

SMSEAGLE SOFTWARE END USER LICENSE AGREEMENT

IMPORTANT – READ BEFORE OPERATING!

The herein contained End User License Agreement (the "**Agreement**" or "**License**" or "**EULA**") shall be considered a legally binding agreement between you (an individual or an entity, hereinafter "**Licensee**" or "**You**" or "**Your**") and Proximus Sp. z o.o., ul. Piątkowska 163, Poznań, Poland, zip code 60-650 (hereinafter "**PROXIMUS**") for the use of the software preinstalled on a SMSEagle device (i.e. software which is installed and delivered together with this device), which may include related printed material and any other components and/or software modules, including but not limited to required drivers (the "**SMSEagle Software**"). Other aspects of the SMSEagle Software may also include, but not limited to software updates and any upgrades that PROXIMUS may supply to You or make available to You, or that You obtain after acquiring the SMSEagle device, and as such that said items are not accompanied by a separate license agreement or terms of use.

BY YOUR USING THE SMSEAGLE DEVICE, OR UPDATING OR UPGRADING THE SMSEAGLE SOFTWARE, YOU AGREE TO BE LEGALLY BOUND BY THE HEREIN-CONTAINED TERMS OF THIS LICENSE AGREEMENT. IF YOU DO NOT AGREE TO BE BOUND BY THE TERMS OF THIS EULA, DO NOT USE THE SMSEAGLE DEVICE AND YOU MAY CHOOSE TO PROMPTLY RETURN THE DEVICE FOR A REFUND OF ITS PURCHASE PRICE BY CONTACTING PROXIMUS AT THE ADDRESS ABOVE.

THE SMSEAGLE SOFTWARE IS PROTECTED BY COPYRIGHT LAWS, AS WELL AS ANY OTHER RELEVANT INTELLECTUAL PROPERTY LAWS. THE SMSEAGLE SOFTWARE IS LICENSED AND NOT SOLD. ALL RIGHTS INCLUDING COPYRIGHTS TO SMSEAGLE SOFTWARE REMAIN THE SOLE OWNERSHIP OF PROMIXUS, ADDITIONALLY AS STATED BELOW, THE SMSEAGLE SOFTWARE INCLUDES SOME MODULES DEVELOPED BY OTHERS, WHICH ARE SUBLICENSED TO YOU HEREBY ACCORDING TO TERMS PERMITTED BY THE DEVELOPER.

This EULA gives you specific legal rights, and you may also have other legal rights in addition, which vary from jurisdiction to jurisdiction. The disclaimers, exclusions, and limitations of liability under this EULA will not apply only to the extent prohibited by applicable law. Some jurisdictions do not allow the exclusion of implied warranties or the exclusion or limitation of incidental or consequential damages or other rights, so in that case those provisions of this EULA may not apply to you. However, it does not prejudice the executability and applicability of all other provisions of EULA.

1. DEFINITIONS AND INTERPRETATIONS

1.01 "Agreement" or "License" or "EULA" shall mean this End User License Agreement.

1.02 "Licensee" or "You" or "Your" refers to you, the individual or business entity acquiring a SMSEagle device on which the SMSEagle Software has been installed.

- 1.03** "Intellectual Property" means current and future worldwide rights under copyright law, patent law, trade secret law, trademark law, moral rights law, and other similar rights.
- 1.04** "Update" means maintenance of, or a fix to, a version of SMSEagle Software, including, but not limited to a hot fix, patch, or enhancement, none of which function as a standalone service or other software package and which do not have an additional cost for an existing Licensee.
- 1.05** "Upgrade" means a major, standalone version of SMSEagle Software, which may include additional applications, features, or functionality.
- 1.06** A reference to "person" includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors and permitted assigns.
- 1.07** Words in the singular shall include the plural and vice versa.
- 1.08** A reference to a statute, statutory provision or subordinate legislation is a reference to it as it is in force from time to time, taking account of any amendment or reenactment and includes any statute, statutory provision or subordinate legislation which it amends or re-enacts; provided that, as between the Parties, no such amendment or re-enactment shall apply for the purposes of this Agreement to the extent that it would impose any new or extended obligation, liability or restriction on, or otherwise adversely affect the rights of, any Party.
- 1.10** A reference to writing or written includes e-mail.
- 1.11** Any obligation in this Agreement on a person not to do something includes an obligation to not agree or allow that thing to be done.
- 1.12** Any phrase introduced by the terms "including", "include", "in particular" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 1.13** References to articles, sections, or clauses are to the articles, sections, and clauses of this Agreement.
- 1.14** "We", "Us", and "Our" refer to Proximus Sp. z o.o. ("PROXIMUS").
- 1.15** The "Parties" to this Agreement are You and Proximus Sp. z o.o. ("PROXIMUS").
- 1.16** "Collect" refers to transmitting data off the device in a way that allows PROXIMUS or any third-party partners to access it.

2. LICENSE GRANT

- 2.01** PROXIMUS grants to You a non-exclusive license for the use of the SMSEagle Software on the

SMSEagle device on which it was preinstalled and installation of Updates and Upgrades subject to the terms and conditions set forth herein:

(a) **Use.** PROXIMUS grants You the right to use a single instance of the SMSEagle Software on the SMSEagle device you have acquired. Use on any other device or computer is prohibited.

(b) **Backup Copy.** You may retain a single copy of the current version of SMSEagle Software for Your SMSEagle device as may be necessary for backup purposes.

2.02 Furthermore, this EULA shall also cover any and all software Updates and Upgrades provided by PROXIMUS that would replace, overwrite and/or supplement the original installed version of the SMSEagle Software, unless those other Updates and Upgrades are covered by a separate license, in which case the terms of that license will govern.

3. INTELLECTUAL PROPERTY

3.01 PROTECTED SMSEAGLE SOFTWARE. The SMSEagle Software is protected by copyright and other Intellectual Property laws and treaties.

3.02 RESTRICTIONS ON USE. As a Licensee, You may not: (a) Make use of the SMSEagle Software on more than one device at a time, without prior purchase of additional devices; (b) Share or otherwise make available the SMSEagle Software, in any manner whatsoever, to any third party (c) Modify, adapt, create derivative works from or translate any part of the SMSEagle Software other than what may be used within Your SMSEagle device in accordance with this License; (d) Reverse engineer, decompile or disassemble the SMSEagle Software, nor attempt to locate or obtain its source code; (e) Attempt to alter or remove any trademark, copyright or other proprietary notice contained within the SMSEagle Software; or (f) Make use of SMSEagle Software in any manner not stipulated within this EULA or the documentation accompanying the SMSEagle device on which it was preinstalled.

3.03 UPDATES/UPGRADES. PROXIMUS may find it appropriate to make available Updates or Upgrades to the SMSEagle Software. You may initiate the process for installing any Update or Upgrade such as by clicking a button "Check for software updates now" in the SMSEagle device's web interface. Alternatively (when the device has no Internet access) You may obtain an Update or Upgrade package from SMSEagle support at <https://support.smseagle.eu> to be later installed on the SMSEagle device. It shall be at the sole discretion of PROXIMUS to make conditional releases of said Updates or Upgrades to You upon Your acceptance of another EULA or execution of another separate agreement. Deciding to install and make use of these Updates or Upgrades, You agree to be subject to all applicable license, terms and conditions of this EULA and/or any other agreement.

4. DISCLAIMER OF WARRANTY

PROXIMUS shall use reasonable efforts consistent with prevailing software development standards to maintain SMSEagle Software in a manner which minimizes errors and interruptions.

HOWEVER, PROXIMUS NEITHER WARRANT THAT THE USE OF SMSEAGLE SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE; NOR MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF SMSEAGLE SOFTWARE.

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT AS EXPRESSLY PROVIDED HEREIN AND NOTWITHSTANDING ANYTHING TO THE CONTRARY, NEITHER PROXIMUS NOR ANY OFFICER, DIRECTOR, SUBSIDIARY, AFFILIATE, AUTHORIZED RESELLER, OR EMPLOYEE THEREOF, MAKES ANY OTHER WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE, AND NONINFRINGEMENT.

5. LIMITATION OF LIABILITY AND REMEDIES

IN SPITE OF ANY DAMAGES ARISING FROM OR RELATED TO THE SMSEAGLE DEVICE AND SMSEAGLE SOFTWARE OR ITS OPERATION THAT YOU MAY INCUR FOR ANY REASON, WHICH MAY INCLUDE, BUT ARE NOT LIMITED TO, ANY AND ALL DAMAGES IN CONTRACT, TORT OR OTHERWISE, THE ENTIRE LIABILITY OF PROXIMUS AND/OR ANY OF THE AFOREMENTIONED PERSONS REFERRED TO IN SECTION 4 ABOVE, AS WELL AS ANY LICENSORS REFERRED TO IN SECTION 6 BELOW, SHALL NOT EXCEED YOUR TOTAL PAYMENTS (IF ANY) WITH RESPECT TO THE PERTINENT SMSEAGLE DEVICE, WHICH HAS BECOME DUE FOR DURING THE PERIOD OF PRIOR 12 MONTHS BEFORE THE MONTH DAMAGE HAS BEEN SUFFERED. THIS LIMITATION IS CUMULATIVE AND SHALL COVER THE TOTAL FOR ALL SUCH INCIDENTS AND CLAIMS. THE AFOREMENTIONED LIMITATIONS, EXCLUSIONS AND ANY DISCLAIMERS SHALL APPLY TO THE MAXIMUM EXTENT ALLOWABLE BY LAW, EVEN SHOULD ANY PROPOSED REMEDY FAIL OF ITS ESSENTIAL PURPOSE.

6. OPEN SOURCE

Certain software modules in the PROXIMUS Software are subject to "open source" or "free software" licenses ("Open Source Software"). Some of the Open Source Software is owned by third parties. Such Open Source Software is not subject to the terms and conditions of this Agreement. Instead, each item of Open Source Software is licensed under the terms of the end user license that accompanies such Open Source Software. Nothing in this Agreement limits your rights under, or grants you rights that supersede, the terms and conditions of any applicable end user license for the Open Source Software. Applicable Open Source licenses include the: MIT License; GNU General Public License v. 2.0; GNU Lesser General Public License v. 2.1; BSD-3 Clause License; Apache License 2.0. If required by any license for particular Open Source Software, PROXIMUS makes such Open Source Software, and Our modifications to that Open Source Software, available by written request to Us at the email or mailing address.

7. U.S. GOVERNMENT END USERS

The SMSEagle Software is licensed to the U.S. Government with RESTRICTED RIGHTS. The use,

duplication of, or the disclosure thereof by the U.S. Government, shall be subject to restrictions in accordance with DFARS 252.227-7013 of the Technical Data and Computer Software clause, and 48 DCR 52.227-19 of the Commercial Computer Software clause, as applicable.

8. DATA PRIVACY

8.01 DATA COLLECTION STATEMENT. PROXIMUS does NOT collect ANY data you are working with when You use SMSEagle device. We could not see or collect any data saved on SMSEagle device, because we do not have any access to Your device.

8.02 GDPR. For your rights according to European Union General Data Protection Regulation (GDPR) see Privacy Policy available under this website: <https://www.smseagle.eu/privacy-policy/>

9. MISCELLANEOUS

9.01 SUCCESSORS AND ASSIGNS. This EULA, in its entirety, shall be legally binding upon and inure to the benefit of PROXIMUS and You, our respective successors and permitted assigns.

9.02 SEVERABILITY. If any provision of this Agreement is held to be illegal, invalid or unenforceable by a tribunal of competent jurisdiction, the remaining provisions shall not be affected.

9.03 WAIVER. If there is any waiver of any breach or failure to enforce any of the provisions contained herein, it shall not be deemed as a future waiver of said terms or a waiver of any other provision of this EULA.

9.04 AMENDMENTS. Any waiver, supplementation, modification or amendment to any provision of this EULA, shall be effective only when done so in writing and signed off by PROXIMUS.

9.05 GOVERNING LAW. In matters not regulated herein the provisions of the Polish Civil Code shall apply and provisions of Polish Copyright Act, 4th February 1994 (Journal of Laws 1994, No. 24, item 83). This Agreement shall be governed in all respects by the laws of the Republic of Poland.

9.06 DISPUTE RESOLUTION. All disputes arising from the present Agreement and/or in connection with it shall be finally decided with the Arbitration Court attached to the Czech Chamber of Commerce and the Agricultural Chamber of the Czech Republic according to its Rules by one arbitrator appointed by the President of the Arbitration Court.

9.07 ASSIGNMENTS. You may not transfer the SMSEagle device on which SMSEagle Software is installed unless the transferee agrees to the terms of this Agreement.

9.08 VALID AND BINDING. This Agreement constitutes a valid and legally binding obligation of the Parties, enforceable against the Parties in accordance with its terms, subject in all respects to the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other laws relating to or affecting creditors' rights generally and general equitable principles.

9.09 EFFECT OF TITLE AND HEADINGS. The title of the Agreement and the headings of Sections, and Clauses are included for convenience and shall not affect the meaning of the Agreement or the Section.

9.10 FORCE MAJEURE. Except for payment obligations, if either Party is prevented from performing or is unable to perform any of its obligations under this Agreement due to causes beyond the reasonable control of the Party invoking this provision, including but not limited to acts of God, acts of civil or military authorities, riots or civil disobedience, wars, strikes or labor disputes (each, a "**Force Majeure Event**"), such Party's performance shall be excused and the time for performance shall be extended accordingly provided that the Party promptly takes all reasonably necessary steps to resume full performance.

9.11 The provisions of this EULA do not prejudice the provisions on consumer protections and entrepreneur protection if You are a natural person who buys the device and conclude this EULA not connected directly with its business or professional activity or in case of entrepreneur being a natural person – not connected directly with its professional activity (applied to the EULA concluded from January 1st, 2021). If any provision of this EULA is inconsistent with mandatory consumer or individual entrepreneur's protection laws, the provision does not bind the consumer/individual entrepreneur and the provision of commonly binding law closest to that provision shall apply.

10. CONTACT INFORMATION

If you have questions regarding this EULA, please contact PROXIMUS at:

Proximus Sp. z o.o.
Ul. Piątkowska 163
60-650 Poznań
Poland | Europe
tel. + 48 61 6713 413
www.smseagle.eu