUPTIONS IN ANY ONE OR MORE OF PROVIDER'S SERVICES; OR (II) RESELLER'S ABILITY TO PROMOTE OR ORDER SERVICES.

c. Provider shall have no liability to Reseller nor any obligation to indemnify Reseller for any failure to implement, provide, maintain, administer or support Services to the extent that the failure to do any of the foregoing is based, in any material respect, on Reseller's failure to: (i) provide accurate information in the Reseller Order or as otherwise reasonably requested by Provider; or (ii) to otherwise cooperate with Provider as it may reasonably request.

12. Indemnification.

a. By Reseller: Reseller shall indemnify Provider, its corporate parent, their respective affiliates, and their respective shareholders, directors, officers, employees, and agents (any one or more of the foregoing, the "Provider Indemnification Group"), reimburse the damages, liabilities, costs, and expenses of any one or more members of the Provider Indemnification Group, including their attorney's fees and all related expenses reasonably incurred or otherwise awarded against them, and defend them each against each claim or proceeding brought by any party other than Reseller that relates to or arises from: (i) the content of any one or more promotional or marketing print or electronic documents, presentations or other communications in any form or medium issued by or on behalf of Reseller; (ii) Reseller's failure to provide support for any one or more of the Services to any one or more of its End-User Customers; (iii) Reseller's breach of its obligations to protect Confidential Information of Provider, one or more of its vendors or licensors, or one or more End-User Customers, from unauthorized disclosure or use; (iv) any breach of Reseller's obligations, representations, warranties or covenants under these Reseller Terms and Conditions, including Reseller's obligation to: (a) limit access to Provider's Services solely to End-User Customers that have entered into and are in compliance with the groupSPARK End-User Terms and Conditions and Applicable Vendor Terms and Conditions; (b) enforce the groupSPARK End-User Terms of Service; or (c) limit access to Provider's Confidential Information as required in Section 9 (c) of the Reseller Terms and Conditions; or (v) any misrepresentation made by or on behalf of the Reseller related, in any material respect, to: (a) its authority or status as a reseller of Provider's services; or (b) any one or more of Provider's services; (vi) Reseller's infringement of the intellectual property, privacy rights, publicity rights, or other legal rights or interests of any person or entity; (vii) any act or omission related to the Reseller's activity in connection with its appointment as a groupSPARK Reseller in any material respect that is committed by, or on behalf of, Reseller or any one or more of its agents, contractors, or employees; and (viii) any access to or use of Reseller's systems, products or services.

b. By Provider: Provider shall, subject to Section 11 c. of the Reseller Terms and Conditions, indemnify Reseller, its shareholders, directors, officers, employees, and agents (any one or more of the foregoing, the "Reseller Indemnification Group"), reimburse the damages, liabilities, costs, and expenses of any one or more members of the Reseller Indemnification Group, including their reasonable attorney's fees and

all related expenses reasonably incurred or otherwise awarded against them, and defend them each against each claim or proceeding brought by any non-party to the Reseller Terms and Conditions that relates to or arises from: (i) access to, or the use of, any one or more of the Services as permitted under the Terms of Service that infringes the U.S.-based intellectual property rights or interests of the claimant; or (ii) Provider's breach of its obligations to protect Reseller's Confidential Information hereunder.

c. The indemnified party shall have the right to select and control legal counsel for the defense of each claim, demand or action to which it is entitled to indemnification hereunder and for negotiations related to each such claim, demand or action. The indemnified party shall have the right to prior notice of and the right to approve any settlement of any such claim, demand or action. Additionally, the indemnified party may participate in proceedings concerning indemnified claims at its own cost and expense.

13. Termination; Effect of Termination of Authorization to Act as a groupSPARK Reseller.

a. Reseller and Provider may each terminate Reseller's authorization to act as a groupSPARK Reseller on 30 days' prior written notice to the other.

b. Effect of Termination. Upon the termination Reseller's authorization to act as a groupSPARK Reseller:

- i. The Limited Reseller License will terminate;
- ii. Reseller's access to groupSPARK facilities and resources will terminate;
- iii. All of Reseller's rights of access to or use of any Provider product, service and facility will terminate, except to the extent that other agreements between Reseller and Provider then in effect, if any, otherwise provide;
- iv. Reseller shall cease holding itself out as having: (a) authority to participate in groupSPARK; and (b) any other right to resell or distribute Provider products or services; or (c) except as one or more then current agreements between Reseller and Provider provide, any other contractual relationship with Provider;
- v. Reseller shall, without prejudice to any other claims, rights or remedies that Provider or any of its vendors or licensors may then have, remain obligated to pay Provider, in full, as required under the Reseller Terms and Conditions for all Reseller's activity predating termination of Reseller's authorization to act as a groupSPARK Reseller, including Reseller's obligation to remit to Provider all fees and other payments obtained from End-User Customers under their respective agreements for one or more Provider Services;
- vi. Subject to Section 13 (b)(vii), Provider and Reseller shall: (i) cease any use of, and as the other party may then request, return or destroy any and all physical files, documents, or materials that embody or reflect the Confidential Information of the other party that may then be in its possession, custody or control; and (ii) delete, overwrite render substantially irretrievable any and all Confidential Information in electronic form that may then be in its possession, custody or control; (iii) delete any and all software, non-proprietary content, and other intellectual property from its system that it received from the other party, including with respect to Reseller, deleting any and all software from the Reseller's system that was provided to it by or on behalf of Provider in connection with the Services; and (iv) provide the other party with a written statement, certifying that it has complied with the foregoing obligations, signed by a duly authorized agent; and
- vii. Provider may exercise any one or more of its rights as stated in Section 8(c) of the Reseller Terms and Conditions with respect to any one or more End-User Customers without first providing Reseller with a Notice of Noncompliance or an opportunity to cure.

14. Dispute Resolution. Provider and Reseller shall each make a reasonable, good faith effort to resolve each dispute that may arise under or related to the Reseller Terms and Conditions before commencing any legal proceeding related to that dispute other than a proceeding seeking immediate injunctive relief. Provider and Reseller shall discuss the dispute for a period of not less than 30 days after either party gives written notice to the other party that such a dispute exists. Provider and Reseller shall each designate a representative to participate in each such discussion who is authorized to resolve the dispute on its behalf. No action or other proceeding, except for proceedings seeking emergency injunctive relief, may be commenced before the chief executive officer of a party has notified the chief executive officer of the other of its assessment that such negotiations have failed and that it therefore intends to commence proceedings with respect to the dispute. In the event that either Provider or Reseller deems it necessary to seek emergency injunctive relief, the discussions contemplated in this section shall take place at the earliest reasonable time.

15. Independent Contractor. Provider and Reseller are and shall be independent contractors. Neither Provider nor Reseller undertakes as a result of Reseller's appointment as a groupSPARK Reseller or otherwise, to perform any obligation of the other. Neither Provider nor Reseller is or shall be construed to be, an agent, affiliate, partner, or employee of the other.

16. Modifications; No Implied Waiver. No amendment, modification or waiver of any provision of the Reseller Terms and Conditions shall be effective as to Provider unless it is in writing and signed by its duly authorized representative.

17. Severability. If any provision of the Reseller Terms and Conditions should, for any reason, be held invalid or unenforceable in any respect, the remainder of the Reseller Terms and Conditions shall remain enforceable to the full extent permitted by law.

18. Force Majeure. Provider and Reseller shall be excused from delays in performing or from any failure to perform hereunder, other than their obligations to make payments, to the extent that such delay or failure results from a severe cause, such as war or natural disaster or strike, which is beyond the reasonable control of the party, provided that in order to be excused from delay or failure to perform, the party must act diligently to minimize such delay or failure and their consequences as the circumstances then permit.

19. Assignment and Transfer. Provider may assign any one or more of its rights or obligations under the Reseller Terms and Conditions with reasonable notice to Reseller. The Reseller Terms and Conditions shall bind and benefit the successors and permitted assigns of the parties.

20. Survival. The provisions of Sections 5c., 6 b.-d., 8 through 17, inclusive, 20 through 26, inclusive, and each subsection thereof, shall each survive any expiration or termination of Reseller's authorization to act as a groupSPARK Reseller under the Reseller Terms and Conditions.

21. Notices. Any notice required or permitted by the Reseller Terms and Conditions may be given by any reasonable means, including email accompanied by read receipt, registered mail or overnight courier, addressed to: a. Reseller, at the address Provider uses, as of the date of that notice, to provide invoices to Reseller; and b. to Provider at 309 Waverley Oaks Road, Waltham, MA 02482, Attn: LEGAL NOTICES, with copies to legal.notices@mindSHIFT.com and to Steven H. Robinson, Chief Legal Officer, mindSHIFT Technologies, Inc., 158 West 27th Street, 5th Fl., New York, NY 10001, steven.robinson@mindSHIFT.com;

212.253.3530. Notices delivered by mail shall be deemed effective five (5) days after deposit with postal authorities and after one (1) day after deposit with an overnight courier. Notices delivered by email should be deemed delivered as of the date and time indicated on the corresponding read receipt.

22. Customer Integrity. Reseller shall not, while it is authorized to act as a groupSPARK Reseller and for one year after its termination, it will not, directly or indirectly, sell or attempt to sell any product or service that competes or reasonably appears to compete with, any one or more of Provider's services, to any person or entity who it knows to be an actual or known potential Provider customer except: (a) as expressly permitted by the Reseller Terms and Conditions; or (b) with Provider's prior written consent. In the event that Reseller enters into an agreement with a Provider customer in violation of this section (each such agreement, an "Unauthorized Transaction"), Reseller shall pay Provider, without prejudice to any other claims, rights or remedies that Provider may then have: (x) with respect to each Unauthorized Transaction involving one or more of the Services the full amount of all Reseller Fees that would become due under the Reseller Terms and Conditions if the transaction between reseller and the Provider customer had been conducted in accordance with the Reseller Terms and Conditions; and (y) with respect to each other Unauthorized Transaction, \$25,000.

23. Non-Solicitation. At all times while Reseller is authorized to act as a groupSPARK Reseller for one (1) year thereafter, neither Provider nor Reseller shall, without prior written consent of the other, directly or indirectly, solicit the employment of any employee or contractor of the other party. Each party agrees that in the event this provision is violated, it would be difficult to determine the amount of the non-breaching party's monetary damages. Accordingly, the breaching party shall pay the non-breaching party, as its sole and exclusive monetary remedy, liquidated damages in the amount of: (a) in the case of an employee, the employee's annual compensation on the date of the breach; or (b) or in the case of a contractor, the amount of fees billed to the non-breaching party by the contractor in the 12 months prior to date of the breach. The non-breaching party may invoice the breaching party for liquidated damages arising under this provision, if any, and the breaching party shall pay such invoices.

24. Entire Agreement. The Reseller Terms and Conditions, the AUP, the Privacy Policy, and all of Reseller's Orders, each of which is hereby incorporated by reference and made part of the Reseller Terms and Conditions, are the final, complete and exclusive agreement between the parties with respect to its subject matter and supersedes any and all prior or contemporaneous agreements, understandings and communications in any form. In the event of a conflict between the Reseller Terms and Conditions and any other document, the Reseller Terms and Conditions shall govern the rights and obligations of Reseller and Provider.

25. Governing Law. The Reseller Terms and Conditions shall be governed by and interpreted in accordance with the laws of the Commonwealth of Virginia, United States of America, without regard to its principles regarding conflicts of law.

26. Authorization. Reseller represents and warrants that: (a) it is duly organized, validly existing, and in good standing under the laws of the state of its incorporation or formation; (b) it is permitted by applicable laws and regulations to agree to and comply with the Reseller Terms and Conditions; (c) it is, in all respects, able to perform fully hereunder; (d) Reseller's agreement to the Reseller Terms and Conditions has been duly authorized and executed on its behalf; and (e) as of the date of its registration as a groupSPARK Reseller and on the date of submission of each of its Reseller Order, the Reseller Terms and Conditions shall constitute Reseller's valid and binding obligation, enforceable by Provider in accordance with its terms.

Ver. 1; June 2015