

MSELLER AND SKYNAMO CUSTOMER TERMS OF USE

United Kingdom and Europe

Version 1.0 | January 2021

1. Interpretation

1.1 In this Agreement, unless inconsistent with or otherwise indicated by the context: -

- 1.1.1 "**Affiliate**" means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. "**Control**," for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity
- 1.1.2 "**Agreement**" means these Terms of Use and the Order Form together with any agreed amendments thereto;
- 1.1.3 "**Associated Parties**" means any employee, contractor, consultant, advisor, associate, Affiliates, directors, officers or any other person related to the Receiving Party who has access to the Confidential Information;
- 1.1.4 "**Change Form**" means any change form agreed to by the Customer which updates the Customer's Subscription;
- 1.1.5 "**Computoy**" means Computoy, Suite 208, Sterling House, Langston Road, Loughton, Essex IG10 3TS;
- 1.1.6 "**Customer**" means the customer which subscribed to the use of the Software in terms of an Order Form;
- 1.1.7 "**Customer Data**" means the data and information supplied and / or entered by the Customer for use on the Software or with the Services;
- 1.1.8 "**Customer Computer Systems**" means the Customer's computer hardware, firmware, software and communications infrastructure through and on which the Software are to be used;
- 1.1.9 "**Data Entry**" means the entry of Customer Data in the Software;
- 1.1.10 "**Data Maintenance**" means the maintenance of the Customer Data in the Software;
- 1.1.11 "**Data Protection Legislation**" means any applicable data protection legislation including, but not limited to the GDPR;
- 1.1.12 "**Force Majeure**" means any event or circumstance which is not within the reasonable control of the affected party including, but not limited to, vis major, casus fortuitus, any act of God, strike, theft, fire, power failure, explosion, riot, insurrection or other civil disorder, war (whether declared or not) or military operations, the downtime of any communications line and/or unavailability of any telecommunications facility or infrastructure, international restrictions, any requirement of any international authority, any requirement of any government or other competent local authority, any court order, export control, and shortage of transport facilities, any cyber-attack, outage Incident or event where the Software is hacked;
- 1.1.13 "**GDPR**" means the General Data Protection Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016;
- 1.1.14 "**License**" means the right granted to the Customer authorizing Customer and an individual User of the Customer to use the Software;
- 1.1.15 "**License Fee**" means the monthly or yearly fee paid or payable by the Customer to Skynamo for the Licenses issued and the use of the Software;
- 1.1.16 "**Licensed User**" means those Users of the Customer for which a License has been issued and has, accordingly, been authorised to use the Software;
- 1.1.17 "**Malicious Code**" means code, files, scripts, agents or programs intended to do harm, including, for example, viruses, worms, time bombs and Trojan horses;

- 1.1.18 “**mSeller Software**” means the mSeller software applications made available and/or licensed by Computoy to the Customer;
- 1.1.19 “**Non-Skynamo Application**” means a web-based, mobile, offline or other software process or functionality that is provided by the Customer or a third party and interoperates with the Skynamo Software, including, but not limited to Enterprise Resource Planning software and Accounting software;
- 1.1.20 “**Once-Off Fees**” means those amounts payable by the Customer which is not payable on a monthly basis but payable once off, including, but not limited to, setup fees and integration fees;
- 1.1.21 “**Order Form**” means the agreement concluded between the Customer, Skynamo and Computoy containing pricing and Subscription details, which subscribes the Customer to the use of the Software and in terms of which a License for the use of the Software has been, or will be, issued to Customer, which agreement directly incorporates these Terms of Use;
- 1.1.22 “**Parties**” means Skynamo, Computoy and the Customer, and “**Party**” means either one of them, as the context may indicate or require;
- 1.1.23 “**Personal Information**” means personal data as defined in the GDPR or any other similar or related definition in any applicable Data Protection Legislation;
- 1.1.24 “**Service Provider**” means –
- 1.1.24.1 Where the Customer subscribes to and/or uses the Skynamo Software (and in relation to any reference to the Skynamo Software) – means **Skynamo**; and
 - 1.1.24.2 Where the Customer subscribes to and/or uses the mSeller Software (and in relation to any reference to the mSeller Software) – means **Computoy**;
- 1.1.25 “**Services**” means the Services that Customer subscribed to in terms of the Order Form;
- 1.1.26 “**Setup**” means the process of implementation of the Skynamo Software with the Customer which process includes a setup discussion, data verification, creation of a unique Skynamo instance, integration with any other software (if applicable), analytics reports, data imports, and instance configuration;
- 1.1.27 “**Skynamo**” means Skynamo Ltd, a private limited company incorporated and registered in England and Wales with registration number 11039559, whose registered office is at 150 Aldersgate Street, London, United Kingdom, EC1A 4AB (e-mail: legal@skynamo.com);
- 1.1.28 “**Skynamo Software**” means the Skynamo software system as licensed to the Customer, which incorporates mobile software, online databases, browser interfaces and documentation. Any reference to the Skynamo Software refers to all these components;
- 1.1.29 “**Software**” means the Skynamo Software and/or the mSeller Software, whichever may be applicable in the context of which software application the Customer uses and/or subscribed to in terms of the Order Form and/or any Change Form;
- 1.1.30 “**Subscription**” means the specific subscription at a specific cost in terms of which the Customer uses the Software;
- 1.1.31 “**Technical Support**” means those employees and/or representatives of Skynamo appointed to assist Users with technical queries relating to the Software;
- 1.1.32 “**Terms of Use**” means the terms of use as set out in this document;
- 1.1.33 “**Third Party**” means any person or entity which is not a party to this Agreement;
- 1.1.34 “**Users**” means the employees and/or managers of the Customer who uses the Software in terms of the Subscription;

- 1.2 In this Agreement, words importing the singular shall include the plural, and vice versa, and words importing the masculine gender shall include the feminine and neuter genders, and vice versa, and words importing persons shall include partnerships, trusts and bodies corporate, and vice versa.
- 1.3 The headings to the paragraphs to this Agreement are inserted for reference purposes only and shall not affect the interpretation of any of the provisions to which they relate.
- 1.4 Each of the provisions contained in this Agreement shall be construed as independent of every other such provision to the effect that if any provisions of this Agreement shall be determined to be illegal, invalid and/or unenforceable then such determination shall not affect any other provisions of this Agreement all of which shall remain in full force and effect.
- 1.5 The Parties acknowledge and agree that they have had equal opportunity to take legal advice and to negotiate this Agreement and the "*contra proferentum-rule*" (and any other rule of interpretation that provides that this Agreement shall be interpreted against the party responsible for the drafting or preparation of this Agreement) shall not apply.
- 1.6 If any provision in a definition is a substantive provision conferring rights or imposing obligations on any party, effect shall be given to it as if it were a substantive clause in the body of the Agreement, notwithstanding that it is only contained in the interpretation clause.
- 1.7 **THESE TERMS OF USE CONTAIN PROVISIONS THAT APPEAR IN SIMILAR TEXT AND STYLE TO THIS CLAUSE AND IS SPECIFICALLY DRAWN TO THE ATTENTION OF THE CUSTOMER AS THESE CLAUSES -**
 - 1.7.1 **MAY LIMIT THE RISK OR LIABILITY OF SKYNAMO AND/OR COMPUTOY; AND/OR**
 - 1.7.2 **MAY CREATE RISK OR LIABILITY FOR THE CUSTOMER; AND/OR**
 - 1.7.3 **MAY CREATE LIABILITY FOR THE CUSTOMER TO INDEMNIFY SKYNAMO AND/OR COMPUTOY; AND/OR**
 - 1.7.4 **SERVES AS AN ACKNOWLEDGEMENT, BY THE CUSTOMER, OF A FACT.**

2. Introduction

- 2.1 This Agreement sets out the terms and conditions that apply to Customer's use of the Software and the obligations of the Parties in this respect.
- 2.2 By executing an Order Form that references these Terms of Use you agree to the terms as set out in this document. If you are entering into this Agreement on behalf of a company or other legal entity, you represent that you have the authority to bind such entity and its affiliates to these terms and conditions. If you do not have such authority, or if you do not agree with these Terms of Use, you must not accept this Agreement

3. Software Licenses and Subscriptions

- 3.1 The Service Provider will issue one license to the Customer for each User subscribed by the Customer in terms the Subscription, for the use of the Software.
- 3.2 The License grants the Customer (and Customer's Licensed User) the non-exclusive, non-transferrable right and license to, subject to the terms and provisions of this Agreement:
 - 3.2.1 Use the Software on mobile devices and to access the online components of the Software through a browser; and
 - 3.2.2 Print portions of the electronic or online documentation for reasonable use by Licensed Users.
- 3.3 The Licenses granted confers no title to or ownership in the Software to the Customer.
- 3.4 Nothing in this Agreement obliges the Service Provider to make service development decisions under the direction of Customer or to make changes to the Software at the instruction of the Customer.

3.5 Customer grants to the Service Provider a worldwide, perpetual, irrevocable, royalty-free license to use and incorporate into the Software and Services any suggestion, enhancement request, recommendation, correction or other feedback provided by Customer or Users relating to the operation of the Software and the Services.

4. Service Provider Responsibilities

4.1 Service Provider will:

- 4.1.1 Make the Software available to Customer pursuant to this Agreement and any applicable Order Forms;
- 4.1.2 Use all commercially reasonable efforts to make the Software available twenty-four hours a day, seven days a week, except for:
 - 4.1.2.1 Planned downtime (of which Service Provider shall give advance electronic notice); and
 - 4.1.2.2 Any unavailability caused by circumstances beyond Service Provider's reasonable control, including, Force Majeure, internet service provider failure or delay, failure or non-functionality of a Non-Skynamo Application, or a denial of service attack.

5. Customer's Responsibilities

5.1 Data Entry and Data Maintenance is the sole responsibility of the Customer. Should it be necessary for Skynamo to deal with any Data Entry on behalf of Customer, clause 6.5 shall apply and the Customer undertakes to supply all data in Excel or CSV format in templates provided by Skynamo.

5.2 Customer will:

- 5.2.1 Be responsible for Users' compliance with this Agreement;
- 5.2.2 Be responsible for the accuracy, quality and legality of Customer Data, the means by which Customer acquired Customer Data and Customer's use of Customer Data with the Software and Services;
- 5.2.3 Use all commercially reasonable efforts to prevent unauthorised access and use of the Software and will notify Service Provider promptly of any such unauthorised access and/or use;
- 5.2.4 Use the Software and the Services only in accordance with this Agreement and any applicable laws and/or government regulations; and
- 5.2.5 Comply with the terms of service of any Non-Skynamo Applications with which Customer uses the Skynamo Software and/or the Services.

5.3 The Customer will not (and will ensure that its Users also do not):

- 5.3.1 Make the Software or the Services available to anyone other than the designated Users, or use the Software or the Services for the benefit of anyone other than the Customer;
- 5.3.2 Sell, resell, license, sublicense, distribute, make available, rent or lease the Software or the Services;
- 5.3.3 Rent, lease, sell, cede, license, sub-license, publish, display, distribute, disseminate, assign or otherwise transfer the license granted to Customer to a third party;
- 5.3.4 Use the Software to transmit Malicious Code;
- 5.3.5 Use the Software in a manner which is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive, facilitates illegal activity, depicts sexually explicit image, promotes unlawful violence, is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability, or is otherwise illegal or causes damage or injury to any person or property;
- 5.3.6 Attempt to gain unauthorised access to any component of the Software or its related systems or networks;

- 5.3.7 Modify, copy, reproduce, or create derivative works based on the Software or the Services or any part, feature, function or user interface thereof;
- 5.3.8 Remove, add, alter, obscure any trademarks, trade names, logos, patent or copyright notices or markings, proprietary and/or other legal notices on or in the Software;
- 5.3.9 Interfere with or disrupt the integrity or performance of the Software or third-party data contained therein;
- 5.3.10 Incorporate the Software into any other software or hardware product;
- 5.3.11 Private label or private brand the Software or any portion thereof or include any other party's marks or legends on the Software or any portion thereof;
- 5.3.12 Frame or mirror any part of any Software or Services, other than framing on Customer's own intranets or otherwise for Customer's own internal business purposes or as permitted under this Agreement;
- 5.3.13 Provide access (directly or indirectly) to the Software via the Internet or any file-sharing method or system;
- 5.3.14 Use the License for the purpose of monitoring the Software's performance or functionality, or for any other benchmarking or competitive purposes. Use of the License by Skynamo's direct competitors is prohibited;
- 5.3.15 Disassemble, reverse engineer, or decompile the Software or the Services, or access it to:
 - 5.3.15.1 Build a competitive product or service;
 - 5.3.15.2 Build a product or service using similar ideas, features, functions or graphics as the Software or the Services;
 - 5.3.15.3 Copy any ideas, features, functions or graphics of the Service or the Software; or,
 - 5.3.15.4 Determine whether the Software is within the scope of any patent.
- 5.4 Any use of the Software or the Services in breach of this Agreement, by Customer or by any of its Users, which in Service Provider's judgment threatens the security, integrity or availability of the Software or the Services, may result in the immediate suspension of the Software and the Services. Service Provider will, however, use all commercially reasonable efforts under the circumstances to provide Customer with notice and an opportunity to remedy such violation or threat prior to such suspension.

6. Skynamo Services and Support

- 6.1 The Technical Support provided by Service Provider shall relate only to the Software. Any problems which are related to Customer Computer Systems must be resolved by the Customer's own support staff.
- 6.2 When seeking Technical Support the Customer shall use its best and reasonable endeavours to provide the fullest information possible to aid the Skynamo in diagnosing any faults in the Software.
- 6.3 Service Provider uses Third Parties to provide cellular network coverage. Service Provider cannot be held responsible for poor network quality or network downtime.
- 6.4 The role of Technical Support is to assist the Customer in using the Software and to troubleshoot any problems and find the source of the error. The role of Technical Support is not to be an outsourced administration office.
- 6.5 **SHOULD ANY MEMBER OF OUR TECHNICAL SUPPORT TEAM ASSIST A USER AND/OR CUSTOMER WITH A REQUEST THAT COULD HAVE BEEN COMPLETED BY THE CUSTOMER AND/OR USER THEMSELVES, SKYNAMO WILL NOT BE LIABLE FOR ANY LOSS OR DAMAGE SUFFERED BY CUSTOMER DUE TO SKYNAMO EXECUTING SUCH REQUEST AND CUSTOMER HEREBY INDEMNIFIES AND AGREES TO HOLD SKYNAMO HARMLESS AGAINST ANY AND ALL LOSSES THAT MAY ARISE IN CONNECTION WITH EXECUTING SUCH REQUEST.**

7. Remote Access

- 7.1 In certain cases where Technical Support is not able to diagnose or resolve a support query from a Customer, Technical Support may request access to Customer's servers and/or computer(s) ("**Systems**") experiencing the issues in order to resolve the problem and provide the necessary support services ("**Remote Access**").
- 7.2 In order for Technical Support to get Remote Access, Customer will need to have remote desktop capabilities on the Systems. In such a case, the Customer authorises Skynamo to remotely access its Systems and, consequently, its data solely for the purpose of providing the required support services.
- 7.3 Customer agrees to backup all of its data prior to providing Skynamo with Remote Access.
- 7.4 **SKYNAMO WILL NOT BE LIABLE FOR ANY LOSS OR DAMAGE SUFFERED BY CUSTOMER DUE TO THE REMOTE ACCESS OF CUSTOMER'S SYSTEMS AND CUSTOMER HEREBY INDEMNIFIES AND AGREES TO HOLD SKYNAMO HARMLESS AGAINST ANY AND ALL LOSSES THAT MAY ARISE IN CONNECTION WITH SUCH REMOTE ACCESS.**

8. Customer Computer Systems

- 8.1 The Customer shall be responsible for all maintenance and upgrades to the Customer's Computer Systems which may from time to time be required.
- 8.2 Computoy shall conduct a full inspection and inventory of the Customer's Computer Systems to ensure compatibility with the mSeller Software. Where appropriate, Computoy may offer recommendations for upgrades and other alterations. Any such recommendations shall be presented in a written report to the Customer.
- 8.3 Computoy may from time to time require physical access to the Customer's Computer Systems for the purposes of inspecting, testing, and upgrading the Customer Computer Systems to ensure their compatibility with the mSeller Software. Such access shall be granted by the Customer only upon receipt of reasonable notice from Computoy.
- 8.4 Skynamo shall be entitled at all times during the term of this Agreement to access the Customer's Computer Systems remotely for the purposes of inspecting, testing and upgrading the customer's computer systems to ensure their compatibility with the mSeller Software.
- 8.5 Where, in the opinion of Computoy, the Customer's Computer Systems are likely to cause disruption to the mSeller Software, Computoy may request that the Customer disconnects from the mseller Software until advised that reconnection is possible. Computoy may require changes such as upgrades or equipment replacement to be made to the Customer Computer Systems prior to reconnection. Any associated costs involved with such upgrade will be borne by the Customer.

9. Access to applications under the mSeller Software

- 9.1 The Customer may only access the applications part of the mSeller Software detailed in the Customer's Order Form or Change Form. No access to other parts of the mSeller Software shall be permitted in the absence of express written permission from Computoy.
- 9.2 Access to the applications detailed in the Order Form or Change Form are only permitted through the mSeller mobile app web configuration services via the mSeller Software.

10. Data Retention and Backup in respect of the Skynamo Software

- 10.1 Skynamo will make a full backup of all Customer Data on the Skynamo Software once a week ("**Backup Cycle**"). Each evening, Skynamo will make an incremental backup. These backups are kept for 4 (four) Backup Cycles in high availability storage (<http://aws.amazon.com/s3/>). Backups resides in the region it was created.
- 10.2 Data on the live instance of the Software may be trimmed as follows as the need arises:
- 10.2.1 Logs are trimmed monthly to 3 (three) months' data;

- 10.2.2 Track points, time segments and route segments are trimmed monthly to 6 (six) months' data;
- 10.2.3 All customer interactions and other events (for example scheduled visits, visits, forms, photos, reimbursement claims) are trimmed monthly to 25 (twenty-five) months' data; and,
- 10.2.4 On the mobile application, only the most recent interactions, orders etc. may be synced down due to space concerns.

11. Sub-Processors

Service Provider makes use of sub-processors in order to carry out some of its processing functions. By making use of the Software, the Customer agrees to Service Provider making use of such sub-processors.

12. Protection of Customer Data

- 12.1 Service Provider acknowledges that in providing the Services to Customer, it will be exposed to Customer Data, including Personal Information relating to Customer's employees, customers and clients.
- 12.2 Service Provider will maintain administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Customer Data in accordance with international best practice in respect of data protection and control.
- 12.3 Service Provider shall not, at any time, copy, compile, collect, collate, process, mine, store, transfer, alter, delete, interfere with or in any other manner use Customer Data for any purpose other than expressed under this Agreement and to the extent necessary to provide the Services, unless with the express prior written consent of Customer.
- 12.4 Service Provider will not be responsible for any loss of data by third party storage providers.
- 12.5 **Data Protection Legislation**
 - 12.5.1 The Customer and Service Provider take specific note of the provisions of any applicable Data Protection Legislation.
 - 12.5.2 The Customer shall ensure that only approved members of the Customer's management team are given access to Customer Data on the Software, subject to the necessary obligations of confidentiality being imposed on such members of the management team. This data may only be processed or used for legitimate business purposes. Any person who is given access to such information shall be made aware of the terms and conditions of this Agreement and of any applicable Data Protection Legislation.
- 12.6 The Customer is responsible for making its Users aware of the Personal Information being collected while they use the Software and to obtain any required consent in terms of Data Protection Legislation. It is further also the Customer's responsibility to ensure that it complies with all applicable Data Protection Legislation.
- 12.7 Certain Customer Data may belong to third parties. In such cases, the Customer warrants that all such Customer Data is used with the consent of relevant third parties.

13. Non-Skynamo Applications

- 13.1 The Skynamo Software can be integrated with Non-Skynamo Applications such as Enterprise Resource Planning systems (e.g. Sage X3).
- 13.2 In such a case the Skynamo Software is, and will remain, the property of Skynamo and Skynamo is not an agent, partner or authorised representative of the Non-Skynamo Application and no legal relationship, whether contractual or otherwise, exists between the Customer and the Non-Skynamo Application in respect of the Skynamo Software.

13.3 The Non-Skynamo Application will not accept any responsibility for any defects in the Skynamo Software or documentation provided by Skynamo and the Non-Skynamo Application is not responsible for the support and/or maintenance of the Skynamo Software.

14. Optional integrations with Google services like Calendar, Contacts and Gmail

14.1 Skynamo offers integration for the Skynamo Software with Google services like Calendar, Contacts and Gmail ("**Google Integration**"). Should the Customer do a Google Integration, additional limits on the use of the Customer's Google User Data will apply. Notwithstanding anything else in this Agreement, if Customer provides Skynamo with access to the following types of Google data, Skynamo's use of that data will be subject to these additional restrictions:

14.1.1 Skynamo will only use access to read, write, modify or control Gmail message bodies (including attachments), metadata, headers, and settings to provide a web email client that allows users to compose, send, read, and process emails and will not transfer this Gmail data to others unless doing so is necessary to provide and improve these features, comply with applicable law, or as part of a merger, acquisition, or sale of assets.

14.1.2 Skynamo will not use this Gmail data for serving advertisements.

14.1.3 Skynamo will not allow humans to read this data unless we have your affirmative agreement for specific messages, doing so is necessary for security purposes such as investigating abuse, to comply with applicable law, or for Skynamo internal operations and even then, only when the data have been aggregated and anonymised.

15. Confidentiality and Non-Disclosure

15.1 For the purposes of this clause 15, **Confidential Information** will mean any and all information disclosed by the Disclosing Party to the Receiving Party (whether prior to the date of signature of this Agreement or thereafter) which is not in the public domain or that has been received by the Receiving Party from the Disclosing Party that is designated by the Disclosing Party as being confidential, proprietary, or is disclosed in circumstances where the Receiving Party would reasonably understand that the disclosed information would be confidential. Without limiting the generality of the foregoing, Confidential Information shall include Customer Data the identity and terms of strategic business relationships, specifications, reports, plans, projections, forecasts, customer lists, current or historical data, trade secrets, intellectual property, discoveries, ideas, concepts, know-how, processes, business plans, techniques, designs, specifications, flow charts, data, computer programs, source code, pricing and customer information, financial statements, confidential filings with any international, federal or state/provincial agency, and all other confidential concepts, methods of doing business, ideas, materials or information prepared or performed by or on behalf of the Disclosing Party by its employees, officers, directors, agents, representatives or consultants

15.2 In using the Software, each Party ("**Disclosing Party**") will disclose Confidential Information to the other Party ("**Receiving Party**") and the Receiving Party will have access to Confidential Information of the Disclosing Party.

15.3 The Disclosing Party is the sole legal and beneficial owner of all Confidential Information and wishes to ensure that the Receiving Party maintains the confidentiality of the Confidential Information.

15.4 The Receiving Party hereby undertakes, in favour of the Disclosing Party, in order to protect the Disclosing Party's proprietary interests in and to the Confidential Information, during the existence of this Agreement or at any time thereafter to:

15.4.1 Restrict disclosure of Confidential Information to Associated Parties on a need to know basis, only as may be strictly necessary for the purpose the Confidential Information was disclosed to it;

15.4.2 Not divulge or disclose (whether directly or indirectly) Confidential Information (or any portion thereof) to any other parties in any form or manner whatsoever;

- 15.4.3 Advise all receiving Associated Parties with access to the Confidential Information of the obligation to protect the Confidential Information;
 - 15.4.4 Not use, exploit, permit the use of, or in any other manner whatsoever apply the Confidential Information or any portion thereof for its own benefit or for any other purpose whatsoever other than for the purpose for which it was provided and otherwise than in accordance with the provisions of this Agreement; and,
 - 15.4.5 Take all such steps as may be necessary to prevent the Confidential Information falling into the hands of unauthorised third parties.
- 15.5 The above undertakings relating to confidentiality and non-disclosure will not apply to any information which:
- 15.5.1 the Receiving Party can demonstrate was acquired by it independently from a third party acting in good faith which has not previously obtained the Confidential Information directly or indirectly under a confidentiality obligation from the Disclosing Party, as proved by Receiving Party's written records;
 - 15.5.2 is received from a Third Party without restriction and without breach of an agreement with the Disclosing Party;
 - 15.5.3 is independently developed by the Receiving Party as evidenced by its written records;
 - 15.5.4 is made public by the Disclosing Party or which otherwise is or hereafter becomes part of the public domain through no wrongful act, fault or negligence on the part of the Receiving Party; or,
 - 15.5.5 is disclosed by the Receiving Party to satisfy an order of a court of competent jurisdiction or to comply with the provisions of any law or regulation in force from time to time, provided that in such circumstances the Receiving Party will give the Disclosing Party sufficient prior written notice of such request so as to enable the Disclosing Party to take whatever steps it deems necessary to protect its interests in this regard, provided that the Receiving Party will only disclose that portion of the Confidential Information which it is legally required to disclose and the Receiving Party will use all reasonable endeavours to protect the confidentiality of such information to the widest extent possible in the circumstances.
- 15.6 In the event that any Confidential Information shall be copied, disclosed or used otherwise than as permitted under this Agreement then, upon becoming aware of same, the Receiving Party shall as soon as practicable notify the Disclosing Party of such event and, if requested by the Disclosing Party, take such steps (including the institution of legal proceedings) as shall be necessary to remedy (if capable of remedy) the default and/or to prevent further unauthorised copying, disclosure or use.

16. Customer's choice of Data Package

- 16.1 The Customer acknowledges that the Software requires an active Internet connection and that, if Users' devices are not connected to Wi-Fi, the Software will use the data connection available on the device (and therefore the data loaded on the device).
- 16.2 Skynamo expressly recommends to Customer that Customer restrict out-of-bundle data options and availability on all User devices in order to avoid accidental or excessive data costs.
- 16.3 Under no circumstances will Skynamo be liable to Customer or Users for any data costs relating to the use of the Skynamo Software.

17. Indemnity

- 17.1 **USE OF THE SOFTWARE WILL BE AT THE SOLE AND EXCLUSIVE RISK OF CUSTOMER AND USERS AND CUSTOMER HEREBY INDEMNIFIES AND AGREES TO HOLD SERVICE PROVIDER HARMLESS AGAINST ANY AND ALL LOSSES THAT MAY ARISE IN CONNECTION WITH SUCH USE OF THE SOFTWARE.**

17.2 THE CUSTOMER SPECIFICALLY INDEMNIFIES AND AGREES TO HOLD SERVICE PROVIDER HARMLESS AGAINST ANY AND ALL CLAIMS, ARISING FOR WHATSOEVER REASON, BY USERS, EMPLOYEES OR REPRESENTATIVES OF THE CUSTOMER RELATING TO THE USE OF THE SOFTWARE.

18. Exclusion of Consequential or Related Damages

IN NO EVENT WILL SERVICE PROVIDER OR ITS AFFILIATES HAVE ANY LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT FOR ANY LOST PROFITS, REVENUES, GOODWILL, OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER, BUSINESS INTERRUPTION OR PUNITIVE DAMAGES, WHETHER AN ACTION IS IN CONTRACT, DELICT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY.

19. Limitation of Liability

19.1 NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, SERVICE PROVIDER SHALL NOT BE LIABLE FOR ANY LOSS, LIABILITY, DAMAGES, WHETHER DIRECT, INDIRECT OR CONSEQUENTIAL OR EXPENSE OF WHATSOEVER NATURE AND HOWSOEVER ARISING WHICH IS CAUSED BY OR ATTRIBUTABLE TO –

19.1.1 ACTS, OMISSIONS OR A BREACH OF THIS AGREEMENT BY THE CUSTOMER OR ITS USERS;

19.1.2 THE FACT THAT THE SOFTWARE OR THE SERVICES ARE NOT FUNCTIONING PROPERLY OR AT ALL AT ANY PARTICULAR STAGE;

19.1.3 A DELAY IN PROVIDING OR REPAIRING THE SOFTWARE OR THE SERVICES OR THE TOTAL OR PARTIAL INTERRUPTION OF THE SOFTWARE OR THE SERVICES;

19.1.4 ANY ACT OR OMISSION OF SERVICE PROVIDER, ITS SERVANTS, AGENTS AND SUBCONTRACTORS AND/OR ANY BREACH OF SERVICE PROVIDER'S OBLIGATIONS IN TERMS OF THIS AGREEMENT;

19.1.5 LOSS OR DAMAGE RESULTING FROM THE TRANSFER OF DATA OVER COMMUNICATIONS NETWORKS AND FACILITIES, INCLUDING THE INTERNET;

19.1.6 THE UNLAWFUL OR FRAUDULENT ACCESSING BY A THIRD PARTY OF THE CUSTOMER'S TELECOMMUNICATION LINES, PBX (PRIVATE BRANCH EXCHANGE) OR ANOTHER TELECOMMUNICATION EQUIPMENT. IN SUCH CIRCUMSTANCES, THE CUSTOMER SHALL REMAIN LIABLE FOR ALL SERVICE CHARGES INCURRED PURSUANT TO SUCH UNLAWFUL OR FRAUDULENT ACCESS AND HEREBY INDEMNIFIES SERVICE PROVIDER AGAINST ALL LOSS, LIABILITY, DAMAGE OR EXPENSE WHICH IT MAY SUFFER AS A RESULT THEREOF.

19.2 BECAUSE OF THE NEED TO CONDUCT MAINTENANCE, REPAIR AND/OR IMPROVEMENT WORK FROM TIME TO TIME ON THE TECHNICAL INFRASTRUCTURE BY MEANS OF WHICH THE SERVICES ARE PROVIDED, THE PROVISION OF THE SERVICES MAY BE SUSPENDED FROM TIME TO TIME WITHOUT NOTICE BY SERVICE PROVIDER. SERVICE PROVIDER, ITS SERVANTS, AGENTS AND SUBCONTRACTORS ARE EXEMPTED FROM ALL LIABILITY FOR ANY LOSS OR DAMAGE (WHETHER DIRECT OR CONSEQUENTIAL) AND/OR FOR ANY COSTS, CLAIMS OR DEMANDS OF ANY NATURE TO THE CUSTOMER AND/OR ANY THIRD PARTY ARISING FROM SUCH SUSPENSION.

19.3 SERVICE PROVIDER DOES NOT UNDERTAKE TO REINSTATE THE SERVICES WITHIN A SPECIFIC PERIOD, AND SHALL BE EXEMPTED FROM ANY LIABILITY WHATSOEVER, IF THE NATURE OF THE FAILURE IS CAUSED BY A THIRD-PARTY SUPPLIER'S FAILURE TO DELIVER THEIR SERVICE AND IF THE FAILURE IS DUE TO A REASON OUT OF THE DIRECT CONTROL OF SERVICE PROVIDER.

19.4 SHOULD SERVICE PROVIDER, NOTWITHSTANDING CLAUSE 16, 17, 18 OR 19 ABOVE, BE FOUND TO BE LIABLE FOR DAMAGES SUFFERED BY THE CUSTOMER OR USERS, SERVICE PROVIDER'S ENTIRE LIABILITY FOR DAMAGES (INCLUDING DIRECT, INDIRECT AND CONSEQUENTIAL DAMAGES), FROM ANY CAUSE

WHATSOEVER, AND REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT OR IN DELICT OR IN TORT, SHALL BE LIMITED TO ACTUAL MONETARY DAMAGES NOT EXCEEDING 6 (SIX) MONTH'S LICENSE FEE. SUCH LICENSE FEE SHALL BE THE LICENSE FEE IN EFFECT WHEN THE CAUSE OF ACTION AROSE.

- 19.5 NOTHING IN THIS AGREEMENT SHALL EXCLUDE OR RESTRICT SERVICE PROVIDER'S LIABILITY FOR ANY LIABILITY WHICH MAY NOT BE EXCLUDED BY LAW.**
- 19.6 SKYNAMO SHALL NOT BE LIABLE FOR ANY LOSS, LIABILITY, DAMAGES, WHETHER DIRECT, INDIRECT OR CONSEQUENTIAL OR EXPENSE OF WHATSOEVER NATURE AND HOWSOEVER ARISING WHICH IS CAUSED BY OR ATTRIBUTABLE TO THE MSELLER SOFTWARE. SIMILARLY, COMPUTOY SHALL NOT BE LIABLE FOR ANY LOSS, LIABILITY, DAMAGES, WHETHER DIRECT, INDIRECT OR CONSEQUENTIAL OR EXPENSE OF WHATSOEVER NATURE AND HOWSOEVER ARISING WHICH IS CAUSED BY OR ATTRIBUTABLE TO THE SKYNAMO SOFTWARE.**

20. Disclaimer of Warranty

- 20.1 NOTWITHSTANDING ANYTHING ELSE TO THE CONTRARY IN THIS AGREEMENT, SERVICE PROVIDER DOES NOT WARRANT THAT USE OF THE SOFTWARE WILL BE UNINTERRUPTED, TIMELY, SECURE OR ERROR-FREE OR THAT THE SOFTWARE OR THE SERVICES WILL MEET THE CUSTOMER'S REQUIREMENTS.**
- 20.2 SERVICE PROVIDER WILL PROVIDE THE SOFTWARE AND THE SERVICES WITH REASONABLE CARE AND SKILL. SERVICE PROVIDER DOES NOT MAKE ANY OTHER PROMISES OR WARRANTIES ABOUT THE SOFTWARE OR THE SERVICES. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY SERVICE PROVIDER OR AN AUTHORISED REPRESENTATIVE OF SERVICE PROVIDER CREATES A WARRANTY AND THE SOFTWARE IS PROVIDED "AS IS" WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND. SERVICE PROVIDER DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, SUCH AS THE IMPLIED WARRANTIES OF CONDITION, UNINTERRUPTED USE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, QUIET ENJOYMENT, AND NON –INFRINGEMENT OF THIRD-PARTY RIGHTS. SERVICE PROVIDER DOES NOT WARRANT AGAINST INTERFERENCE WITH CUSTOMER'S ENJOYMENT OF THE SOFTWARE OR THAT THE SOFTWARE WILL INTEROPERATE OR BE COMPATIBLE WITH ANY OTHER SOFTWARE OR THAT ANY ERRORS OF THE SOFTWARE WILL BE CORRECTED.**
- 20.3 SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION AND/OR LIMITATION OF IMPLIED WARRANTIES OR STATUTORY RIGHTS OF A CONSUMER, IN WHICH CASE SOME OR ALL OF THE ABOVE EXCLUSIONS AND LIMITATIONS APPLY ONLY TO THE FULLEST EXTENT PERMITTED BY LAW IN THE APPLICABLE JURISDICTION.**
- 20.4 WHERE THERE ARE APPLICATIONS UNDER THE MSELLER SOFTWARE THAT ARE THE PROPERTY OF A THIRD PARTY, COMPUTOY WARRANTS THAT THEY HAVE ALL REQUISITE AUTHORITY TO SUB-LICENCE SUCH APPLICATIONS TO THE CUSTOMER FOR THE PURPOSES OF THIS AGREEMENT AND FOR USE UNDER ITS TERMS.**

21. Ownership and Intellectual Property

- 21.1 The License granted to Customer by Service Provider, is a limited license to use the Software. Customer acknowledges that all copies, whether partial or complete, of the Software as well as all intellectual property rights in and to the Software and the Services (including without limitation, copyright and trade secret rights) are and shall remain the sole property of Service Provider or its third-party suppliers.**
- 21.2 Service Provider retains all ownership rights to all applicable copyrights, trade secrets trademarks, service marks, trade names and other intellectual property rights in the Software.**

22. Bribery and Anti-Corruption

- 22.1 Each Party warrants to the other that it shall comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption.
- 22.2 Each Party further warrants that neither such Party nor any affiliated person to such Party have, to the best of such Party's knowledge, corruptly done any act in furtherance of an offer, payment, promise to pay, or authorisation of the payment of any money, offer, gift, promise to give, or of anything of value directly or indirectly to any government official, political party, party official, or any candidate for political office, for purposes of:
- 22.2.1 influencing any act or decision of such government official, political party, party official, or candidate in his or its official capacity;
 - 22.2.2 inducing such government official, political Party, Party official, or candidate to do or omit to do any act in violation of his or its lawful duty;
 - 22.2.3 securing any improper advantage;
 - 22.2.4 inducing such government official, political party, party official, or candidate to use his or its influence with a government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality; or
 - 22.2.5 assisting the other Party or facilitating any transaction which may be related to this transaction in obtaining or retaining business for or with, or directing business to, the other Party.
- 22.3 Breach of the aforementioned warranties by a Party shall entitle the other Party to immediately terminate this Agreement.

23. Legal Cost

Should either Party instruct attorneys to take any steps to enforce any rights in terms of this Agreement arising from a breach thereof, then the breaching party shall be liable for all legal and incidental costs, including legal fees, collection commission and tracing charges.

24. Force Majeure

If either Party ("**affected party**") is prevented or restricted directly or indirectly from carrying out all or any of its obligations under this Agreement by reason of an event of Force Majeure, then the affected party shall be relieved of its obligations hereunder during the period that such event continues (and for so long as the affected party is so prevented from fulfilling its obligations, then the corresponding obligations of the other party shall be suspended to the corresponding extent), and the affected party shall not be liable for any delay and/or failure in the performance of its obligations under this Agreement during such period, provided that if the force majeure event continues for a period longer than 30 (thirty) days, either Party may cancel this Agreement with immediate effect.

25. Notice and Service Address

- 25.1 The Parties choose as their notice and service address ("**Notice Address**") for the purposes of the giving of any notice, the serving of any process and for any other purposes arising from this Agreement, the addresses as set out in the Order Form.
- 25.2 Any notice given and any payment made by a Party to the other ("**the addressee**") which:
- 25.2.1 is delivered by hand during the normal business hours of the addressee at the addressee's Notice Address for the time being shall be presumed, unless the contrary is proved by the addressee, to have been received by the addressee at the time of delivery;

25.2.2 is transmitted by e-mail to the addressee shall be presumed, unless the contrary is proved by the addressee, to have been received by the addressee within 2 (two) hours of transmission.

25.3 Where, in terms of this Agreement any communication is required to be in writing, the term "writing" shall include communications by e-mail.

25.4 Notwithstanding anything to the contrary contained or implied in this Agreement, a written notice or communication actually received by one of the Parties from another including by way of electronic mail shall be adequate written notice or communication to such Party.

26. Applicable Law and Jurisdiction

26.1 This Agreement shall be interpreted and governed in all aspects in accordance with the laws of England and Wales.

26.2 The Parties consent to the jurisdiction of the Courts of England and Wales in respect of any matter flowing from this Agreement.

27. Arbitration

27.1 Except for disputes relating to the payment of Once-off Fees or License Fees under this Agreement, any controversy or claim arising out of or relating to this Agreement, including any question regarding its breach, existence, validity or termination or the legal relationships established by this Agreement, shall be finally resolved by arbitration under The UNCITRAL Rules in force at the date of this Agreement

27.2 It is agreed that:

27.2.1 the tribunal shall consist of one arbitrator who is to be a practicing barrister;

27.2.2 in default of the Parties' agreement as to the arbitrator, the appointing authority shall be the Chartered Institute of Arbitrators in London;

27.2.3 the seat of the arbitration shall be London;

27.2.4 the law governing this arbitration agreement shall be English; and

27.2.5 the language of the arbitration shall be English.

28. General

28.1 Customer agrees that its subscription to the Software and the Services are not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by Service Provider regarding future functionality or features.

28.2 If any provision of this Agreement is found to be unenforceable, the remainder shall be enforced as fully as possible and the unenforceable provision shall be deemed modified to the limited extent required to permit its enforcement in a manner most closely approximating the intention of the Parties as expressed herein.

28.3 Each Party represents and warrants to the other that it is not party to any contract with any other entity or individual that would interfere with or prevent its compliance with the terms and provisions of this Agreement.

28.4 This Agreement shall be binding upon and inure to the benefit of the Parties and their successors and assigns.

28.5 Neither Party may transfer, cede or assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the other Party's prior written consent (which consent shall not to be unreasonably withheld).

- 28.6 This Agreement contains the entire agreement between the Parties and no Party shall be bound by any undertakings, representations, warranties, promises or the like not recorded herein.
- 28.7 Skynamo may propose amendments to these Terms of Use at any time by providing notice to the Customer in writing (including via e-mail). If the Customer does not respond to the notification of the proposed amendments within fourteen calendar days, the amendment will be deemed to have been accepted by the Customer and shall take effect and form part of the Agreement. In the event Customer informs Skynamo that it does not accept the proposed amendments, the proposed amendments will not take effect and the existing terms will continue in full force and effect.
- 28.8 Save for the provisions of clause 28.7, no alteration, cancellation or addition to the Agreement shall be of any force or effect unless reduced to writing and signed by all Parties to this Agreement or their duly authorised representatives.
- 28.9 No failure or delay by any Party hereto in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or future exercise of any right, power or privilege. No indulgence, leniency or extension of time which Skynamo may grant or show to the Customer, shall in any way prejudice Skynamo or preclude Skynamo from exercising any of its rights in the future.
- 28.10 Nothing in this Agreement shall create, or be deemed to create, a partnership, the relationship of principal and agent, or of employer and employee between Service Provider and the Customer