

Third Party Product Terms – Skynamo

1. General Description:

1.1 These Third Party Product Terms detail the provision by KCS to Customer of the Supplier's field sales management software ("Skynamo Software").

1.2 Third Party Products are provided by third party suppliers and the provisions in these Third Party Product Terms reflect or flow down the terms and basis on which the Skynamo Software is provided to KCS.

1.3 Capitalised terms used in these Third Party Product Terms but not defined in herein are defined within the KCS Section A Terms and Conditions.

1.4 In these Terms, unless the context otherwise requires, the following expressions shall have the following meanings:

1.4.1 "**Customer Data**" means the data inputted by the Customer (including its affiliates, employees and directors) into the Skynamo Software or otherwise provided to the Supplier as part of the Customer's use of the Skynamo Software.

1.4.2 "**Incident**" means any Vulnerability, Virus or security incident which:

- (a) May affect the Skynamo Software or the Services
- (b) May affect the Supplier's network and information systems, such that it could potentially affect the Customer or the Skynamo Software or the Services; or
- (c) is reported by the Customer.

1.4.3 "**Non-Supplier 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 Software, including, but not limited to Enterprise Resource Planning software and Accounting software;

1.4.4 "**Services**" means the Services provided by the Supplier to the Customer including providing the Skynamo Software and any applicable Skynamo Support

1.4.5 "**Supplier**" means Skynamo Software Limited a company registered in South Africa under registration number 2012/052717/07 and with its registered address at Block E Capital Place, 11

Neutron Road, Techno Park, Stellenbosch, Western Cape, 7600.

1.4.6 "**Support Services**" means the related support services (if any) provided by the Supplier to the Customer to assist the Customer with any technical and advisory support in connection with the Customer's use of the Skynamo Software.

1.4.7 "**Terms**" mean these Third Party Product Terms.

1.4.8 "**User Subscriptions**" means the individual user subscriptions purchased by the Customer from time to time to enable the Customer's employees, directors, contractors or consultants to access and use the Services in accordance with these Third Party Product Terms (as confirmed by the Supplier in writing).

1.4.9 "**Virus**" means any thing or devices (including any software, code, file or programme) which may: prevent, impair, or otherwise adversely affect the operation of any computer software, hardware or network.

1.4.10 "**Vulnerability**" means a weakness in the computational logic (for example, code) found in software and hardware components that, when exploited, result in a negative impact to confidentiality, integrity or availability.

2 Provision of the Skynamo Software:

2.1 The Skynamo Software provides the features set out at <https://skynamo.com/> subject to regional availability.

2.2 KCS may make changes to these Terms:

2.2.1 at any time following an update in the terms and/or requirements of the Supplier;

2.2.2 at any time following a change in law and/or regulation relating to the use or provision of the Skynamo Software;

2.2.3 on not less than 30 days' prior notice;

and the latest version of these Terms shall be apply.

2.3 The latest version of these Terms are available at <https://www.kerridgecs.co.za/page/site/documentation>

3 Rights to use the Skynamo Software:

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3.1 Subject to these Terms and on condition of the payment of all Charges, and solely in the manner and to the extent permitted by and provided for in the Customer's Contract, KCS hereby grants to the Customer a non-exclusive and non-transferable right to:

- (a) use the Software on mobile devices and to access the online components of the Software through a browser; and
- (b) print portions of the electronic or online documentation for reasonable use by the licenced users.

3.2 The Supplier will issue one license to the Customer for each User subscribed by the Customer in terms of the subscription for the use of the Software.

3.3 The licence granted confers no title to or ownership in the Software to the Customer. The Supplier's third party suppliers may protect their rights in the event of any violation of any terms of this agreement.

3.4 The Customer acknowledges and agrees that the Supplier shall be under no obligation to make service development decisions under the direction of the Customer or to make changes to the Software at the instruction of the Customer.

3.5 Excepts for the right to use the Services as expressly granted in herein, these Terms do not grant the Customer any Intellectual property Rights in respect of the Services and all Intellectual Property Rights in the Services shall vest in, and remain vested in, the Supplier (or its licensors, if applicable).

3.6 To the extent that the Customer acquires any Intellectual Property Rights in the Software the Customer will, on the Supplier's written demand, assign or procure the assignment of such Intellectual Property Rights with full title guarantee (including by way of present assignment of future Intellectual Property Rights) to the Supplier. The Customer shall execute all such documents and do such things as the Supplier may consider necessary to give effect to this clause 3.4 at its own cost.

3.7 Customer grants to the Supplier a worldwide, perpetual, irrevocable, royalty-free licence to use and incorporate into the Software and related services any suggestion, enhancement request, recommendation, correction or other feedback provided by the Customer or Users relating to the operation of the Software and related services.

4 Supplier's Obligations:

4.1 The Supplier will:

- (a) make the Software available to the Customer pursuant to this agreement and any applicable order form.
- (b) Use all commercially reasonable efforts to make the Software available twenty-four hours a day, seven days a week, except for:
 - (i) planned downtime (of which the Supplier shall give advance electronic notice); and
 - (ii) unavailability caused by circumstances beyond the Supplier's reasonable control, including force majeure, internet service provider failure or delay, failure or non-functionality of a Non-Supplier application or a denial of service attack.
- (c) provide the Services with reasonable skill and care.

4.2 The Supplier does not warrant that:

- (a) the Customer's use of the Services will be uninterrupted or error-free;
- (b) the Services will meet the Customer's requirements;
- (c) the Services will be free from Vulnerabilities or Viruses; or that
- (d) the Services will comply with the Customer's cybersecurity requirements.

4.3 The Supplier uses third parties to provide cellular network coverage and shall not be held responsible for poor network quality and/or network downtime.

4.4 The role any technical support provided by the Supplier is to assist the Customer in using the Software and to troubleshoot any problems and find the source of an error. The role of technical support is not tot be an outsourced administration office.

4.5 Should any member of the Supplier technical support team assist a user and/or customer with a request that could have been completed by the customer and/or the user themselves, the supplier will not be held liable for any loss or damage suffered by the customer due to the Supplier executing such request and the Customer indemnifies and agrees to hold the Supplier harmless against any and all losses that may arise in connection with executing such request.

5 Customer's Obligations:

5.1 Customer will:

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- (a) co-operate with the Supplier and provide all necessary information to allow the Supplier to provide the Services;
- (b) ensure that any users who have access to the Software comply with the terms of this Agreement;
- (c) use the Services in accordance with the terms and conditions of this Agreement;
- (d) comply with the terms of service if any Non-Supplier applications with which the Customer uses the Software and related services;
- (e) keep secure all login information for the use of the Services;
- (f) allow the Supplier to audit the use of the Services where the Supplier provides the Customer with reasonable prior written notice;
- (g) ensure that the Customer's network and systems comply with all relevant specifications provided by the Supplier in relation to use of the Services;
- (h) be responsible for obtaining, maintaining and securing its own internet connection.

5.2 Customer will not:

- (a) make the Software or related services available to anyone other than the designated Users, or use the Software and related services for the benefit of anyone other than the Customer;
- (b) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documents (as applicable) in any form or media or by any means;
- (c) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form for all or any part of the Software;
- (d) access all or any part of the Services in order to build a product or service which competes with the Services;
- (e) grant any sublicences to any other party to use the Services;
- (f) attempt to obtain, or assist third parties in obtaining, access to the Services;
- (g) access, store, distribute or transmit Viruses or any harmful or illegal material during the course of its use of the Services; or
- (h) introduce or permit the introduction of, any Virus or Vulnerability into the Supplier's network and information systems.
- (i) Remove, add, alter, obscure any trademarks, trade names, logos, patent or copyright notices or markings, proprietary and/or other legal notice on or in the Software;
- (j) Interfere with or disrupt the integrity of performance of the Software or third-party data contained therein;

- (k) 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;
- (l) frame or mirror any part of any Software or related services, other than framing on Customer's own intranets or otherwise for Customer's own internal business purposes or as permitted under this agreement;
- (m) provide access (directly or indirectly) to the Software via the internet or any file-sharing method or system;
- (n) 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 Software by direct competitors of the Supplier is prohibited;.

5.3 The Customer shall use all reasonable efforts to prevent any unauthorised access to the Services. Upon discovering any unauthorised access, the Customer must immediately notify the Supplier.

5.4 The Customer shall notify the Supplier immediately of any Incidents.

5.5 The Customer acknowledges that any delay caused by the Customer failing to fulfil any of its obligations under this Agreement may mean that the Supplier needs to adjust any agreed timescales and could lead to an increase in the Fees.

6 Charges and Payment:

6.1 KCS Shall invoice the Customer monthly in arrears for the Charges under the relevant Contract.

6.2 Customer is responsible for checking all invoices and Charges in relation to its use of the Skynamo Software. Any disputes solely relating to the Charges for the Skynamo Software must be raised within seven (7) days of date of invoice from KCS, and with sufficient information to allow KCS to raise any elated dispute with the Supplier. Nothing in this clause 6.2 shall entitle the Customer to withhold payment of any invoices. Customer must act reasonably and in good faith in relation to any Skynamo Software disputes of Charge queries.

7 Intellectual Property Rights Indemnity:

7.1 The Supplier shall indemnify the Customer against all damages, liabilities, costs, expenses and losses suffered or incurred by the Customer arising from any claim by a third party that the use of the Services

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by the Customer infringes the Intellectual Property Rights of that third party, provided that:

- (a) the Supplier is given prompt notice of such claim;
- (b) the Customer provides reasonable co-operation to the Supplier in the defence and settlement of such claim, at the Supplier's expense; and
- (c) the Supplier is given sole authority to defend or settle the claim.

7.2 In the defence or settlement of any claim, the Supplier may procure the right for the Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this Agreement without liability to the Customer. The Supplier shall have no liability if the alleged infringement is based on:

- (a) a modification of the Services by anyone other than the Supplier; or
- (b) the Customer's use of the Services in a manner contrary to the instructions given by the Supplier; or
- (c) the Customer's use of the Services after notice of the alleged or actual infringement from the Supplier or any appropriate authority.

7.3 The foregoing states the Customer's sole and exclusive rights and remedies, and the Supplier's (including the Supplier's employees', agents' and sub-contractors') entire obligations and liability for infringement of any intellectual Property Right.

8 Limitation of Liability:

8.1 Except as expressly and specifically provided in these Terms:

- (a) the Customer assumes sole responsibility for results obtained from the use of the Services by the Customer, and for conclusions drawn from such use;
- (b) the Supplier shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Supplier by the Customer in connection with the Services, or any actions taken by the Supplier at the Customer's direction;
- (c) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Agreement; and

(d) the Services are provided to the Customer on an "as is" basis.

8.2 Nothing in these Terms excludes the liability of the Supplier for:

- (a) death or personal injury causes by the Supplier's negligence; or
- (b) fraud or fraudulent misrepresentation.

8.3 Subject to clauses 8.1 and 8.2:

- (a) the Supplier shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses, or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this Agreement; and
- (b) the Supplier's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited to the total Fees paid during the 12 months immediately preceding the date on which the claim arose.

9 Suspension and Termination:

9.1 KCS may suspend and/or terminate the Skynamo Software or Customer's use or access to the Skynamo Software:

- (a) Immediately without notice or instruction or at the request of the Supplier;
- (b) Immediately without notice in the event of a suspected breach of or where required by any acceptable use policy, applicable laws or regulations or the requirements of a supplier;
- (c) Immediately without notice if KCS or a supplier determines, in its sole discretion, that Customer's continued use of the Skynamo Software damages the brand or reputation of KCS or Supplier; or
- (d) immediately without notice in the event of a material breach of these Terms by Customer.

10. Data Processing:

10.1 The Customer shall own all right, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability,

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- integrity, accuracy and quality of the Customer Data.
- 10.2 In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for the Supplier to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by the Supplier. Supplier shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by the Supplier to perform services related to Customer Data maintenance and back-up).
- 10.3 The Supplier shall, in providing the Software, comply with its Privacy Policy relating to the privacy and security of the Customer Data available at <https://skynamo.com/> or such other website address as may be notified to the Customer from time to time, as such document may be amended from time to time by the Supplier in its sole discretion.
- 10.4 If the Supplier processes any personal data on the Customer's behalf when performing its obligations under this agreement, the parties record their intention that the Customer shall be the data controller (or Responsible Party in South Africa and references to Controller shall be construed as references to Responsible Party where appropriate) and the Supplier shall be a data processor and in any such case:
- (a) the Customer acknowledges and agrees that the personal data may be transferred or stored outside the EEA or the country where the Customer and the Authorised Users are located in order to provide the Skynamo Software and the Supplier's other obligations under this agreement;
 - (b) the Customer shall ensure that the Customer is entitled to transfer the relevant personal data to the Supplier so that the Supplier may lawfully use, process and transfer the personal data in accordance with this agreement on the Customer's behalf;
 - (c) the Customer shall ensure that the relevant third parties have been informed of, and where required have given their consent to, such use, processing, and transfer as required by all applicable data protection legislation;
 - (d) the Supplier shall process the personal data only in accordance with the terms of this agreement and any lawful instructions
- reasonably given by the Customer from time to time; and
- (e) each party shall take appropriate technical and organisational measures against unauthorised or unlawful processing of the personal data or its accidental loss, destruction or damage.
- 10.5 The Supplier may also use statistical data relating to the Customer's use of the Skynamo Software in aggregate with similar data from other users provided that the identity of any individual customer cannot be derived from such use.
- 10.6 If Customer wishes to enable third-party applications for use in conjunction with the Service, Customer authorises the Supplier to allow the providers of those third-party applications to access the Customer Data as required for the interoperation of such third-party applications with the Service. The Supplier shall not be responsible for any disclosure, modification or deletion of the Customer's Data resulting from any such access by any such third-party application providers. Under no circumstances will the Supplier be or become liable for any loss or damage suffered by any such party and the End User hereby indemnifies the Supplier from and against any claim that may be made by a third party.
- 10.7 Customer acknowledges that the Supplier is reliant on Customer for directions as to the extent to which the Supplier is entitled to use and process the personal data. Consequently, Customer shall indemnify and keep indemnified the Supplier and its permitted assign for: (i) any claim brought by a data subject, any person, or a supervisory authority against the Supplier (and any damages, fines, awards, expenses, liabilities, and/or losses suffered or incurred by the Supplier) arising from any action or omission by the Supplier or its sub-contractor, to the extent that such action or omission resulted from Customer's instructions except to the extent that same has arisen out of non-compliance by the Supplier or its sub-contractors with their obligations under applicable Data Protection Legislation; and (ii) any damages, fines, awards, expenses, liabilities, and/or losses suffered or incurred by the Supplier (and/or its permitted assigns) arising as a result of a breach by Customer of Customer obligations under applicable Data Protection Legislation
- 10.8 Customer warrants and represents that Customer has obtained and/or have in place, all necessary consents, approvals and/or valid legal basis for the

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lawful transfer of personal data to the Supplier for the purposes of these Terms and the provision of services by the Supplier and KCS.

11 Customer Indemnity:

Customer agrees to defend, indemnify, and hold harmless the Supplier from and against any claims, demands, damages, losses, liabilities, awards and/or expenses suffered and/or incurred or agreed to be paid out by the Supplier arising out of or in connection with Customer's use or the use by Customer's End Users of the Skynamo Software in breach of these terms and/or any Content posted, uploaded, distributed, transmitted or disseminated by Customer or Customer's End Users.

12 Remote access:

12.1 In certain cases where the Supplier's 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**").

12.2 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 the Supplier to remotely access its Systems and, consequently, its data solely for the purpose of providing the required support services

12.3 Customer agrees to backup all of its data prior to providing the Supplier with Remote Access.

12.4 The Supplier 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 the Supplier harmless against any and all losses that may arise in connection with such remote access.

13 Data Retention and Backup:

13.1 The Supplier will make a full backup of all Customer Data once a week ("**Backup Cycle**"). Each evening, the Supplier will make an incremental backup. These backups are kept for 4 (four) Backup Cycles in high availability storage (<http://aws.amazon.com/s3/>). Backups reside in the region it was created.

13.2 Data on the live instance of the Software may be trimmed as follows as the need arises:

- (a) Logs are trimmed monthly to 3 (three) months' data;
- (b) Track points, time segments and route segments are trimmed monthly to 6 (six) months' data;
- (c) 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,
- (d) On the mobile application, only the most recent interactions, orders etc. may be synced down due to space concerns.

14 Sub-Processors:

14.1 The Supplier 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 the Supplier making use of such sub-processors.

14.2 The Supplier shall be entitled to subcontract any obligation in terms of this Agreement without the prior written approval of the Customer, provided that the Supplier shall remain principally liable to the Customer to ensure that any of its subcontractors comply with the obligations of the Supplier so sub-contracted.

15 Non-Supplier Applications:

15.1 The Software can be integrated with Non-Supplier Applications such as Enterprise Resource Planning systems (e.g. Sage X3).

15.2 In such a case the Software is, and will remain, the property of the Supplier and the Supplier is not an agent, partner or authorised representative of the Non-Supplier Application and no legal relationship, whether contractual or otherwise, exists between the Customer and the Non-Supplier Application in respect of the Software.

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

16 Optional integration with Google services like Calendar, Contacts and Gmail:

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16.1 The Supplier offers integration for the 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 you provide the Supplier with access to the following types of Google data, the Supplier's use of that data will be subject to these additional restrictions:

- (a) The Supplier 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.
- (b) The Supplier will not use this Gmail data for serving advertisements.

16.2 The Supplier 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.

17 Customer's choice of data package:

17.1 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).

17.2 The Supplier 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.

17.3 Under no circumstances will the Supplier be liable to Customer or Users for any data costs relating to the use of the Software.

18 Use of Customer logos as a reference:

18.1 The Customer agrees that the Supplier may use the Customer's name and/or logo as a reference for marketing and sales purposes in accordance

with any trademark usage guidelines that the Customer provides.

19 General:

19.1 Relationship of the parties:

The Customer and the Supplier are independent businesses and not partners, principal; and agent, 16.1.1 or employer and employee or in any other relationship of trust to each other.

19.2 Assignment and other dealings:

The Customer shall not assign, subcontract or encumber any right or obligation under these Terms, in whole or in part, without the Supplier's prior written consent or except as expressly permitted in these Terms.