



**CROWD CONNECTED COLOCATOR SERVICES
TERMS AND CONDITIONS OF SUPPLY**

v1.5 April 2017

1. Application

- 1.1 Crowd Connected Ltd (“CC”) is willing to provide a licence to certain software, data and documentation (as defined below), together with a web-based console and API (also defined below) subject to the following terms and conditions (“**Terms and Conditions of Supply**”) which shall apply to the provision of the Services by CC to You during the Term.
- 1.2 Save where expressly stated or otherwise agreed in writing, in the event of conflict, ambiguity or inconsistency between the different components of this Agreement, such conflict, ambiguity or inconsistency shall be construed in accordance with the following order of priority:
 - (a) the Front Sheet;
 - (b) the Schedule(s) to the Front Sheet (if any);
 - (c) these Terms & Conditions of Supply.

2. Definitions and Interpretations

In this Agreement, unless the context otherwise requires, the following capitalised expressions have the following meanings:

“**Access Key**” means a unique alpha-numeric code issued by CC specific to a particular Application that enables a particular Software Feature or set of Software Features and/or facilitates Production Rights;

“**Access Permission**” means a unique authorisation entitling an individual to have access to the Colocator Web Console and/or authentication for API access in accordance with this Agreement;

“**Additional Colocator Software**” means any additional software (together with any additional documentation) that CC provides or makes available to You in connection with the Services including any related plug-ins, updates and/or upgrades as CC may distribute directly or indirectly. Additional Colocator Software will be considered Colocator Software under this Agreement, and will be subject to all Terms and Conditions of Supply. By receiving or possessing such Additional Colocator Software, You agree that the terms of this Agreement will apply thereto except to the extent any alternate terms provided by CC in connection with such Additional Colocator Software conflict with the terms of this Agreement. In the event of any such conflict, ambiguity or inconsistency, the alternate terms shall take precedence for that Additional Colocator Software only;

“**Agreement**” means these Terms and Conditions of Supply, the Front Sheet and its Schedule(s) and any other document which is agreed by the Parties and expressly designated to form a part of this Agreement and includes any variation made thereto;

“**Analytics**” means such analytics, heatmaps, visualisations, charts and other reports derived from and pertaining to the Output Data whether supplied by CC via the Colocator Web Console or API or by any other method, and always in an aggregated form;

“**Android**” means Google’s mobile operating system;

“**Announcement**” means any public relations release of information to any media publicising CC’s provision of the Services to You under this Agreement;

“**API**” means an application programming interface as may be updated from time to time that CC provides or otherwise makes available to You in connection with the Services provided under this Agreement;

“**Application**” means each software application You develop, or have developed on Your behalf by a Permitted Company or Your Contractor(s), with or in connection with the Colocator Software, which application is intended to be distributed for download and/or installation by end users for use on Devices, or otherwise installed on any hardware platform for any purpose;

“**CC Representative**” means the individual identified in the Front Sheet as CC’s primary contact in relation to this Agreement or such other individual notified by CC to You from time to time;

“**Colocator**” means CC’s patented cloud-based centralised system for managing mobile localisation and location data;

“**Colocator Proprietary Object Code**” means the text or computer processing instructions in machine readable form that enable specific Software Features;

“**Colocator Software**” means (i) the software licensed to You under this Agreement including the software development kit(s); related libraries and headers (i.e. Colocator Proprietary Object Code); certain sample application(s) in human readable (source code) form or object code (each a “**Sample Application**”); and (ii) Additional Colocator Software, if any, that CC provides;

“**Colocator Web Console**” means the web-based service as may be updated from time to time made available by CC and subject to Your subscription status as specified in the Front Sheet to enable You to set up

and manage Your account, and may provide You via various modules the ability to, *inter alia*: (i) set up and manage beacons, regions, events and alerts; (ii) access certain Analytics; (iii) configure Colocator Software; (iv) create segmented geo-behavioural messaging campaigns for delivery to Devices; and (v) access other functionality provided to You with respect to Your Application(s) and/or Your Output Data;

“**Commencement Date**” means the date from which the Agreement has effect as specified in the Front Sheet;

“**Confidential Information**” of a Party means any document, material, idea, data, or other information which relates to that Party’s or a member of its Group’s research and development, products, processes, know-how, market opportunities, trade secrets, or business affairs or which is marked confidential or which the Receiving Party knows or reasonably ought to know is confidential and disclosed by a Party to the other in connection with this Agreement. Confidential Information includes all of the aforementioned in relation to: Access Key, Access Permission, Agreement, Analytics, API(s), Application, Output Data, Colocator, Colocator Proprietary Object Code, Colocator Software, Colocator Web Console, Device, Documentation, Input Data, Output Data, or Software Feature. Without prejudice to the foregoing sentence, Confidential Information does not however include any document, material, data or other information which:

- (a) is in the possession of and is at the free disposal of the Receiving Party or is published or is otherwise in the public domain before its receipt by the Receiving Party;
- (b) is or becomes publicly available on a non-confidential basis through no fault of the Receiving Party or any member of its Group; and
- (c) is received in good faith by the Receiving Party from a third party who, on reasonable enquiry by the Receiving Party claims to have no obligations of confidence to the other Party to this Agreement in respect of it and who imposes no obligations of confidence upon the Receiving Party;

“**Contractor**” means Your independent contractor notified to CC in advance who develops and/or distributes an Application on Your behalf and who You procure shall be bound by the terms of this Agreement;

“**Device**” means any hardware on which the Application is installed and run, including a smartphone or similar mobile device via which the Application may be accessible by an end user;

“**Disclosing Party**” means the Party disclosing Confidential Information;

“**Discovered Device**” means any hardware that is not a Device (that is, on which the Application is not installed) including a smartphone or similar mobile device and which transmits a signal that is sensed by one or more Devices;

“**Documentation**” means Colocator documentation that CC makes available to You in connection with the Services;

“**DPA**” means the Data Protection Act 1998;

“**EU**” means the European Union of member states;

“**Front Sheet**” means the front sheet service specification document (including its schedules) which forms part of this Agreement;

“**Good Industry Practice**” means using such standards, practices, methods and procedures and exercising such degree of skill and care, diligence, prudence and foresight, which would in each case reasonably and ordinarily be expected from a skilled and experienced person in the same industry in the same or similar circumstances;

“**Group**” means in the case of either Party, that Party, its subsidiaries and holding companies and any other subsidiaries of such holding companies, and “**Group Company**” shall be construed accordingly;

“**Intellectual Property Rights**” or “**IPR**” means patents, trade marks, service marks, utility models, rights in and to designs, trade and business names, domain names, rights in goodwill or to sue for passing off, unfair competition rights, copyright (including rights in computer software) and related rights, database rights, moral rights, rights in confidential information (including know-how and trade secrets), in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;

“**Initial Period**” means a period from the Commencement Date specified in the Front Sheet;

“**Input Data**” means observations derived from sensors on the Device sent from Devices to Colocator servers;

“**Invoice Period**” means the period representing the frequency with which the different Fees are payable by You as specified in the Front Sheet (e.g. a month, quarter, year etc.);

“**IOS**” means Apple’s mobile operating system;

“**Marks**” means the trade names, trademarks, service marks, logos, domain names and other distinctive brand features of CC or third parties licensed to CC;

“**Output Data**” means certain data points relating to Devices and/or Discovered Devices as specified in the Documentation including locations, trajectories, client events and other spatio-temporal data which, subject to Your subscription status as specified in the Front Sheet, may be made available to You in non-aggregated form via the API and/or Colocator Web Console;

“**Permitted Company**” means, if applicable, each of You and those Group Companies identified as a “Permitted Sub-Licensee” in the Front Sheet and who You procure shall be bound by the terms of this Agreement;

“**Personal Data**” means any data relating to an identifiable individual, as defined by the DPA;

“**Party**” means each of CC and You; “**Parties**” means both CC and You;

“**Production Rights**” means the right to access and use the Services in connection with Applications that have been distributed, or are about to be distributed, to third parties;

“**Receiving Party**” means the Party receiving Confidential Information;

“**Relevant Law**” means all laws, statutes, regulations, directions, guidelines and codes of conduct of any governmental or other regulatory body of competent jurisdiction and any orders of any court or other tribunal of competent jurisdiction which are applicable to this Agreement or to the performance by either Party of its obligations under this Agreement;

“**Services**” means various Colocator products and services as updated from time to time and made available by CC under this Agreement pursuant to Your subscription status as specified in the Front Sheet, comprised of (i) the Colocator Software; (ii) API(s); (iii) Documentation; (iv) the Colocator Web Console modules; (v) the Output Data; (vi) certain Analytics; (vii) certain geo-targeted messaging functionality and (viii) other related Colocator services provided by CC;

“**Service Fees**” means those sums set out in the Front Sheet which are payable by You to CC in consideration of the Services supplied to You under this Agreement;

“**Software Feature**” means certain functionality embedded within an Application facilitated by Colocator Software;

“**Territories**” means the countries set out in the Front Sheet;

“**Term**” means the term of this Agreement, as specified in the Front Sheet;

“**Third Party Software**” means any third party software code as may be contained in the Colocator Software including software licensed under open source terms;

“**UK**” means the United Kingdom of Great Britain, Northern Ireland, the Channel Islands and the Isle of Man;

“**User**” means Your authorised individual (whether a person employed by You, or by Your Contractor or otherwise) assigned an Access Permission enabling the individual to log in to the Web Console and/or gain access to an API and use the Services in accordance with this Agreement;

“**VAT**” means United Kingdom value added tax or any similar tax from time to time replacing it or performing a similar fiscal function;

“**Virus**” means any thing or device (including any software, code, file or programme) which is intended to and may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, Trojan horses, viruses and other similar things or devices;

“**You**” means the person identified as such in the Front Sheet and accordingly “**Your**” means belonging to or associated with You; and

“**Your Representative**” means the individual identified in the Front Sheet as the primary contact in relation to this Agreement or such other individual notified by You to CC from time to time.

- 2.1 Any reference in this Agreement to a statute or a provision of a statute shall be construed as a reference to that statute or provision as amended, re-enacted or extended at the relevant time.
- 2.2 The headings in this Agreement are for convenience only and shall not affect its interpretation.
- 2.3 The schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement and any reference to this Agreement includes the schedules.
- 2.4 Any reference to a “person” includes a natural person, corporate or unincorporated body (whether or not having separate legal

personality).

- 2.5 Any list or examples in this Agreement following the word “including” shall be interpreted without limitation to the generality of the preceding words.
- 2.6 This Agreement shall be binding upon a Party’s permitted assigns and successors in title.

3. Grant of Licence

3.1 With effect from the Commencement Date and in consideration of the Service Fees being paid in accordance with the terms of this Agreement, CC hereby grants each Permitted Company a personal, non-exclusive, non-sublicenseable (except as set forth in Clause 3.6), non-transferable, royalty free, revocable, limited licence during the Term:

- (a) to reproduce the Colocator Proprietary Object Code, solely for the development, testing and installation in production versions of Applications (the “**Permitted Purpose**”);
- (b) subject to Clauses 3.4 and 3.5 if You have received an Access Key with Production Rights, to reproduce and distribute solely in the Territories, through multiple tiers of distribution, the Colocator Proprietary Object Code, solely as part of such Application;
- (c) to reproduce a reasonable number of copies of the Documentation for use by Permitted Companies and Your Contractors only, and always solely in support of the Permitted Purpose. Any other distribution of the Documentation is expressly prohibited; and
- (d) to access the APIs and Colocator Web Console with functionality enabled on a modular basis corresponding to Your subscription status as specified in the Front Sheet

always strictly in accordance with these Terms and Conditions of Supply.

3.2 CC may, in its sole discretion, provide You with certain Sample Application(s) whether in conjunction with or separately from the other Colocator Software. In any event the following conditions shall apply to each Sample Application:

- (a) if (and only if) CC provides such Sample Application in source code form to You, then subject to Your compliance with these Terms and Conditions of Supply, CC hereby grants to each Permitted Company a personal, non-exclusive, non-sublicenseable (except as set forth in Clause 3.6), non-transferable, revocable, limited licence during the Term, and in accordance with the Documentation, to (i) display and modify such Sample Application source code, (ii) compile such Sample Application source code and Your modifications thereto into object code solely for the Permitted Purpose; and (iii) subject to the distribution restrictions set forth in Clause 3.1(b) above, to reproduce and distribute, through multiple tiers of distribution, such compiled object code as part of Applications that You develop. You will inform any third parties that are to receive Applications that contain any Sample Application code or Your modifications thereto that the delivery of such Applications will not confer any rights not so granted to You as being sub-licensable pursuant to Clause 3.6; and
- (b) if (and only if) CC provides such Sample Application to You in object code, then subject to Your compliance with the Terms and Conditions of Supply, CC hereby grants to each Permitted Company a personal, non-sublicenseable (except as set forth in Clause 3.6 below), non-transferable, non-exclusive, revocable, limited licence during the Term, to display such Sample Application on a reasonable number of Devices which remain directly under the relevant Permitted Company’s control, solely for internal evaluation and demonstration of the Colocator Software functionality.

3.3 In the event that the Colocator Software contains Third Party Software, such Third Party Software shall be brought to your attention, including by way of certain third party notices made available in the Documentation or accompanying the Colocator Software (including in the Software ‘readme’ files). The license terms associated with Third Party Software apply to Your use of it, and in some instances such Third Party Software cannot be used or further distributed without a licence from the respective owner of such Third Party Software. You shall be solely responsible to obtain, if necessary, a separate and independent licence with respect to the use of any such Third Party Software by Permitted Companies.

The delivery of the Colocator Software does not confer a licence, nor imply any rights, to use Third Party Software. A separate and independent licence for such use may be required and You shall be solely responsible to verify whether such licence is needed in conjunction with the use of any Third Party Software by Permitted Companies.

- 3.4 Each Access Key issued may only be used with a single Application. You may be required to go through an approval process in order to obtain Access Key(s) with Production Rights, which shall include obligations pursuant to Clause 5.2. CC may, in its sole discretion, withhold its approval, and decline to provide You with (i) Access Key(s) with Production Rights, and/or (ii) access to the Services by an Access Key.
- 3.5 CC has the right to monitor by whatever means in its sole discretion it deems necessary Your use of the Access Key and Your Application to ensure they are not utilised except strictly in accordance with these Terms and Conditions of Supply. In the event that Your use of the Key and Your Application is other than in accordance with these Terms and Conditions of Supply CC has the right to immediately revoke the Access Key, pursuant to Clause 9.
- 3.6 You shall not sub-license, transfer and/or assign the licence or any rights granted under Clauses 3.1 and 3.2 above, save as follows:
- (a) solely to Your Contractors and/or a Permitted Company (if applicable) for the sole purpose of developing and/or distributing Applications on Your behalf, provided that (i) any sublicense rights granted by You pursuant to this Clause 3.6 may be granted on a single tier basis only, without further sublicense rights; (ii) You own the Applications developed (excluding the Colocator Software) or have obtained all permissions (including in respect of IPR) necessary to allow such Contractor or Permitted Company to perform such development and/or distribution, (iii) the Applications developed and/or distributed by such Contractors or Permitted Companies on Your behalf comply with these Terms and Conditions of Supply; (iv) You procure that Your Contractor and/or a Permitted Company complies with all applicable terms of this Agreement; and (v) You shall be responsible and liable for the acts and omissions of Your Contractors and/or Permitted Companies, including their compliance with this Agreement, as if such acts or omissions were Your own acts and omissions; and
- (b) in respect of the Colocator Proprietary Object Code, solely as an integral part of Your Application and solely to licensed recipients of Your Application, subject to the following additional requirements: (i) Your Colocator-enabled Application(s) must add significant functionality to the Colocator Proprietary Object Code, as applicable, and You shall not, and You shall procure that Your Contractors and/or Permitted Companies do not, distribute the Colocator Proprietary Object Code except as fully integrated into Your Application(s); (ii) Your sublicense must be no less protective of the Colocator Software and the rights of CC than are these Terms and Conditions of Supply; (iii) You shall not, and shall procure that Your Contractors and/or Permitted Companies do not, make any representations, warranties, or undertake (or attempt to undertake) any obligations on behalf of CC provided that:
- (c) You shall ensure the terms of each such sub-licence do not grant or purport to grant any rights which are not granted to You hereunder; and
- (d) CC shall have no additional obligations and/or liabilities under this Agreement as a result of any such sub-licence being granted and/or use of the Services by any person other than You (whether in connection with the Services and/or Your Application or otherwise); and
- (e) You shall ensure that each such sub-licence terminates automatically without notice upon the termination or expiry of this Agreement.
- 3.7 Subject to Clause 5.6, where Your subscription entitles You access to Your Output Data, CC hereby grants each Permitted Company a perpetual, royalty-free, worldwide licence to use and reproduce Your Output Data that You have stored during the Term or is otherwise made available to You (and specified accordingly in the Front Sheet).
- 3.8 Where Your subscription entitles You access to certain Analytics, CC hereby grants each Permitted Company a perpetual, royalty-free, worldwide licence to use and reproduce Your Analytics that You

have stored during the Term or is otherwise made available to You (and specified accordingly in the Front Sheet).

- 3.9 If the Colocator Software or Colocator Web Console or API(s) provided to You under this Agreement is designated by CC as a pre-commercial release (indicated by terms such as “alpha”, “beta”, “trial”, “draft”, or “evaluation”) then in lieu of the licenses granted to You above, but subject to any other binding agreement that You may have entered into for the Colocator Software which grants additional or different rights or imposes additional or different restrictions, You shall only have the right under this Agreement to download and install the Colocator Software on a reasonable number of Devices directly under a Permitted Company’s control for the internal and non-commercial evaluation of the Colocator Software. You acknowledge that any such Colocator Software or Colocator Web Console or API(s) is a pre-release or experimental version and is not at the level of performance and compatibility of a final product. The Colocator Software or Colocator Web Console or API(s) may not operate correctly and may be substantially modified prior to commercial release by CC, or may be withdrawn completely. You shall not, and shall procure that Your Contractors do not:
- (a) do any significant development or testing using the Colocator Software or Colocator Web Console or API(s), and any development You undertake is at Your sole risk, with the understanding that the Colocator Software or Colocator Web Console or API(s) may never be issued for commercial use; and
- (b) commercialise, distribute, publicly perform or publicly display any Applications using any pre-release or non-commercial Colocator Software or any component thereof.
- If You require other rights (such as the right to develop commercial products using the Colocator Software), You must use a commercial release of the pre-release/non-commercial Colocator Software. The internal and non-commercial evaluation license granted under this clause 3.9 expires when the Colocator Software or Colocator Web Console or API(s) is made available under full commercial terms which You accept.
- 3.10 The licences to the Colocator Software and Documentation granted to You hereunder are solely for the limited purposes set forth in this Clause 3. The Colocator Software, including the Documentation, shall not be used for any other purpose or use.
- 3.11 Except as expressly permitted under this Clause 3, You shall not, and shall procure that Your Contractors and Permitted Companies do not reproduce, publicly perform, publicly display or create derivative works of or based on the Services, or disclose, re-sell, onward provide, transfer, distribute, disseminate or gift the Colocator Software, the Documentation, the Colocator Web Console, API(s), Colocator Proprietary Object Code or any portion thereof in any manner, to any third party.
- 3.12 You acknowledge that the licences to the Colocator Software may be subject to certain limitations as specified in the Front Sheet (such as, by way of example, a limit on the number of Devices concurrently connected to Colocator, or a limit on the number of Device interactions with Colocator during a certain time period). Where the Front Sheet specifies any such limitations, CC reserves the right of enforcement including by preventing Software Features from being enabled in any further Devices and/or preventing the Colocator Software on further Devices from communicating with the Colocator servers.
- 3.13 CC warrants and undertakes that:
- (a) it has the capacity and authority to provide and license the use of the Services in accordance with this Clause 3;
- (b) the receipt of the Services by each Permitted Company strictly in accordance with the terms of this Agreement will not cause each Permitted Company to breach any Relevant Law or infringe the Intellectual Property Rights of a third party, in each case in the UK; and
- (c) the Services shall be provided with reasonable care and skill and in accordance with Good Industry Practice, including the use of encryption and security practices to protect all data stored in connection with Colocator.
- 3.14 CC is under no obligation to provide any form of technical support for the Services. If CC, in its sole discretion, chooses to provide any form of support or information to You or Your Contractors relating to the Services, such support and information shall be deemed Confidential Information.

4. Your Obligations

- 4.1 You warrant, represent and undertake that, throughout the Term, You have obtained and will maintain all necessary rights, permissions and licences, if any, in content, material, data or code appearing, used, stored, recorded or displayed in or using any of the Applications and that the Applications will be in full compliance with all terms of applicable platform requirements including by way of example terms imposed by Apple and Google on developers and parties utilising their respective iOS and/or Android technology platforms, marketplaces, etc.
- 4.2 You (and other Permitted Companies, if applicable) are strictly prohibited from publishing or otherwise distributing any Applications to any third party unless (i) such publication or other distribution complies with the terms of this Agreement; (ii) such publication or distribution complies with any third party agreement terms applicable to the development and distribution of such Application (including by way of example the iOS and/or Android platform and marketplace terms and conditions); and (iii) a Permitted Company owns the Application (excluding the Colocator Software), or has secured all IPR licences necessary to distribute the Application.
- 4.3 You agree that You will not develop or distribute, and shall procure that Your Contractors and each Permitted Company (if applicable) do not develop or distribute on Your behalf, any Application which is in breach of any Relevant Law.
- 4.4 You (or another Permitted Company, if applicable) hereby grant to CC a non-exclusive, royalty-free, worldwide licence during the Term to use, reproduce, display, and execute:
- (a) all of Your Applications for internal review and the development and testing of CC's Services (or any portion thereof); and
 - (b) all of Your Applications in demonstrations of CC's Services (or any portion thereof), its capabilities or functionalities (or any portion thereof), to third parties.
- 4.5 You hereby agree that CC may display in any media whatsoever Your Group name, the name of the Applications and any marks or logos associated with the Applications for the purposes of marketing and promoting the Services, or any portion thereof, and/or products and services of CC.
- 4.6 You (or another Permitted Company, if applicable) shall include, and shall be solely responsible for including, in a mandatory end-user license agreement for each of Your Applications, whether in an agreement between a Permitted Company and an end user (where Your Application is licensed directly to end users) or in an agreement between a Permitted Company and the licensor/distributor/reseller of Your Application, legally enforceable provisions which are appropriate to Your Application, which comply with all Relevant Laws and which include:
- (a) all provisions necessary to comply with the terms of this Agreement;
 - (b) each end user's consent to the collection, storage, and use by CC and CC's service providers of Input Data and the transfer of Input Data between CC and CC's service providers, in each case for the purposes of (i) facilitating certain functionality provided by Colocator or otherwise by CC under this Agreement; (ii) facilitating the provision of new products, updates, enhancements and other services, (iii) improving the Colocator Software, and other products, services and technologies, and (iv) providing new products, services or technologies to You and customers of CC;
 - (c) each end user's consent to the collection, storage, and use by You, Your service providers, CC (acting on Your behalf) and CC's service providers of Output Data and, if applicable under Your subscription status as specified in the Front Sheet, the transfer of Output Data between CC and You and/or Your service providers;
 - (d) each end user is advised that Your Application may incur data usage charges in varying amounts, based on variable factors which include the way in which You configure and use Colocator Software; and
 - (e) if Your Application uses any portion of other services provided by CC (by way of example, services available only under separate agreement), You acknowledge that additional end-user terms and conditions will be required to be obtained from each end user as more particularly described in the separate agreement for the other services.
- 4.7 Save for (i) any portions of the Colocator Software provided to You in source code format; and (ii) any Third Party Software distributed with the Colocator Software that is licensed under contrary terms, You will not and You will procure that any Permitted Companies or Your Contractors will not reverse engineer, disassemble, decompile, or translate the Colocator Software or any portion thereof, or otherwise attempt to derive the source code version of the Colocator Software, except if and to the extent expressly permitted under any Relevant Law. If Relevant Law expressly permits such activities, any information so discovered or derived shall be deemed to be the Confidential Information of CC and must be promptly disclosed by You to CC.
- 4.8 You shall not, and shall procure that any Permitted Companies and Your Contractors do not:
- (a) access or use for any purpose (i) any API; (ii) any Colocator Software; and (iii) the Colocator Web Console other than as are expressly described in the Documentation;
 - (b) use the Colocator Software to create or develop any developer tools (including without limitation plug-ins and middleware) or any software other than end-user targeted Applications;
 - (c) use the Colocator Software to connect to, interface with or otherwise transmit data to/from third party services;
 - (d) use any part of the Services to do anything which degrades or otherwise negatively impacts CC's product or services;
 - (e) incorporate, link, distribute or use any third party software or code in conjunction with (i) the Colocator Software (ii) any software, products, documentation, content or other materials developed using the Colocator Software, and/or (iii) any derivative works that You make using the source code portions of the Colocator Software (if any), in such a way that:
 - i. creates, purports to create or has the potential to create, obligations with respect to the Colocator Software, including without limitation the distribution or disclosure of any source code; or
 - ii. grants, purports to grant, or has the potential to grant to any third party any rights to or immunities under any Intellectual Property Rights or proprietary rights in respect of the Services and Colocator Software.
- 4.9 Your access to the Services including the Colocator Web Console and API(s) is subject always to these Terms and Conditions of Supply and shall be solely in connection with Your Applications. You shall use all reasonable endeavours in accordance with Good Industry Practice to prevent any unauthorised access to, or use of, the Services and/or Documentation and, in the event of any such unauthorised access or use, shall promptly notify CC. You are solely responsible for maintaining the confidentiality of Your Access Key(s) and Your Access Permission(s). Save that you may permit Permitted Companies and Your Contractors to use Your Access Key(s) and Your Access Permission(s) on Your behalf in connection with Your Applications and Your use of the Services, You shall not, and shall procure that Your Contractors and any Permitted Companies do not, further distribute Your Access Key(s) and Your Access Permission(s), or otherwise allow third parties to access the Colocator Web Console and API(s).
- 4.10 Except as may be allowed by Relevant Law which is incapable of exclusion by agreement between the Parties, You shall not (working alone or with a third party), and shall procure that Your Contractors and Permitted Companies do not:
- (a) license, sublicense, sell, resell, transfer, assign, distribute, or otherwise commercially exploit or make available the Colocator Web Console or API(s) in any way to any third party;
 - (b) interfere with, copy, modify, duplicate, frame, mirror, republish, download, display, transmit or distribute any component element of the Services in any form or media or by any means save as made available strictly in the form of Output Data and Analytics by the Colocator Web Console and/or API(s) and/or Application;
 - (c) reverse engineer or access the Colocator Web Console and/or API(s) in order to (i) build a competitive product or service; (ii) build a product using Colocator functionality, similar ideas or functions of the Services, (iii) copy any ideas, features, or functions of the Services; or (iv) transfer any Analytics to any third party in exchange for a fee or any other benefit;
 - (d) attempt to gain unauthorised access to the Colocator Web Console or API(s) or their respective related systems or

networks;

- (e) excessively use the overall network capacity or bandwidth of Colocator (including the Colocator Web Console and API(s)) or otherwise burden Colocator with unreasonable data loads;
- (f) interfere with CC's networks or servers or any third party networks or servers connected to the Colocator Web Console and/or API(s) or otherwise disrupt other users' use of the Colocator Web Console and/or API(s);
- (g) attempt to connect to or use Colocator by any means save as expressly permitted under these Terms and Conditions of Supply;
- (h) store, distribute or transmit any Viruses, or any material via the Colocator Web Console and/or API(s) that is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; facilitates illegal activity; depicts sexually explicit images; or promotes unlawful violence, discrimination based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activities;
- (i) store, distribute or transmit any material via the Colocator Web Console and/or API(s) that infringes the IPR or other right of any other person;
- (j) take any action that interferes or may interfere, as determined in CC's sole discretion, with operations of or any products or services provided in connection with Colocator, including: (i) placing an unreasonable load on CC's infrastructure; (ii) circumventing security features used to prevent or restrict access to or use of Services; (iii) creating User accounts by automated means; (iv) impersonating any individual or person; (v) using an Access Key for more than one Application or for an Application not expressly authorised by CC; and (vi) using the Services for any illegal purpose;
- (k) permit or encourage any third party to do any of the above; and
- (l) use or acquire any materials from any third party that has done any of the above.

For the avoidance of doubt, this Clause 4.10 is not intended to prohibit You from subscribing to any services from third parties that are broadly similar to the Services.

- 4.11 You agree to report promptly to CC all bugs You or a Permitted Company (if applicable) or Your Contractor experience or encounter with the Services or any component thereof, along with Your logs, steps to reproduce such bugs, and experiences regarding the performance and use of the Services.
- 4.12 The Colocator Software may embed Marks. When such attribution is embedded, You must, and You shall ensure that Your Contractors, display it as provided or otherwise described in instructions provided by CC and You may not delete or in any manner alter these Marks. Except as set forth in the preceding sentence, You shall not, and shall procure that Permitted Companies and/or Your Contractors do not, display or make any use of Mark in connection with the Application without the prior written approval of CC. You shall not, and You shall procure that Permitted Companies and/or Your Contractors do not, display the Marks in any manner that falsely expresses or implies that the Application or any content transmitted via the Application is endorsed by CC. All permitted uses of Marks shall be in strict accordance with the guidelines CC makes available to You from time to time. Any use of Marks that does not fully comply with such guidelines is prohibited.
- 4.13 You shall ensure that any software component under Your control (which for the avoidance of doubt shall include any software component you license from a third party) which interfaces with an API (or otherwise with Colocator) complies at all times with the relevant specifications as set out in the Documentation or as otherwise agreed by the Parties.
- 4.14 You undertake and You shall procure that any Permitted Company and Your Contractors undertake that:
 - (a) the maximum number of Users shall not exceed the number of Access Permissions specified in the Front Sheet or as otherwise agreed by the Parties;
 - (b) You will not allow or suffer any Access Permissions to be used by more than one individual User unless it has been reassigned in its entirety to another individual User, in which case the prior User shall no longer have any right to access or use the Colocator Web Console and/or applicable API(s); and

- (c) each User shall keep his or her password confidential.

5. Data Collection and Privacy

5.1 You hereby acknowledge and agree that:

- (a) the data management processes relating to any data collected, used, and processed by CC in respect of Colocator are detailed in the Documentation;
- (b) the Colocator Software collects Input Data from Devices and transmits such Input Data to Colocator servers, as more fully described in the Documentation;
- (c) subject to Clause 5.2, Input Data does not include any Personal Data;
- (d) Colocator processes Input Data to generate Output Data;
- (e) You, and any person working on Your behalf, will not alter, intercept, inhibit, direct, or otherwise interfere with (i) the transmission of Input Data from Devices to Colocator or (ii) the processing or storing of any Input Data or Output Data in connection with the Services;
- (f) You and any person working on Your behalf, will not access any Input Data that is stored in a private data store by the Colocator Software on an end user's Device; and
- (g) CC's use of the Input Data and Output Data shall be subject always to using encryption and security practices in accordance with Good Industry Practice and is strictly limited as follows: (i) to provide the Services to You and Your end users, (ii) to improve, optimise, troubleshoot, create bug fixes for the Services, and (iii) on a de-identified basis (such that no end user can be identified) for CC's legitimate business purposes.

5.2 In the event You are aware that (i) additional data is added to Input Data and/or (ii) other data sourced by or from Your Application is transmitted to Colocator by whatever means, such that Personal Data may be stored on Colocator servers, You undertake (or procure that a Permitted Company or Your Contractor (as applicable) undertakes) to promptly notify CC of your belief that CC will be processing Your end users' Personal Data to seek CC's consent (which shall not be unreasonably delayed, conditioned, or withheld). Such consent shall be required before Your use of an Access Key with Production Rights to enable CC to comply with the DPA or other similar laws or regulations.

5.3 As more fully described in this clause 5.3, to the extent required under Clause 5.2 and Relevant Law, Your use of the Colocator Software is subject to (i) You displaying at all times Your own privacy notice which shall include to the extent required explanation of the privacy and data management practices of CC in respect of Colocator; and (ii) obtaining the end users' opt-in consent before turning on applicable Software Features. Furthermore:

- (a) Unless otherwise agreed by the Parties and correspondingly recorded in the Front Sheet, You acknowledge that CC is solely a technology service provider. Accordingly, to the extent Clause 5.2 is applicable, the Parties hereby agree that for the purposes of the DPA or other similar laws or regulations where the Application is distributed, You shall be considered the "Data Controller", and CC shall be considered the "Data Processor";
- (b) To the extent required (whether under Relevant Law, in accordance with Good Industry Practice, in accordance with Android and IOS app store terms and conditions, or otherwise) You undertake to, or procure that a Permitted Company or Your Contractor (as applicable) undertakes to, include a privacy policy in Your Application(s) (hereinafter "Your Privacy Policy") that: (i) completely and accurately discloses Your Application's data collection and use practices (including the data processing CC provides for You on Colocator servers as described in the Documentation), and (ii) discloses that a service provider enables functionality within the Application on Your behalf and that certain data will be stored and processed by the service provider on servers as described in the Documentation. In addition, You must clearly and conspicuously make the Privacy Policy available to end users before the Application collects data (including Input Data) from such end users and in a manner that complies with all Relevant Law. You shall obtain end users' consent for such data collection and the use practices of CC (as described in the Documentation) before enabling the Colocator Software

- within Your Application;
 - (c) if You choose to transmit to Colocator other data sourced from Your Application in addition to Input Data (whether pursuant to Clause 5.2 or otherwise, such as by way of example a Device's alias) then You undertake to disclose completely and accurately such data collection and associated use practices in Your Privacy Policy;
 - (d) You undertake, represent and warrant that the use and distribution of each Application and Your Privacy Policy(ies) comply, at a minimum, with all Relevant Laws, in each jurisdiction in which the Application is distributed including ensuring that the Application does not breach any privacy, data protection, information security or other similar legal rights of Application end users; and
 - (e) You shall be solely responsible for ensuring Your compliance with the Application's Privacy Policy, and that use of the Application, and the terms related to use of the Application by end users, do not conflict with and are not inconsistent with Relevant Law.
- 5.4 You undertake to use encryption and security practices in accordance with Good Industry Practice to protect Your end users' Personal Data.
- 5.5 To the extent required under Clause 5.2 and Relevant Law CC shall use all reasonable endeavours to cooperate with You to provide Your end users with applicable data subject rights required under the DPA and similar Relevant Law with respect to Personal Data such as access, correction and/or deletion rights, subject to You reimbursing CC for all reasonable costs associated with the same.
- 5.6 Where CC has granted You a licence to the Output Data pursuant to Clause 3.7, You:
- (a) undertake, represent and warrant that the use of the Output Data shall not breach any privacy, data protection, information security or other similar legal rights (to the extent that (i) Output Data either already constitutes Personal Data or (ii) the Output Data is subsequently combined with additional data such that it becomes Personal Data); and
 - (b) at Your own expense, indemnify (and keep indemnified) CC against any costs or liabilities, including reasonable legal fees, suffered or incurred by CC and which arise from any breach by You of this Clause 5.6.

6. Confidentiality

- 6.1 Save as expressly provided otherwise under this Agreement (including pursuant to Clause 3.7) all data, feedback and other information relating to or in connection with the Services, including information relating to each Device's interaction with Colocator, constitutes Confidential Information. For the avoidance of doubt, all the aforementioned may be used by CC for its own internal business purposes without payment or attribution to You.
- 6.2 Except as expressly permitted in this Agreement, You shall not, and shall procure that each Permitted Company and Your Contractors do not, disclose, or permit the disclosure of, any Confidential Information in any form or any information relating thereto (including without limitation the results of use or testing) to any third party without CC's prior written permission. You shall not, and shall procure that each Permitted Company and Your Contractors do not, discuss or otherwise disclose any information about a pre-commercial release of the Colocator Software and/or Colocator Web Console including any Application You develop or have developed using a pre-commercial release of the Colocator Software. You may not use any Confidential Information of CC for any purpose except to the extent expressly permitted in this Agreement.
- 6.3 Except as expressly set forth in Clause 19, You shall not make any disclosure or public announcement relating to this Agreement or the subject matter hereof without the prior written approval of CC. You acknowledge and agree that in the event of a conflict, ambiguity or inconsistency between this Agreement and any other confidentiality or non-disclosure agreement relating to the Services that may govern the exchange of Confidential Information between You and CC, the terms of this Agreement shall prevail.
- 6.4 In respect of Confidential Information, the Receiving Party:
- (a) may not use any Confidential Information of the other Party for any purpose other than the performance of its obligations or exercise of its rights under this Agreement;
 - (b) shall ensure that where persons have received any

- Confidential Information of the other Party pursuant to Clause 6.4(d) or 6.5 that they are subject to obligations of confidentiality no less strict than those set out in this Clause 6.4;
 - (c) shall acknowledge that Confidential Information of the other Party shall at all times be and remain the exclusive property of the Disclosing Party, but shall be held by the Receiving Party in safe custody at its own risk and maintained and kept in good condition by the Receiving Party until returned to the Disclosing Party, and shall not be disposed of or used other than in accordance with the Disclosing Party's prior written instructions or authorisations;
 - (d) may not disclose any Confidential Information of the other Party to any person except those specified in Clause 6.5 or otherwise with the prior written consent of the Disclosing Party; and
 - (e) shall make every effort to prevent the unauthorised use or disclosure of the Confidential Information of the other Party.
- 6.5 Subject to Clause 6.4, the Receiving Party is permitted to make the following disclosures of Confidential Information of the other Party:
- (a) communications with its employees and sub-contractors (including any Contractors) to the extent necessary for performance of that Party's obligations or exercise of its rights under this Agreement;
 - (b) to its and its Group's officers, employees, legal and other professional advisors and auditors; and
 - (c) to the extent required to be disclosed by Relevant Law.
- 6.6 Without prejudice to any other rights or remedies the Disclosing Party may have, the Receiving Party acknowledges and agrees that the Disclosing Party shall, without proof of special damage, be entitled to an injunction or other equitable remedy for any threatened or actual breach of the provisions of this Clause 6 in addition to any damages or other remedies to which it may be entitled.
- 6.7 Notwithstanding this Clause 6, nothing in this Agreement shall be construed to prevent or restrict CC from disclosing or using in the course of its business any technical knowledge, skill or expertise of a generic nature acquired by CC in the performance of this Agreement.

7. Fees and Payments

- 7.1 You agree to pay the applicable Service Fees as detailed in the Front Sheet in accordance with this Clause 7.
- 7.2 CC will invoice You on a monthly basis unless otherwise specified in the Front Sheet.
- 7.3 The Fees and all other sums payable pursuant to this Agreement are exclusive of VAT. Where You are based outside the UK, the supplies which are the subject of this Agreement will be outside the scope of UK VAT. However, where You are outside of the EU, if and to the extent that You use and enjoy the Services in the UK, a UK VAT liability will arise on that proportion of the Services used and enjoyed in the UK. Where applicable, VAT shall be paid by You as additional charges pursuant to this Agreement on production of a valid VAT invoice.
- 7.4 If You are based outside of the EU then You agree to monitor the extent to which the use and enjoyment of the Services by You is in the UK for VAT purposes. If You do, to any extent, use and enjoy the Services in the UK for VAT purposes then You further agree to provide to CC sufficient records and documentation to enable CC to make a fair and reasonable assessment of the UK VAT due in respect of the supply of the Services to You, together with a calculation of the VAT that the You reasonably consider is due in respect of such a supply. You agree to provide such records, documentation and calculation at the end of each calendar month. If the You fail to comply with this Clause 7.4 and as a result CC is liable to interest and penalties on underpaid UK VAT then You agree to indemnify CC on demand for such interest and penalties.
- 7.5 All payments required to be made by You pursuant to this Agreement shall be made within thirty (30) days of receipt of the relevant invoice (save where such invoice has been reasonably disputed in good faith to CC within thirty (30) days of its receipt), without any set-off, withholding or deduction except such amount (if any) of tax as You are required to deduct or withhold by law.
- 7.6 If You fail to make any payment on the due date in respect of any sum properly due under this Agreement (including any sum which You dispute but it is later determined was properly owing) then CC

shall have the right without prejudice to any other remedy to charge You interest on any such sum at the rate of 3% per annum above the base rate of Barclays Bank PLC from the due date for payment until the date on which the payment is received.

- 7.7 If You fail to pay any properly owing sum due under this Agreement in accordance with Clause 7.5, CC may, without prejudice to any other remedy, give twenty-one (21) days' notice of suspension of the provision of Services or any part thereof, pursuant to Clause 9 such suspension to be rescinded promptly once the relevant payment is made.
- 7.8 If CC's invoices are paid late more than once in any twelve (12) month period, upon CC's request, You must provide CC with a refundable deposit equal to two (2) times the amount of the last month's invoice, to be held until termination of the Agreement.
- 7.9 Payments must be remitted in accordance with the instructions on the applicable invoice.
- 7.10 You acknowledge that CC shall not give a refund of any amounts paid by You if for any reason all or any of the Services are not used by You.
- 7.11 Any time after the Initial Period, upon no less than 60 days' written notice, CC shall be entitled to issue reasonable increases to the Service Fees. In the event that You are not happy to accept such increases, You shall be entitled to terminate the Agreement within that notice period. Failure to terminate the Agreement shall be deemed to be acceptance of the new Service Fee levels.

8. Term and Termination

- 8.1 Subject to any earlier right termination under this Agreement, this Agreement shall be in effect upon acceptance by You during the Term.
- 8.2 Without prejudice to any other rights or remedies which the Parties may have (under this Agreement or in law), either Party may terminate this Agreement without liability to the other forthwith by written notice to the other Party if:
 - (a) the other Party commits a material or persistent breach of any of its obligations under this Agreement (which for the avoidance of doubt shall include any late payment of Service Fees by You) and (if such breach is capable of remedy) has not remedied such breach within thirty (30) days of receiving written notice of the breach and requiring it to be remedied;
 - (b) the other Party has entered into liquidation (other than a members' voluntary liquidation for the purposes of a bona fide amalgamation or reconstruction) whether compulsory or voluntarily or compounds with its creditors generally or has an administrator, administrative receiver or receiver appointed over all or a substantial part of its undertaking or assets;
 - (c) the other Party has become bankrupt or shall be deemed unable to pay its debts by virtue of Section 123 of the Insolvency Act 1986; or
 - (d) the other Party ceases or threatens to cease to carry on business.
- 8.3 Without prejudice to any other rights or remedies which CC may have (under this Agreement or pursuant to Relevant Law), CC may terminate this Agreement without liability to You forthwith by written notice to You if:
 - (a) a Permitted Company persistently breaches any term(s) of this Agreement; or
 - (b) CC reasonably suspects that a Permitted Company is in breach of Clause 4.8, 4.9, or 4.10.
- 8.4 On termination of this Agreement for any reason:
 - (a) all rights and licences granted to Permitted Companies and Your Contractors under or in connection this Agreement shall cease with immediate effect;
 - (b) CC shall retain any sums already paid to it by You and You shall promptly pay to CC all of CC's outstanding unpaid invoices and any accrued interest and, in respect of any Services supplied for which no invoice has been submitted, CC may submit an invoice which shall be payable within fourteen (14) days of Your receipt; and
 - (c) the accrued rights of the Parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination shall not be affected and for the avoidance of doubt Clauses 4.5, 4.10(d), 4.10(f), 4.10(j), 4.10(k) (insofar as it applies to 4.10(d), 4.10(f) and 4.10(j)), 4.10(l) (insofar as it applies to 4.10(d), 4.10(f) and 4.10(j)),

5.1(f), 5.1(g) (ii) and (iii), 5.6, 6, 8.4, 10, 11, 12 and 22.8 shall survive termination of this Agreement and shall remain in full force and effect.

- 8.5 Termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to either Party.

9. Suspension of Services

Notwithstanding CC's termination rights under Clause 8, CC reserves the right to suspend or deprecate the scope of the Services available to You, Permitted Companies, Your Contractors or any of Your Applications for:

- (a) late payment of fees pursuant to clause 7.7;
- (b) material and/or persistent breach of this Agreement;
- (c) allegations that the Application, or any component thereof (including content contained within the Application), is in breach of third party IPR;
- (d) disruption of communication networks or negative impact on CC's servers;
- (e) the Application, or any component thereof, contains a Virus or other objectionable content;
- (f) non-compliance with the Relevant Law;
- (g) harm or reasonable threat of harm to CC's reputation or the reputation of CC's suppliers or customers, and/or the reputation of their products and/or services;
- (h) continued use of Software Features that could cause harm to any third party; or
- (i) CC deems in its sole discretion acting reasonably that such suspension or deprecation of access to all or part of the Services to be necessary.

10. Limitation of Liability

- 10.1 Nothing in this Agreement shall limit or exclude:
 - (a) either Party's liability for death or personal injury caused by its or its employees', agents' or sub-contractors' negligence;
 - (b) either Party's liability for fraud or fraudulent misrepresentation;
 - (c) either Party's liability for any liability to the extent it cannot be limited or excluded by Relevant Law; or
 - (d) Your liability for any breach of Clauses 4.8, 4.9 and 4.10 and 5.6.
- 10.2 Subject to Clause 10.1, each Party's entire liability arising out of or in connection with this Agreement, howsoever arising (including for breach of contract, tort (including negligence), breach of statutory duty or otherwise) shall in no circumstances exceed in aggregate one hundred and twenty per cent (120%) of the Service Fees paid by You in the twelve (12) months prior to any claim. Where liability arises during the first twelve (12) months of this Agreement, such cap shall be measured by reference to the Services Fees due to be paid by You for the first twelve (12) months of this Agreement.
- 10.3 Subject to Clause 10.1, neither Party shall have any liability under or in connection with this Agreement, howsoever arising, for loss of profits, loss of revenues, loss of contracts, loss of business, loss or corruption of data, loss of goodwill, loss of advertising, loss of anticipated savings, loss of opportunity, loss caused by business interruption or for any indirect, consequential or special loss. The limitation in this Clause 10.3 will apply even if such loss was reasonably foreseeable and/or such Party had been advised or was otherwise aware of the possibility of such loss or damage.
- 10.4 Subject to Clause 10.1, You agree that CC shall not be liable in contract, tort (including negligence), for breach of statutory duty or in any other way for any loss or damage to the extent it arises directly or indirectly from any inferences or conclusions derived from the Services by a Permitted Company or Your Contractors or other third parties working on Your behalf.
- 10.5 You acknowledge that:
 - (a) the Services have not been developed to meet Your individual requirements and You accept responsibility for the selection of the Services to achieve Your intended results; and
 - (b) CC does not warrant that operation of the Services will be uninterrupted or error-free, or that defects in the services will be corrected.
- 10.6 Save as expressly stated otherwise in these Terms and Conditions of Supply, CC does not give any warranties, representations or

undertakings in respect of Colocator, the Services and the Documentation, and CC hereby excludes to the fullest extent permitted by Relevant Law, all warranties, conditions, undertakings and other terms (whether express or implied, statutory or otherwise) that relate to the delivery, performance, quality, uninterrupted use, fitness for purpose, occurrence or reliability of the Services. You acknowledge and agree that (except as expressly provided in this Agreement) the Services, Documentation and technical support (if any) are provided “AS IS” without warranties of any kind (whether express or implied). Accordingly use of the Services is at your sole risk.

11. Intellectual Property

- 11.1 You acknowledge and agree that, as between You and CC, all Intellectual Property Rights and any other proprietary rights comprising, or used or embodied in Colocator, the Services and Documentation (together, “CC IP”) are owned by CC and are vested absolutely and exclusively in CC.
- 11.2 The Services are licensed and not sold to You. CC does not and shall not assign to You, any Permitted Companies, Your Group or Your Contractors any Intellectual Property Rights in any of the CC IP.
- 11.3 Any and all rights in the CC IP which have not been expressly licensed to You under this Agreement are reserved to CC and may be used, marketed, exploited and disposed of by CC concurrently with, and throughout the Term of this Agreement, freely and without limitation or restriction, and regardless of the extent to which those rights are competitive with You.
- 11.4 CC shall, at its own expense, indemnify (and keep indemnified) and defend You against any direct costs, claims, damages, expenses or liabilities, including reasonable legal fees, suffered or incurred by You and which arise from any third party claim that the use by You of CC IP strictly in accordance with the terms of this Agreement infringes the UK Intellectual Property Rights of any third party, provided that You:
 - (a) promptly notify CC in writing of any third party claim, giving all reasonable details of the same;
 - (b) makes no admission as to liability and does not compromise or agree any settlement of the claim without the prior written consent of CC;
 - (c) uses all reasonable endeavours to mitigate Your losses;
 - (d) gives CC sole control over the claim provided that CC shall notify You of any material developments in the claim; and
 - (e) fully co-operate with CC at its expense in the conduct of the claim.
- 11.5 CC will not indemnify You to the extent that the applicable third party claim is based upon or arises from the unauthorised combination or use of the CC IP with any products, hardware or services not provided by and/or expressly approved by CC.
- 11.6 If a third party claims that Your use of the Services infringes that person’s Intellectual Property Rights or other rights, then CC may at its sole discretion and cost within a reasonable period of being notified of such claim: (i) procure the right for You to continue using the applicable infringing material; or (ii) replace or modify the applicable infringing material so that it becomes non-infringing.
- 11.7 You shall, at Your own expense, indemnify (and keep indemnified) and defend CC against any losses, damages, costs, claims, damages, expenses or liabilities, including reasonable legal fees, suffered or incurred by CC and which arise from any claim that an Application infringes the rights of any third party, and if CC seeks such indemnification it shall:
 - (a) promptly notify You in writing of the applicable claim, giving all reasonable details of the same;
 - (b) make no admission as to liability or compromise or agree any settlement of the claim without the prior written consent of You;
 - (c) use its reasonable endeavours to mitigate its losses;
 - (f) give You sole control over the claim provided that You shall notify CC of any material developments in the claim; and
 - (g) fully co-operate with You at Your expense in the conduct of the claim.

12. Employees

- 12.1 Each Party agrees that during a period from the Effective Date to twelve (12) months after the termination of this Agreement it shall not directly or indirectly induce or attempt to induce any of the

other Party’s employees who have been associated with the provision or receipt of the Services to leave the employment of such other Party, without the other Party’s prior written agreement.

- 12.2 Each Party agrees that if it employs or engages any person contrary to Clause 12.1, the Party in default shall be liable to pay to the other Party liquidated damages in an amount equal to such employee’s annual salary at the time of leaving the employment of the other Party, it being agreed that such sum is fair and reasonable in all the circumstances and represents a genuine pre-estimate of the loss that would be suffered by a Party in respect of the other Party’s breach of Clause 12.1.

13. Sub-Contracting and Assignment

- 13.1 Subject to Clause 13.2, and except to the extent expressly permitted under this Agreement, neither Party shall, without the prior written consent of the other Party (such consent not to be unreasonably withheld or delayed), assign, novate, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.
- 13.2 Each Party consents to a novation of this Agreement by the other Party in favour of a Group Company and shall on the written instruction of the other Party enter into a novation agreement in such form as the other Party may reasonably require enabling the rights and obligations of the other Party under this Agreement to be novated to such Group Company.
- 13.3 Each Party shall be liable to the other Party for the acts or omissions of its sub-contractors (and, to avoid doubt, You shall be liable for the acts and omissions of Permitted Companies and Your Contractors) as though they were that Party’s own acts or omissions.

14. Force Majeure

- 14.1 Neither Party shall be liable for any delay in performing, or any failure to perform any of its obligations under this Agreement (other than payment obligations, to which this Clause 14.1 shall not apply) where such delay or failure arises from any cause beyond its reasonable control.
- 14.2 If either Party is prevented from performing its obligations due to any cause outside its reasonable control, it shall promptly notify the other Party in writing of the circumstances and the other Party shall grant a reasonable extension of the performance of this Agreement, provided however that if the affected Party shall have been so prevented from performing its obligations for more than thirty (30) days following receipt of such notice, then either Party may terminate this Agreement forthwith upon written notice to the other Party.

15. Waiver

- 15.1 No waiver by either Party of any breach of this Agreement by the other Party shall be considered as a waiver of any subsequent breach of the same or any other provision. A waiver of any term, provision or condition of this Agreement shall be effective only if given in writing and signed by the waiving Party and then only in the instance and for the purpose for which any waiver is given.
- 15.2 No failure or delay on the part of any Party in exercising any right, power or privilege under this Agreement shall operate as a waiver of, nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise of or the exercise of any other right, power or privilege.

16. Severance

- 16.1 If any provision (or part of a provision) of this Agreement is held by any competent authority to be invalid, unenforceable or illegal in whole or in part the validity of the other provisions of this Agreement and the remainder of the provision in question shall not be affected thereby.
- 16.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, that provision will apply with whatever modification is necessary to make it valid, enforceable and legal.

17. Notices and Communications

- 17.1 Unless otherwise specified in this Agreement, any notice or other information required or authorised by this Agreement to be given

by either Party to the other shall be given by email or post or comparable means of communication to contact details specified in the Front Sheet as being for notices and marked for the attention of the person specified.

- 17.2 Any notice or information delivered in the manner provided by Clause 17.1 which is not returned to the sender as undelivered shall be deemed to have been given:
- (a) if hand delivered or sent by prepaid first class recorded or registered posted or prepaid international recorded airmail, at the time of delivery;
 - (b) if sent by first class post (other than by prepaid recorded or registered post), three days from the date of posting;
 - (c) if sent by airmail (other than by prepaid international recorded airmail), seven days from the date of posting;
 - (d) if sent by email, at the time of transmission unless the sender receives notification that such email has not been successfully delivered (and in proving transmission, it shall be sufficient to prove the email was sent to the correct email address and that dispatch of the transmission from the sender's external gateway was confirmed).
- 17.3 If application of Clause 17.2 results in a notice that is taken to be received on a day that is not a working day or after 5.00pm (UK time), it is taken to be received at 9.00am (UK time) on the next working day ("working day" meaning a day that is not a Saturday, Sunday or public holiday and on which banks are open for business generally, in the place to which the communication is posted, sent or delivered).

18. No Partnership or Agency

Nothing in this Agreement is intended to, or shall operate to, create a partnership between the Parties, or to authorise either Party to act as agent for the other, and neither Party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way.

19. Announcements

Neither Party may make any Announcement without obtaining the prior written consent of the other Party, such consent to be in respect of the form and content as well as the existence of any Announcement and not to be unreasonably delayed, conditioned or withheld. In any Announcements made by either Party relating to the Services or this Agreement, the Party making the Announcement shall include a reference to the fact that the Services are being provided by CC, such reference to be in terms agreed by both Parties (such agreement not to be unreasonably withheld, delayed or conditioned).

20. Anti-Bribery

- 20.1 Each Party shall procure that persons associated with it including agents, contractors (including Contractors), suppliers, joint venture partners or any other persons who are performing services in connection with this agreement ("**Associated Persons**") shall:
- (a) comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including the Bribery Act 2010 ("**Relevant Requirements**"); and
 - (b) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK.
- 20.2 You undertake that You have and shall maintain in place throughout the Term Your own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements and Clause 20.1 and will enforce them where appropriate.
- 20.3 Each Party shall not do, or omit to do, any act that will cause or lead the other to be in breach of any of the Relevant Requirements; and shall promptly report to the other any request or demand for any undue financial or other advantage of any kind received by them in connection with the performance of this Agreement.
- 20.4 If either Party reasonably believes that the other Party (including any director, employee, sub-contractor or agent of it) has breached this Clause 20.4, then the aggrieved Party may terminate this Agreement by written notice to the other with immediate effect. Any termination under this Clause 20.4 shall be without prejudice to any right or remedy that has accrued to either Party.

21. Dispute Resolution

- 21.1 If any dispute arises out of or in connection with this Agreement (or its validity, construction, performance or enforceability) (a "**Dispute**"), either Party may refer the Dispute to the CC Representative and Your Representative by giving written notice to the other Party (a "**Dispute Notice**"). Following receipt by a Party of a Dispute Notice, the Representatives shall meet in good faith with a view to resolving the Dispute.
- 21.2 If the Representatives are unable to resolve the Dispute within fourteen (14) days of receipt of the Dispute Notice, either Party may escalate the matter to the Chief Executive Officer (or such person of equivalent seniority and/or authority to settle such a dispute) (the "**Senior Representatives**") by giving notice in writing to the other Party (a "**Dispute Escalation Notice**"). Following receipt of the Dispute Escalation Notice, such Senior Representatives shall meet and negotiate in good faith with a view to resolving the Dispute.
- 21.3 For the avoidance of doubt, all negotiations shall be undertaken without prejudice to the rights of the Parties in any future proceedings.
- 21.4 Nothing in this Clause 21 shall prevent either Party from seeking interim relief.

22. Legal Construction

- 22.1 The Parties have read and understand this Agreement and agree that it, together with any schedules and exhibits attached hereto, constitutes the whole agreement between the Parties and supersedes all proposals, representations, understandings and prior arrangements and/or agreements, whether oral or written, and all other communications between them relating to the subject matter of this Agreement.
- 22.2 Each Party warrants to the other that, in entering into this Agreement, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, understanding, promise, assurance or warranty of any person (whether a Party to this Agreement or not and whether made verbally, in writing or otherwise) other than as expressly set out in this Agreement.
- 22.3 Nothing in Clauses 22.1 or 22.2 shall limit or exclude either Party's liability for fraud or fraudulent misrepresentation.
- 22.4 This Agreement may be entered into in any number of counterparts and either Party may enter into this Agreement by executing a counterpart. A counterpart constitutes an original of this Agreement and all executed counterparts together have the same effect as if each Party had executed the same document.
- 22.5 Subject to Clause 22.6, no purported variation, change or modification to this Agreement will be valid unless;
- (a) it is confirmed in writing in a document which expressly states that it amends this Agreement and is signed by an authorised representative of each Party, provided always that neither Party shall unreasonably delay or withhold approval for any reasonable variation, change or modification; or
 - (b) it is initiated through a mechanism on the Web Console that allows Users authorised by You to select additional Services they wish to receive (subject to such User accepting the terms and conditions presented at the time of such amendment on behalf of You).
- 22.6 CC reserves the right to reasonably amend this Agreement at any time subject always to CC giving a minimum of fourteen (14) days' written notice to You. CC shall endeavour to keep such changes to a minimum and shall seek to offer You arrangements as close to the original arrangements as is reasonably possible in the circumstances.
- 22.7 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement and no person who is not a Party to this Agreement (including any Permitted Company, Contractor or any employee, officer, agent, representative or sub-contractor of either Party) shall have the right whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise to enforce any term of this Agreement which expressly or by implication confers benefit on that person without the express prior agreement in writing of the Parties.
- 22.8 This Agreement (and any dispute, controversy, proceedings or claim of whatever nature arising out of or in any way relating to this Agreement or its formation) and any non-contractual obligations arising out of or in connection with it shall be governed by and

construed in accordance with the laws of England and Wales and the Parties shall submit to the exclusive jurisdiction of the English courts.

- 22.9 If You have appointed an agent for service (which shall be specified in the Front Sheet), service on the agent shall be deemed to be valid service whether or not the process is received by You. If the agent changes its address to another address in England, You shall within seven days notify CC of the agent's new address. If the agent ceases to be able to act as agent or to have an address in England, You shall within seven days notify CC of the appointment of a new agent acceptable to CC.