

TERMS AND CONDITIONS

Crave System and Services (including Payment Services)

1. INTERPRETATION

1.1. The definitions and rules of interpretation in this condition apply in these Terms and Conditions (“Terms”).

“Acceptance Date”	The date the Customer accepts or is deemed to have accepted the Application Software and the Platform Services in accordance with condition 9.
“Active Unit”	An individual item of Service Hardware, Purchased Hardware or other hardware to which the Application Software is downloaded or streamed and which is connected to the Crave Platform, or other unit of measure as defined in the Proposal.
“Application Software”	The Supplier’s application software as more particularly specified in the Proposal.
“Chargebacks”	A forced transaction reversal initiated by a payment cardholder’s bank.
“Contract”	The Customer’s order and the Supplier’s acceptance of the Proposal for the supply of the Services and/or Service Hardware, incorporating these Terms and formed in accordance with condition 3.2.
“Crave Platform”	The database and related software hosted by (or on behalf of) the Supplier including AppLess and ServeSafely.
“Customer Materials”	Any information in whatever form that the Customer provides to the Supplier in relation to the Contract including the KYC Information, content uploaded to the Crave Platform by the Customer from time to time and/or the content provided to the Supplier by the Customer from time to time for incorporation onto the Crave Platform but excluding any Usage Data.
“Customer”	The person, firm or company buying, renting, subscribing or licensing the Services and/or Service Hardware from the Supplier.
“Delivery Point”	The place where delivery of the System is to take place as specified in the Proposal.
“Documentation”	The operating manuals, user instructions manuals, technical literature and all other related materials in human-readable and/or machine-readable forms supplied by the Supplier to the Customer.
“EULA”	The end user licence agreement set out in the Appendix to these Terms.
“Extended Term”	Has the meaning specified in condition 23.1.
“Guest Contract”	an agreement between the Guest and the Customer regarding a Guest Order and the delivery or collection of the Guest Order.
“Guest Order”	an order placed by a Guest with the Customer through the Crave Platform.
“Guest”	Any guests or clients of the Customer authorised by the Customer who places a Guest Order through the Crave Platform.
“Initial Term”	Has the meaning specified in condition 23.1.
“Intellectual Property Rights”	Patents, rights to inventions, copyright and related rights, trade marks, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including without limitation know-how and trade secrets) and any other intellectual property rights, 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.
“KYC Information”	Any and all documents, evidence or data the Supplier requires for compliance with know-your-customer obligations under anti-money laundering and prevention of terrorist financing regulations.
“Licence Fee”	The licence fee payable by the Customer for the Application Software and the Platform Services in respect of each Active Unit and, unless otherwise specified in the Proposal, all other items of Service Hardware.
“Licensor”	Crave Interactive Limited.
“Payment Services”	The receiving of money from Guests, securing the money and transferring money due to the Customer or refunding it to the Guests.
“Platform Services”	The online services provided by the Supplier by means of the Crave Platform and including any Documentation relating to the Platform Services.

“Prohibited Material”	Viruses, trojans, worms, logic bombs or other material which is malicious or technologically harmful or any material that is: unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; facilitates illegal activity; depicts sexually explicit images; promotes unlawful violence; is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or in a manner that is otherwise illegal or causes damage or injury to any person or property; or as otherwise advised by the Supplier from time to time.
“Proposal”	The Supplier’s proposal attached to these Terms containing details of the System and Services, delivery and Fees.
“Purchased Hardware”	Any Service Hardware for which the title and ownership is being sold by the Supplier to the Customer.
“Service Hardware”	Any hardware, devices, QR codes or accessories supplied by the Supplier or its sub-contractors to the Customer to enable the Customer to access the Services as more particularly specified in the Proposal and all substitutions, replacements or renewals of such hardware and all related accessories, manuals and instructions for such hardware.
“Services”	The services to be provided by the Supplier under the Contract (including the Payment Services, Platform Services and any configuration services that are described in the Proposal to tailor and configure the Crave Platform for the Customer) together with any other services which the Supplier provides or agrees to provide to the Customer.
“Software”	Means the software programs proprietary to the Supplier (including the Application Software), specified in the Contract which are to be provided to the Customer without modification.
“Supplier Data”	Any data or information in whatever form including images, still and moving, and sound recordings, the provision of which comprises the Platform Services (wholly or in part) but excluding the Customer Materials.
“Supplier”	Crave Interactive Limited.
“System”	The system consisting of the Service Hardware, the Software, any third-party software provided to the Customer by the Supplier and any Documentation; references to “the System” shall include all or any part of the System.
“Term”	The period comprising the Initial Term and each Renewal Term.
“Usage Data”	Data or other information the Supplier may collect from time to time about the Customer’s or any User’s use of the Platform Services.
“User”	Any employees, Guests or clients of the Customer authorised by the Customer to access and use the Platform Services (wholly or in part).

1.2. Condition headings do not affect the interpretation of these Terms; A reference to a law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.3. Any words following the terms **including, include, in particular or for example** or any similar phrase shall be construed as illustrative and shall not limit the generality of the related general words.

1.4. If there is an inconsistency between any of the provisions of these Terms and the provisions of the Proposal, the provisions of the Proposal shall prevail.

2. APPLICATION OF TERMS

2.1. These Terms shall apply to and be incorporated in the Contract and prevail over any inconsistent terms or conditions contained in or referred to in the Customer’s purchase order, confirmation of order, or specification or other document, or implied by law, trade custom, practice or course of dealing.

2.2. These Terms apply to all the Supplier’s sales of the System and the Services and any variation to these Terms and any representations about the System and the Services shall have no effect unless expressly agreed in writing and signed by the Supplier’s authorised representative.

2.3. Any Proposal given is valid only for the period stated in the Proposal or if no period is stated a period of 30 days from its date, provided that the Supplier has not previously withdrawn it.

3. BASIS OF SALE

3.1. Each order for the System and/or Services by the Customer to the Supplier is an offer by the Customer to buy, rent or subscribe to the System or Services subject to these Terms.

3.2. The Customer’s order shall not be treated as accepted by the Supplier unless and until the Supplier issues a written acknowledgement of the Customer’s order or (if earlier) the Supplier begins work to fulfil the Customer’s order when a binding contract shall come into existence between the Supplier and the Customer.

4. PRICES AND PAYMENT

4.1. The Licence Fee and other fees payable for the System (including the Service Hardware) and Services shall be as stated in the Proposal (**Fees**) and shall be paid as specified in the Contract without any deductions or withholdings except as required by law Provided That, for the avoidance of doubt, if and to the extent that any deductions or withholdings are required by law the Customer shall, in addition to its obligations to make payment of the Fees under this condition 4.1, comply with the provisions of condition 4.4 in all respects. Time for payment shall be of the essence of the Contract.

4.2. Unless otherwise specified in the Proposal:

(a) the Customer shall pay the Licence Fee in respect of each Active Unit;

(b) all sums payable under the Contract shall be paid in the currency specified in the Proposal and shall be paid in cleared funds within 30 days of the date of the Supplier’s invoice.

(c) the Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any materials.

4.3. Except where otherwise specified all prices are exclusive of delivery, packaging, packing, shipping, carriage, insurance, value added or other applicable sales tax and other tariffs, charges, import taxes, duties or other local, national government or European Community levies which shall be paid by the Customer in addition to the price payable for the System and the Services.

4.4. If any deduction or withholding is required by law the Customer shall:

(a) pay to the Supplier such sum as will, after the deduction or withholding has been made, leave the Supplier with the same amount as it would have been entitled to receive in the absence of any such requirement to make a deduction or withholding;

(b) within five business days of making the deduction or withholding, provide a statement in writing showing the gross amount of the payment, the amount of the sum deducted and the actual amount paid to the Supplier and for the avoidance of doubt, the actual amount paid to the Supplier shall be an amount that the Supplier would have been entitled to receive in the absence of any requirement on the Customer to make a deduction or withholding; and

(c) shall promptly on request from the Supplier provide such form or other information as the Supplier may require to enable the Supplier to make a successful application for double taxation relief.

4.5. Without prejudice to clause 4.4, the Customer must comply with all applicable tax laws and regulations and must determine whether or not any deduction or withholding is required by law.

4.6. Unless otherwise specified in the Proposal, on the anniversary of the Acceptance Date in each year of the Contract, the Fees payable under the Contract will automatically increase by 5%.

4.7. If the Customer fails to make payment in full on the due date then without prejudice to any other right or remedy available to the Supplier, the Supplier may:

(a) charge interest on the amount outstanding from the due date to the date payment is made to the Supplier (whether or not after judgment), at the annual rate of 4% above the base lending rate from time to time of the Bank of England, accruing on a daily basis and being compounded monthly;

(b) suspend all further performance of the Contract until payment has been made in full.

5. CUSTOMER OBLIGATIONS

5.1. The Customer undertakes and agrees without charge or delay, to:

(a) provide all co-operation, access, facilities, assistance, information and data reasonably requested by the Supplier to enable the Supplier (including its employee's agents and sub-contractors) to provide the System and Services;

(b) provide the Customer Materials (including KYC Information) and any additional information related to this Contract upon the Supplier's request and must ensure that it is complete and accurate in all respects and the Supplier shall be entitled to rely on the Customer Materials. Such Customer Materials and other information shall be provided promptly or within such timescales as the Supplier may require from time to time;

(c) provide the Supplier with all information that the Supplier may require to identify the Customer and verify the ultimate beneficial owner of the Customer;

(d) inform the Supplier immediately of changes in the KYC Information and other information supplied in accordance with condition 5.

(e) ensure that any information about food supplied in accordance with condition 5 shall also include information about allergens;

(f) shall communicate changes to any Customer Materials made available to Guests or other Users via the Platform to the Supplier two (2) working days before they become effective, so that: (i) the Supplier may change the Customer Materials as shown on the Platform; or (ii) the Supplier may authorise the Customer itself to change certain Customer Materials as shown on the Platform;

(g) provide all cabling and other equipment and all power and internet access needed for the installation and configuration of the System including any equipment needed to connect and interface the System with the Customer's IT system;

(h) only connect to the Crave Platform: the Service Hardware; or such other devices that have been approved in writing by the Supplier; and

(i) comply with such reasonable instructions as the Supplier may issue from time to time in connection with the System and Services so that the Supplier can provide the same to the Customer.

5.2. The Customer warrants that:

(a) it will comply with all applicable laws and regulations including health and safety laws;

(b) any meals, beverages and other items supplied to the Guest in fulfilment of a Guest Contract are suitable for consumption and meet the (information) requirements of the applicable food law and related laws and regulations;

(c) it shall promptly notify the Supplier of any changes in the composition, ingredients and additives that could cause a reaction to allergies and intolerances;

(d) Guest Contracts according to the Customer Materials (including any food information) are complied with as shown on the Platform.

5.3. The Customer warrants and represents that it has and shall maintain for the duration of the Contract all the necessary permits to operate and to fulfil Guest Contracts.

5.4. If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation ("**Customer Default**"):

(a) the Supplier shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;

(b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations under the Contract; and

(c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

6. DELIVERY

6.1. The Supplier will supply the System (including the Service Hardware) and the Services in accordance in all material respects with the Proposal. The Supplier shall use reasonable endeavours to meet the performance dates set out in the Proposal but any such dates shall be estimates only and time is not of the essence as to the delivery of the System and performance of the Services.

6.2. Delivery shall be made to the place of delivery specified in the Proposal. The Supplier may deliver the Service Hardware by separate instalments.

6.3. The Customer shall procure that a duly authorised representative of the Customer shall be present at the delivery of the Service Hardware. Acceptance of delivery by such representative shall constitute conclusive evidence that the Customer has examined the Service Hardware and has found it to be in good condition, complete and fit in every way for the purpose for which it is intended. If required by the Supplier, the Customer's duly authorised representative shall sign a receipt confirming such acceptance.

7. EXPORT

7.1. Neither party shall export, directly or indirectly, any technical data acquired from the other party under this agreement (or any products, including software, incorporating any such data) in breach of any applicable laws or regulations ("**Export Control Laws**"), including United States export laws and regulations, to any country for which the government or any agency thereof at the time of export requires an export licence or other governmental approval without first obtaining such licence or approval.

7.2. Each party undertakes:

(a) contractually to oblige any third party to whom it discloses or transfers any such data or products to make an undertaking to it in similar terms to the one set out above; and

(b) if requested, to provide the other party with any reasonable assistance, at the reasonable cost of the other party, to enable it to perform any activity required by any competent government or agency in any relevant jurisdiction for the purpose of compliance with any Export Control Laws.

8. RISK AND PROPERTY

8.1. With the exception of Purchased Hardware, the Service Hardware shall at all times remain the property of the Supplier (or its authorised supplier), and the Customer shall have no right, title or interest in or to the Service Hardware (save the right to possession and use of the Service Hardware subject to the terms and conditions of the Contract).

8.2. The risk of loss, theft, damage or destruction of the Service Hardware shall pass to the Customer on delivery.

8.3. The Service Hardware shall remain at the sole risk of the Customer during the Term and any further term during which the Service Hardware is in the possession, custody or control of the Customer until, except in the case of Purchased Hardware, such time as the Service Hardware is redelivered to the Supplier.

8.4. Ownership of the Purchased Hardware shall pass to the Customer on the later of completion of delivery (including off-loading), or when the Supplier has received in full in cleared funds all sums due to it in respect of the Purchased Hardware.

8.5. With the exception of Purchased Hardware, the Customer shall give immediate written notice to the Supplier in the event of any loss, accident or damage to the Service Hardware arising out of or in connection with the Customer's possession or use of the Service Hardware.

9. INSPECTION AND TESTING OF SYSTEM

9.1. The Supplier shall test and inspect the Crave Platform, System and Services on installation and/or configuration to ensure that they comply with the requirements of the Contract.

9.2. The Customer shall be deemed to have accepted the Crave Platform, System and Services if: (a) the tests are certified by the Supplier to be successful; or (b) the Customer commences operational use of the Platform Services, System or Services; or (c) 90 days following notification from the Supplier that the Platform, System or Services are ready for testing.

10. USERS

10.1. Subject to the terms of the Contract and with effect from the Acceptance Date, the Supplier grants to the Customer a non-exclusive, non-transferable right to permit the Users to use the Platform Services and the Documentation during the Term.

10.2. The Customer shall not access, store, distribute or transmit any Prohibited Material and the Supplier reserves the right, without liability or prejudice to its other rights to the Customer, to suspend, terminate or disable the Customer's and/or any User's access to any Prohibited Material. If the Supplier suspects or becomes aware that the Customer or any User is uploading, downloading or otherwise transmitting any Prohibited Material via the Platform Services the Supplier may suspend, terminate or disable the Customer's or any User's access to the Platform Services.

10.3. The Customer shall not:

(a) use the Platform Services and/or Documentation to provide services to third parties except the Users unless otherwise agreed in writing by the Supplier; or

(b) license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Platform Services and/or Documentation available to any third party except the Users.

11. PLATFORM SERVICES

11.1. The Supplier shall, during the term of the Contract, use reasonable endeavours to make the Platform Services and the Documentation available to the Customer on and subject to the terms of the Contract.

11.2. As part of the Platform Services the Supplier may from time to time install modifications and updates (including security and integration updates) to the Application Software installed on Active Units including software which corrects faults (including by way of a fix or patch or a temporary by-pass solution), adds functionality or otherwise amends or upgrades the Application Software installed on Active Units (**Updates**).

11.3. If the Customer fails to install or make arrangements for the installation of an Update on all Active Units within one month of the Supplier's notifying the Customer that such Update is available for installation, the Supplier shall not be liable for any failure to provide the Platform Services to the extent that such failure would not have occurred but for the failure to install the Update.

11.4. Notwithstanding clause 11.2, the Supplier reserves the right to charge for certain Updates or to provide certain Updates only where the Customer has also purchased support services from the Supplier.

11.5. The Supplier does not warrant that the Customer's use of the Platform Services will be uninterrupted or error-free; or that the Platform Services, Documentation and/or the information obtained by the Customer through the Platform Services will meet the Customer's requirements.

11.6. The Supplier is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Platform Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

11.7. The Customer shall ensure that it complies promptly (and at its own cost) with any minimum hardware, software and internet protocol requirements specified by the Supplier for the purposes of establishing connectivity between the Customer's IT system and the Crave Platform.

11.8. The Customer shall comply with any laws and regulations applicable to its use of the Platform Services.

11.9. Unless otherwise agreed in writing by the Supplier, any updates that the Customer wishes the Supplier to make to the System with Customer Materials provided from time to time by the Customer at any time after the Acceptance Date shall be subject to agreement in accordance with condition 23.2 (variations) and the Customer paying the Supplier's standard charges in force from time to time to make such updates.

12. PAYMENT SERVICES (WHERE APPLICABLE)

12.1. The Supplier provides the Payment Service to the Customer as a result of which Guest Contracts are made. The Supplier's role in entering into Guest Contracts is that of agent on behalf of the Customer. The Customer hereby appoints the Supplier as its agent with authority to conclude agreements for Guest Orders in the name of and on behalf of the

Customer and to process and receive payment for Guest Orders from Guests.

12.2. The Customer authorises the Supplier to enter into Guest Contracts on behalf of the Customer.

12.3. The Customer is exclusively responsible for the fulfilment of a Guest Contract. The Supplier is not a party to the Guest Contract.

12.4. The Customer accepts the settlement by the Supplier of amounts received from the Guests and owed to the Customer against any amounts owed by the Customer to the Supplier.

12.5. The Supplier has the right, but no obligation, to set off the amounts received from the Guests and due to the Customer against any amounts owed by the Customer to the Supplier.

12.6. The Customer acknowledges and agrees that the Supplier may refuse to provide any sums owed to the Customer unless or until the Customer has provided KYC Information to the Supplier that is satisfactory to the Supplier.

12.7. The Customer shall use best endeavours to operate its business in a manner which ensures that the number of Chargebacks in respect of Guest Contracts are kept to a minimum.

12.8. A Guest Contract is formed by a Guest placing a Guest Order through the Platform. The Customer is exclusively responsible for compliance with and fulfilment of the Guest Contract. The Guest is responsible for the debt to the Customer under the Guest Contract. The Supplier is only responsible for the Payment Services.

12.9. The Supplier will pass Guest Orders via the Platform to the Customer as soon as possible. The Customer shall ensure that it is easily accessible for receiving Guest Orders via the Service Hardware, software or other connection method provided by the Supplier to send Guest Orders to the Customer.

12.10. If a Guest Order cannot be collected or cannot be delivered by the Customer, the Customer must inform the Guest within ten (10) minutes after receipt of a Guest Order and offer the Guest a reasonable alternative to the Guest Order.

12.11. The Supplier is not responsible for the accuracy and completeness of Guest Orders placed by Guests. The Customer can check every Guest Order with the Guest by contacting the Guest by the means provided and specified in the Guest Order.

12.12. The Customer must make the Guest Order available for collection or delivery to the Guest in accordance with any delivery terms of the Customer.

12.13. The Customer shall not use the Platform for the sale of products or services whose sale is illegal or is considered to be illegal.

12.14. If a Guest Order contains alcoholic products or other items with a legal age requirement, the Customer must ask the Guest to verify that they meet these requirements upon delivery or pick up in accordance with applicable law. If the Guest cannot provide sufficient verification or does not meet the minimum age requirements, the Customer must refuse to deliver the restricted items to the Guest.

12.15. If the Customer has the Guest Order delivered to the Guest by a third party, it is the Customer's responsibility for the delivery and costs. The Customer indemnifies the Supplier for claims from third parties in connection with the delivery and the costs thereof.

12.16. The Customer may only cancel the Guest Order if:

- (a) the Guest has placed a Guest Order with incorrect contact details;
- (b) the Guest is unable to satisfactorily verify they meet the minimum age requirements for restricted items; or
- (c) the product that is the subject of the order is no longer available and the Guest refuses to accept the alternative offered by the Customer.

12.17. The Supplier may cancel the Guest Order if the Guest Order appears to be false or if there is any suspected illegal activity.

12.18. If a Guest Order is cancelled, the Customer must inform the Supplier within twenty-four (24) hours. Cancellations after this period will not be taken into account.

12.19. The Supplier is not liable for damages, costs or losses caused by:

- (a) cancellations by Guests;
- (b) Guests who do not meet their financial obligations to the Customer;
- (c) Chargebacks; or
- (d) fraudulent or unauthorised transactions.

12.20. The Customer shall indemnify the Supplier (its employees, agents or sub-contractors) against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Supplier (its employees, agents or sub-contractors) arising out of or in connection with:

- (a) any claim made against the Supplier by a third party arising out of or in connection with the Guest Contract or the fulfilment of the Guest Order except to the extent that such claim arises out of the breach or negligent performance the Guest Contract by Supplier;
- (b) any claim made against the Supplier and/or the Customer for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with use of the Customer Materials in accordance with the Contract;
- (c) any liabilities which the Supplier may incur as a result of acting with reasonable care and skill within the scope of its authority under the Guest Contract as agent for the Customer; and
- (d) the matters specified in condition 12.19.

12.21. The Supplier will settle all payment obligations to Guests (for refunds) and the Customer with regard to the funds received from Guests in connection with Guest Orders.

12.22. The Supplier provides a weekly overview of the balances and transactions for the period and ensures the transfer of any positive balance to the Customer. This payment by the Supplier to the Customer will take place no later than ten (10) working days after receipt of the funds by the Supplier from the relevant Guest, unless a more detailed examination of the transaction is required.

12.23. Amounts owed by Guests only contribute to the balance that the Supplier owes to the Customer to the extent that the amount has actually been received by the Customer.

12.24. The Customer must notify the Supplier by e-mail immediately upon becoming aware, and no later than seven (7) days after the date of payment by the Supplier to the Customer, of any disputed payment.

12.25. The Customer agrees that Guests' claims for refund will prevail over payment obligations to the Customer.

12.26. Immediately on demand from the Supplier, the Customer shall pay to the Supplier the full amount of any sums that are deducted from the Supplier's account or the account of any third party payment processor used by the Supplier to provide the Payment Services where such deductions are incurred by the Supplier (or its third party payment processor) acting within the scope of its authority as agent for the Customer, including any Chargebacks or fraudulent or other unauthorised transactions.

12.27. The Customer is exclusively responsible for the handling of Guest complaints regarding the fulfilment of Guest Contracts. The Supplier is not responsible for handling such Guest complaints.

12.28. The Supplier has the right but not the obligation to check the Sanctions Lists on all Customers and their owners and carries out due diligence. If a Customer and / or its owner is on one of these lists or, based on its due diligence investigation the Supplier determines that the Payment Services cannot be provided, the Supplier may immediately freeze all payments and Services to the Customer.

13. CUSTOMER DATA

13.1. The Customer shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Materials.

13.2. In the event of any loss or damage to Customer Materials, the Customer's sole and exclusive remedy shall be for the Supplier to use reasonable commercial endeavours to restore the lost or damaged Customer Materials from the latest back-up of such Customer Materials maintained by the Supplier. The Supplier shall not be responsible for any loss, destruction, alteration or disclosure of Customer Materials caused by any third party (except those third parties sub-contracted by the Supplier to perform services related to Customer Materials maintenance and back-up).

13.3. If the Supplier processes any personal data on the Customer's behalf when performing its obligations under the Contract, the parties record their intention that the Customer shall be the data controller and the Supplier shall be a data processor and in any such case:

- (a) the Customer acknowledges and agrees that the personal data may be transferred or stored outside the EEA or the country where the Customer and the Users are located in order to carry out the Services and the Supplier's other obligations under this agreement;
- (b) the Customer shall ensure that the Customer is entitled to transfer the relevant personal data to the Supplier so that the Supplier may lawfully use, process and transfer the personal data in accordance with this agreement on the Customer's behalf;
- (c) the Customer shall ensure that the relevant third parties have been informed of, and have given their consent to, such use, processing, and transfer as required by all applicable data protection legislation; and
- (d) each party shall take appropriate technical and organisational measures against unauthorised or unlawful processing of the personal data or its accidental loss, destruction or damage.

14. WARRANTY

14.1. The Supplier shall use all reasonable care and skill to provide the Services in a professional and efficient manner.

14.2. The Supplier warrants to the Customer that:

- (a) the Purchased Hardware is free from defects of workmanship and materials; and
- (b) the Purchased Hardware shall conform in all material respects to its specification (as set out in the Proposal).

14.3. The Supplier undertakes (subject to the remainder of this condition 14), at its option, to repair or replace any part of the Purchased Hardware (other than consumable items) which is found to fail to conform with the warranties in condition 14.2 within 12 months from the date of delivery of the relevant Purchased Hardware. If the Supplier is unable to repair or replace the defective part of the Purchased Hardware and if agreed with the Customer the Supplier shall refund the price paid by the Customer for the defective part of the Purchased Hardware.

14.4. With the exception of Purchased Hardware, for the duration of the Term, the Supplier undertakes (subject to the remainder of this condition 14), at its option, to repair or replace any part of the Service Hardware (other than consumable items) which does not conform to its specification (as set out in the Proposal).

14.5. The Supplier shall not be liable for a breach of the warranties in condition 14.2 or under any obligation to repair or replace Service Hardware under condition 14.4 unless:

(a) the Customer gives written notice of the defect to the Supplier promptly on discovering the defect and, in respect only of Purchased Hardware, within 12 months from the date of delivery of the relevant Purchased Hardware; and

(b) after receiving the notice, the Supplier is given a reasonable opportunity of examining the Service Hardware (or the relevant part of the Service Hardware) and the Customer (if asked to do so by the Supplier) returns the Service Hardware (or any relevant part) to the Supplier's place of business at the Supplier's cost for the examination to take place there.

14.6. The Supplier shall not be liable for a breach of the warranties in condition 14.2 or under any obligation to repair or replace Service Hardware under condition 14.4 if:

- (a) the Customer makes any use of the Service Hardware in respect of which it has given written notice under condition 14.5(a); or
- (b) the failure to conform to the specification of the Service Hardware arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Service Hardware or (if there are none) good trade practice; or
- (c) the Customer alters or repairs the Service Hardware without the written consent of the Supplier; or
- (d) the failure to conform to the specification of the Service Hardware arises because of a failure, interruption or surge in the electrical power or its related infrastructure connected to the Service Hardware or a failure or interruption in the telecommunications services or network connections or their related infrastructure connected to the Service Hardware;
- (e) the failure to conform to the specification of the Service Hardware arises due to the Customer's breach of its obligations under condition 17.1 or any other breach of the Customer's obligations under the Contract.

14.7. The Supplier shall not be liable for any damage or defect to the Service Hardware caused by improper use of the Service Hardware or use outside its normal application.

14.8. The Supplier warrants that it has the right to license the Intellectual Property Rights in and to the Application Software to the Customer in accordance with the Contract.

14.9. Unless otherwise agreed in writing the Customer acknowledges that the System has not been developed to meet the Customer's individual requirements and that it is therefore the Customer's responsibility to ensure that the facilities and functions of the System meet the Customer's requirements.

14.10. The Supplier shall not be liable for defects in the Service Hardware caused by fair wear and tear, abnormal conditions of storage, of use or any act, neglect or default of the Customer or any third party (including any accidental or deliberate damage caused to the Service Hardware screen).

14.11. Any manufacturer's terms or conditions of sale or general application endorsed on Service Hardware supplied by the Supplier shall be observed and complied with by the Customer. If there is any inconsistency between the manufacturer's terms and conditions and these Terms, these Terms shall prevail.

14.12. The Customer shall at the Supplier's election, reimburse the Supplier for any costs and expenses incurred by the Supplier where Service Hardware proves not to have been in breach of the Supplier's warranty or the Supplier proves not to have been under any obligation to repair or replace Service Hardware under conditions 14.2 or 14.4.

15. APPLICATION SOFTWARE

15.1. The Customer understands and agrees that its use of the Application Software and the online software provided by the Supplier as part of the Services ("Platform Software") shall be subject to the terms of the EULA and the Customer may only use the Application Software and the Platform Software in accordance with the EULA. If there is any conflict between the EULA and these Terms, these Terms shall prevail.

15.2. The Customer understands and agrees that its use of the optional Deliverect POS integration services and the online software provided by Deliverect as part of these services (the "**POS Integration Services**") shall be subject to the terms of the Crave-Deliverect Services Agreement ("**CDSA**") and the Customer may only use the POS Integration Services in accordance with the CDSA.

16. THIRD PARTY SOFTWARE

16.1. If the Supplier supplies or provides any third party software to the Customer pursuant to the Contract, then such software shall be supplied or provided subject to the standard terms and conditions of the proprietor of such software at the time of supply or provision. The Customer undertakes to use such software, and to procure that such software is used, strictly in accordance with such terms and conditions.

17. CUSTOMER'S RESPONSIBILITY FOR SERVICE HARDWARE

17.1. In respect of all Service Hardware that is not Purchased Hardware, the Customer shall during the Term:

(a) ensure that the Service Hardware is kept and operated in a suitable environment, used only for the purposes for which it is designed, and operated in a proper manner by trained competent staff in accordance with any operating instructions;

(b) take such steps (including compliance with all safety and usage instructions provided by the Supplier) as may be necessary to ensure, so far as is reasonably practicable, that the Service Hardware is at all times safe and without risk to health when it is being set, used, cleaned or maintained by a person at work;

(c) make no alteration to the Service Hardware and shall not remove any existing component(s) from the Service Hardware without the prior written consent of the Supplier;

(d) not, without the prior written consent of the Supplier, part with control of (including for the purposes of repair or maintenance), sell or offer for sale, underlet or lend the Service Hardware or allow the creation of any mortgage, charge, lien or other security interest in respect of it;

(e) not remove any barcode or other security device fitted to the Service Hardware by or on behalf of the Supplier;

(f) not suffer or permit the Service Hardware to be confiscated, seized or taken out of its possession or control under any distress, execution or other legal process; and

(g) retain the original packaging for the Service Hardware.

17.2. With the exception of Purchased Hardware, the Customer shall immediately notify the Supplier if any Service Hardware is lost or damaged or fails to operate in accordance with its specification.

17.3. The Customer acknowledges that the Supplier shall not be responsible for any loss of or damage to the Service Hardware, or liable for any failure to provide the Services, to the extent arising out of or in connection with any negligence, misuse, mishandling of the Service Hardware or otherwise caused by the Customer or its customers officers, employees, agents and contractors.

18. LIMITATION OF LIABILITY

18.1. In this condition 18 the following shall mean an "**Event of Default**": (a) any breach by the Supplier of its contractual obligations arising under the Contract (other than a breach arising from wilful default or recklessness); (b) any misrepresentation by the Supplier in connection with (whether or not contained in the agreement) the Contract (other than a fraudulent misrepresentation); (c) any tortious, act or omission, including negligence, arising in connection with the Supplier's performance under the Contract (other than any act or omission which is fraudulent or dishonest); and/or (d) any other act giving rise to a liability in respect of the Contract.

18.2. Subject to condition 18.3 all warranties, conditions and other terms implied by statute or common law (including the terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982) are, to the fullest extent permitted by law, excluded from the Contract.

18.3. Nothing in the Contract limits or excludes the Supplier's liability to the Customer: (a) for death or personal injury resulting from its own or its employees', agents' or sub-contractors' negligence; (b) in relation to any fraudulent misrepresentation or fraudulent acts of its employees; or (c) for any breach of its obligations implied by section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982; or (d) any other liability which cannot be excluded or limited by law.

18.4. Subject to condition 18.3: (a) the Supplier's aggregate liability to the Customer in respect of all Events of Default shall be limited to the fees paid for the System and Services; (b) the Supplier shall not be liable to the Customer in respect of any Event of Default for: (i) loss of profits; or (ii) loss of business; or (iii) depletion of goodwill or similar losses; or (iv) loss of anticipated savings; or (v) loss of goods; or (vi) loss of contract; or (vii) loss of use; or (viii) loss or corruption of data or information; or (ix) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses even if such loss was reasonably foreseeable or the Supplier had been advised of incurring the same.

19. INTELLECTUAL PROPERTY RIGHTS

19.1. The Customer grants to the Supplier a non-exclusive licence to use the Customer Materials to the extent necessary to perform its obligations under the Contract. All Intellectual Property Rights in the Customer Materials remain owned by the Customer and the Customer warrants that the Supplier's use of the Customer Materials in accordance with the Contract will not infringe the rights of any third party.

19.2. The Customer acknowledges that all Intellectual Property Rights used by or subsisting in the System and the Services (including Usage Data and Supplier Data) are and shall remain the sole property of the Supplier or (as the case may be) the third party licensor of such rights.

20. USAGE DATA

20.1. Where the Supplier processes Usage Data it does so as a data controller.

20.2. To the extent that the Supplier and the Customer are the data controller of the same personal data each of them will be separate (not joint) data controllers of such personal data.

20.3. The Customer understands and agrees that the Supplier may provide to the Users such fair processing notices, and/or secure from the Users such consents as the Supplier may deem necessary from time to time to enable the Supplier to process the Usage Data in accordance with all relevant laws and regulations.

20.4. The Customer shall have no right to the Usage Data unless a licence to use the Usage Data is agreed in writing in accordance with condition 24.2 (variation) which shall include agreement over the Supplier's charges for such licence;

21. CONFIDENTIALITY

21.1. All information disclosed by either party to the other in connection with the performance of the Contract, except such information as may be generally available to the public, shall be agreed to have been disclosed in confidence and each party must keep any such information as it may acquire confidential and, save to the extent required by law or by any governmental or other authority or regulatory body, not to disclose it to any other person or otherwise improperly use it either before or after the termination of the Contract except insofar as such information has entered the public domain otherwise than in breach of this condition.

22. ADVERTISING

22.1. From time to time the Supplier may (but is not obliged to) advertise the goods and services of third parties to Users (**Advertisements**). Such Advertisements shall conform to the Supplier's advertising policy in all material respects and shall not directly compete with the hotel services offered by the Customer.

22.2. Unless otherwise specified in the Proposal or agreed in writing by the Supplier all sums received by the Supplier for the Advertisements shall belong to the Supplier.

23. TERMINATION

23.1. The Contract shall commence on the date that the Contract is formed in accordance with condition 3.2. Unless terminated earlier in accordance with condition 23.2, the Contract shall continue for the initial period specified in the Proposal from the Acceptance Date (**Initial Term**) and shall automatically extend for 12 months (**Extended Term**) at the end of the Initial Term and at the end of each Extended Term. Either party may give written notice to the other party no later than 3 months before the end of the Initial Term or the relevant Extended Term, to terminate the Contract at the end of the Initial Term or the relevant Extended Term, as the case may be.

23.2. The Supplier may terminate the Contract immediately at any time by written notice if:

- (a) the Customer fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment;
- (b) the Customer commits a breach of any material term of the Contract which, if capable of remedy, is not remedied within 21 days of notice from the Supplier;
- (c) the EULA is terminated;
- (d) the Customer ceases trading or is unable to pay its debts as they fall due or a petition is presented or meeting convened for the purpose of winding the Customer up or the Customer enters into liquidation, whether compulsorily or voluntarily, or compounds with the Customer's creditors generally or has an administrator appointed over it or has a receiver appointed over all or any part of the Customer's assets or is the subject of a bankruptcy petition or order; or any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in this condition;
- (e) the Customer receives (repeated) complaints from Guests;
- (f) the Customer fails to provide KYC Information to the Supplier that is satisfactory to the Supplier (in its absolute discretion); or
- (g) the Supplier determines (in its absolute discretion) that the number of Chargebacks in respect of Guest Contracts justifies the opinion that the Customer does not have the intention or ability to adequately fulfil Guest Contracts.

23.3. On termination, howsoever arising, the Customer shall pay to the Supplier all costs and expenses, including legal and other fees incurred and all arrears of charges or other payments arising in respect of the Contract or otherwise.

23.4. Termination, howsoever or whenever it occurs shall be subject to any rights and remedies the Supplier may have under the Contract or in law.

23.5. On termination, howsoever arising, the Customer shall deliver up the Service Hardware in the original packaging for the Service Hardware at such address as the Supplier requires. If the Customer fails to deliver the Service Hardware to the Supplier (or its order) within 14 days of the Supplier's request to do so the Supplier (or the Supplier's authorised representative) may, without notice and at the Supplier's expense, enter any premises of the Customer or of any third party where the Service Hardware is located in order to recover the Service Hardware.

23.6. On termination, howsoever arising, without prejudice to any other rights or remedies of the Supplier, the Customer shall pay to the Supplier on demand any costs and expenses incurred by the Supplier in recovering the Service Hardware and in repairing or replacing any items of Service Hardware which is lost or damaged (fair wear and tear excepted) otherwise than by the Supplier (its employees, agents or sub-contractors).

23.7. The following conditions shall survive termination of these Terms conditions 4, 8, 17-23 inclusive and any other relevant conditions.

24. GENERAL

24.1. Neither party shall be liable for delay in performing or failure to perform obligations under the Contract if the delay or failure results from

any Act of God war riot act of terrorism outbreak of hostilities strike or other industrial action of any kind malicious damage default of suppliers or sub-contractors accident failure or breakdown of plant or machinery fire flood explosion any act of local or national government or authority and any cause or circumstance whatsoever outside the reasonable control of the parties (a "**force majeure**"). In the event of any delay or failure under the Contract resulting from "force majeure" either party may rely on the provisions of this condition for exemption from liability for non-performance, part performance, defective performance or delay and in the event that any such delay or failure continues for a period in excess of 120 consecutive days either party shall have the right to terminate the Contract with immediate effect.

24.2. No variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

24.3. Nothing in these Terms is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute the Customer an agent of the Supplier for any purpose. The Customer has no authority to act as agent for, or to bind, the Supplier in any way.

24.4. Notice given under the Contract shall be properly served only if it is in writing, sent by fax, email, first class pre-paid post (or by airmail post if to an address outside the country of posting) to the receiving party, at the address, email address or fax number, given in the Contract or notified to the other party in some other way. Any notice shall be deemed to have been received: (a) if delivered by hand, at the time of delivery; (b) if sent by post 2 working days after the notice shall have been posted (5 working days if sent by airmail post); (c) if sent by fax or email, at 9.00 am on the next working day after completion of transmission (provided that an error free transmission report has been received by the sender). This condition does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

24.5. The Contract together with any documents referred to in the Contract constitute the whole agreement between the parties and supersedes all previous agreements between the parties relating to the System and Services. Each party acknowledges that, in entering into the Contract, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in the Contract.

24.6. The Customer must not assign, transfer, charge or deal in any other manner with the Contract or any of the Customer's rights under it, or purport to do any of the same, nor sub-contract any of the Customer's obligations under the Contract.

24.7. A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

24.8. A person who is not a party to the Contract shall not have any rights under or in connection with it.

24.9. The Contract and any dispute or claim arising out of or in connection with the Contract (or its subject matter) shall be governed by the law of England and Wales. For the avoidance of doubt, the United Nations Convention on the International Sale of Goods shall not apply to the Contract. The international rules for the interpretation of trade terms prepared by the International Chamber of Commerce (**Incoterms**) shall apply but where they conflict with the Contract, the Contract shall prevail.

24.10. The courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Contract (or its subject matter).