

TERMS AND CONDITIONS

1. DEFINITIONS

1.1 In this Agreement and Schedules the following expressions have the following meanings unless inconsistent with the context:

"Agreement"	means these terms and conditions and any Order.
"Affiliate"	a party's subsidiary and holding companies (as defined in Sections 736 and 736A of the Companies Act 1985) and any other subsidiaries of such holding companies;
"Co-Branding"	any co-branding for the Landing Page subject to compliance with the Cloud's branding guidelines in force from time to time;
"Customer Equipment"	any equipment which the Customer owns or licenses, or of which it has the use pursuant to this Agreement, and which is used under this Agreement to provide the Services;
"Edge Device"	a router or similar equipment used to send and received packets to and from the core Network.
"Fees"	in respect of any Order, the Service Fees, the Set Up Fees and/or any fees for additional services;
"Hotspot"	a location where Services are provided at a Venue through edge device equipment connected over a single backhaul connection to The Cloud's data centre;
"Landing Page"	the web page which offers the User the option to log on to the Services;
"Marketing Partner"	any third party providing Materials or other promotional or technical support for the Services;
"Materials"	any documents and materials supplied by The Cloud in connection with the Services, which may also incorporate the marks and/or logos of the Customer, The Cloud, or Partners;
"Minimum Term"	the minimum term as specified in the Order;
"Network"	The Cloud's broadband wireless network;
"New WiFi Standards"	any new wireless standard being analogous to or a development of WLAN which comes into commercial use at any time during the term of this Agreement, including but not limited to the 802.11* standards;
"Order"	the order(s) placed by the Customer and accepted by The Cloud pursuant to this Agreement;
'Other Wireless Technologies'	any wireless communication technology, including without limitation, the 802.16 standards commonly known as: <ul style="list-style-type: none"> (a) WiMax; (b) 2.5G; (c) 3G; (d) UMTS; (e) GSM; (f) UWB; (g) Bluetooth and other licensed mobile data technologies

but excluding RFID;

"Partner"	according to context a Marketing Partner or a WLAN Services Partner;
"PAYG Access"	(or pay-as-you-go) access to the Network provided to Users by The Cloud directly and not by a WLAN Services Partner and paid for at the time of access by way of voucher, credit card or other payment method;
"Services"	the WLAN public access services at the Venue(s), including but not limited to PAYG Access and access by such WLAN Service Partners as the Cloud shall, at its sole discretion, allow to provide services at each Hotspot, all for the purposes and at terms and conditions determined by the Cloud from time to time, at its sole discretion;
"Service Fees"	the periodic fees for the Services as specified in the relevant Order;
"Set Up Fees"	the set up fees specified in the relevant Order;
"Specified Equipment"	Edge device equipment and any Customer Equipment;
"Switched On"	the point in time at which the relevant Hotspot is verified by The Cloud as working;
"User"	any person using or attempting to use the Services;
"Venues"	the venues set out in any Order.;
"WLAN"	wireless network conforming to: <ul style="list-style-type: none"> (a) the IEEE802.11(a), (b) and/or (g) standards (as varied or amended from time to time); and/or (b) New WiFi Standards; and/ or (c) Other Wireless Technologies; and/or (d) A combination of (a), (b) and (c); such other wireless networks as The Cloud may from time to time integrate into the Network; and
"WLAN Services Partner"	any third party partner providing WLAN access for Users, including, but not limited to, wireless internet service providers (WISPs), roaming partners or mobile network operators.

2. THE WLAN SERVICES

- 2.1 Subject to the terms and conditions of this Agreement and The Cloud's User terms and conditions (available from the Landing Page) and, as may be applicable, The Cloud's Partner's terms and conditions, The Cloud shall:
- 2.1.1 provide the Services to Users at each Hotspot which is Switched On and provide Users at a Hotspot with access to Services provided by such Partners as The Cloud, at its sole discretion, shall grant access to such Hotspot;
- 2.1.2 during the service hours specified from time to time on the Landing Page provide the Customer with access to a support desk to assist with problems with the Hotspot and/or the Services;
- 2.1.3 design and host: (a) the Landing Page; and (b) if specified in the Order, any Co-Branding;
- 2.1.4 input the Venues' details into the locator tool on The Cloud's website and/or such third party locator tools as The Cloud may support, and license such data to third parties to promote access to the Services (provided that

- such data shall not include Personal Data as defined in the Data Protection Act 1998);
- 2.1.5 take reasonable steps to ensure that The Cloud and the Partners observe regulations affecting or covering the Venues including any health and safety and security regulations notified to it by the Customer; and
- 2.1.6 provide any additional services as set out in any Order.
- 2.2 The Customer shall place Orders in accordance with this Agreement. Orders shall be placed using the applicable form. No Order shall be binding until both parties have signed it. Each Order shall be governed by the terms and conditions of this Agreement.
- 2.3 Following execution of an Order form by both parties, The Cloud shall use reasonable endeavours to supply the relevant Services to the Customer in accordance with the timescales specified in the relevant Order, but all dates are estimates.
- 2.4 The Customer acknowledges that The Cloud's ability to provide the Services is dependent on the availability of an acceptable backhaul service to the Venue.
- 2.5 The Customer accepts that Services may fail from technical fault or otherwise from time to time. The Customer shall report any faults by telephone or electronic mail to The Cloud's network operations centre using the telephone number and e-mail address provided from time to time by The Cloud for such purpose. The Cloud and/or its WLAN Service Partners will take steps to correct faults as soon as is reasonably possible. Any failures of the BT or other carrier network shall not be the responsibility of The Cloud.
- 2.6 The Cloud may from time to time suspend or terminate the Services to any and/or all Hotspots for technical, operational or other reasons.
- 2.7 The Cloud may provide The Cloud branded Materials to the Customer and shall at its discretion add the Customer logo on the Landing Page. The Customer may request further Materials from The Cloud at a cost to be agreed. Non-standard materials will be paid for by the Customer. The Cloud retains the right to veto the adaptation of its own literature and to modify the set of standard Cloud Materials from time to time at its discretion.
- 2.8 The Cloud reserves the right to charge the Customer on a time and materials basis (at The Cloud's then prevailing rates) plus expenses where assistance is required to correct a fault at a Hotspot which has arisen due to the Customer's negligence or mistreatment of any equipment or backhaul connection needed for the Hotspot to operate.
- 3. DURATION**
- 3.1 Subject to **clause 11**, the Services shall be provided at each Hotspot for the Minimum Term starting from the day on which that Hotspot is Switched On provided that either party may terminate the Services at the end of the first year of the Minimum Term by giving notice to the other party no later than 11 months after the start of the Minimum Term. . At the end of the Minimum Term, Services will continue to each Hotspot for further periods of one (1) year unless terminated by either party providing not less than three (3) months' advance written notice expiring at the end of the Minimum Period or any subsequent anniversary thereof.
- 3.2 For the avoidance of doubt the Minimum Period in respect of each Hotspot is independent of the services period of each other Hotspot and termination of Services to one Hotspot will not affect the duration of Services to any other Hotspot.
- 3.3 This Agreement shall continue (subject to **clause 11**) until the Services provided to each of the Hotspots relevant to this Agreement are terminated.
- 4. EQUIPMENT SUPPLY**
- 4.1 Upon acceptance of an Order, The party listed on the Order shall, in respect of that order, throughout the term of this Agreement:
- 4.1.1 provide the Edge Device;
- 4.1.2 as part of the Customer Equipment for each Hotspot, provide: (a) a working BT PSTN line; and (b) a broadband public Internet connection, each of which complies with the Cloud's reasonable technical requirements as amended from time to time, and make all payments for, and otherwise ensure that service to, such broadband connection and PSTN line respectively shall continue throughout the service period to that Hotspot;
- 4.1.3 arrange and pay for installation and connection of the Specified Equipment itself or via the Installation Partner, and procure that either the Customer or the Installation Partner shall provide all wiring, routers, and other equipment necessary to connect the edge equipment to the appropriate power and telecommunications lines;
- 4.1.4 maintain the Specified Equipment in working order at all times during the period of Services.
- 4.2 If the Customer fails to fulfil its obligations under this **clause 4**, then the Cloud may at its sole option: (a) suspend or cease the provision of the Services to any Hotspots affected by any such failure; or (b) assume the obligation at the cost of the Customer without prejudice to the Customer's liability to pay the Service Fees.
- 4.3 The Cloud may, at its own discretion and expense, install upgraded Edge Device, backhaul and/or other components of the Network at any time.
- 4.4 Any equipment supplied by a party from time to time shall at all times remain the property of that party, and the other party shall not in any way sell, offer for sale, transfer, let, license, mortgage, charge or otherwise deal in any way with that equipment or parts thereof or permit any lien to be created over the same nor allow the same to be seized by execution, distress or other legal process.
- 4.5 Should any distraint be threatened or levied in respect of any of a party's equipment then the other party's entitlement to be in possession of that equipment will cease forthwith and the other party will give immediate notice of such distraint to the owning party.
- 5. FEES AND PAYMENTS**
- 5.1 The Customer shall pay the Fees as set out in the applicable Order to the account specified in The Cloud's invoice.
- 5.2 All Service Fees shall be paid quarterly in advance, shall be deemed to accrue on a daily basis, and shall not be suspended at any time or for any reason unless expressly agreed in writing between the parties. The Fees shall be paid within fourteen (14) days of presentation to the Customer of The Cloud's VAT invoice.
- 5.3 In the event that any amount is overdue for payment under this Agreement, the party entitled to payment may at its election without prejudice to its other rights and remedies under this Agreement:
- 5.3.1 charge interest at a rate of 4% above base rate of the Royal Bank of Scotland from time in force; and/or
- 5.3.2 The Cloud may suspend the supply of the Services on fourteen (14) days' written notice.
- 5.4 All sums payable under this Agreement are subject to VAT at the standard rate in force.
- 6. CUSTOMER OBLIGATIONS**
- 6.1 The Customer and its Affiliates shall throughout the term of this Agreement:
- 6.1.1 provide The Cloud with control over, and co-operate with The Cloud and the Partners in respect of, all matters

- relating to the installation, configuration, maintenance, operation, use and marketing of the Hotspot, Specified Equipment and/or Services and exclusive use of and access to the Specified Equipment in a Hotspot for the period during which Services are provided to that Hotspot;
- 6.1.2 allow The Cloud to operate the Hotspot in a similar fashion to other Hotspots in The Cloud network, including allowing The Cloud to provide Services from any and all WLAN Services Partners as The Cloud may, at its sole discretion, determine at the terms and conditions of The Cloud's normal agreements with such WLAN Services Partners;
- 6.1.3 where necessary obtain and maintain all necessary third party permissions and/or rights to provide Services in each of the Venues and maintain such permissions and/or rights throughout the period of service applicable to the Hotspots in such Venue;
- 6.1.4 in the event that The Cloud displays and/or uses the Customer's logo and descriptive information concerning the Customer and the Venues in the Materials, on the Landing Page, The Cloud's website, and/or any information resource operated by a Partner, hereby grant to The Cloud all permissions or licences necessary for such display and/or use;
- 6.1.5 at its own expense provide power to each item of the Specified Equipment for the operation of the Hotspot, in accordance with specifications prescribed by The Cloud from time to time;
- 6.1.6 not carry out or permit any modification, repair, removal, or disconnection of the Specified Equipment or otherwise carry out any work on the same, and not use or permit to be used the Specified Equipment for any purpose other than the provision of the Services by The Cloud pursuant to this Agreement;
- 6.1.7 provide The Cloud and the Partners with reasonable and prior agreed (which agreement shall not be unreasonably withheld or delayed) access to the Venues: (1) to inspect, maintain, test or remove the Specified Equipment or the Venue (as relevant); and / or (2) to conduct quality of service measurement or other reasonable research in respect of the Services; (3) conduct staff training (; and (4) display and place Materials and other materials to create awareness of the Services at the Venue;
- 6.1.8 not enter into any agreement with any third party for the promotion or provision of any services similar to the Services at Venues without the prior written approval of The Cloud;
- 6.1.9 prior to Switch On at a Venue and throughout the term that Services are provided at each Venue prominently display at each Venue the Materials, as provided by The Cloud from time to time for the purpose of promoting the availability of Services to Users.
- 6.1.10 publicise, and allow The Cloud to publicise (including promotional activity), the availability of the Services at regular intervals;
- 6.1.11 not do nor to authorise any other party to do anything that does not comply with any relevant legislation or regulation or is in any other way unlawful, or that may damage or adversely affect The Cloud's or Partners' brand or reputation;
- 6.1.12 not resell or sublicense the Services save as expressly permitted by this Agreement;
- 6.1.13 indemnify The Cloud up to the full replacement value against fire, theft, damage or vandalism to any property of The Cloud whilst the same is sited in any Venue; and
- 6.1.14 display in an appropriate manner such point of sale material as may be reasonably required by The Cloud, from time to time.
- 7. WARRANTIES**
- 7.1 Each party warrants to the other that:
- 7.1.1 it has the full right, power and authority to enter into this Agreement and to perform its obligations hereunder; and
- 7.1.2 the execution and performance of this Agreement by such party does not and will not violate any agreement to which such party is a party.
- 7.2 Where the Customer supplies any part of the Specified Equipment, the Customer warrants to The Cloud that it has and shall maintain all necessary licences for the use by The Cloud of such part or parts of the Specified Equipment and the related software, to the extent necessary to enable The Cloud to provide the Services.
- 8. ASSIGNMENT**
- 8.1 Neither party shall assign the benefit or delegate the burden of this Agreement (whether in whole or in part) without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed, provided that such consent will not be required in the case of an assignment by either party to an Affiliate of that party.
- 9. INSURANCE**
- 9.1 The Customer shall effect and maintain for the period referred to in **clause 9.2** at its own cost with insurers of good repute the insurances specified below and such other insurances as are required by law, in each case with adequate limits of indemnity and reasonable maximum deductibles ("the Insurances"):
- 9.1.1 public liability insurance; and
- 9.1.2 material damage insurance for all risks for The Cloud's equipment sited in a Venue to their full reinstatement value with a maximum deductible approved by The Cloud from time to time.
- 9.2 The Customer shall effect and maintain the Insurances during the period of this Agreement and for such other period as is necessary to ensure that insurance is provided for all of the Customer's liabilities arising under this Agreement usually covered under the Insurances irrespective of when any claim in relation to any such liability is made. The Customer will be responsible for payments of all premiums and deductibles in respect of the Insurances and the Customer shall produce evidence to The Cloud on reasonable request of the Insurances and payment of the premiums due on each policy. The Customer warrants that nothing has or will be done or omitted to be done which may result in any of the Insurances being or becoming void, voidable or unenforceable.
- 10. LIABILITY**
- 10.1 Neither party excludes or limits its liability to the other for fraud or personal injury or death resulting from negligence.
- 10.2 Subject to **clause 10.1** and except as expressly set out in this agreement, each party excludes to the fullest extent permissible in law all conditions, warranties and stipulations, express (other than those set out in this Agreement) or implied, statutory, customary or otherwise which, but for such exclusion, would or might subsist in favour of the other party.
- 10.3 Except as provided in to **clauses 10.1, 10.4** and **10.5**, the aggregate liability of each party to the other under or in connection with this Agreement (whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise) in respect of all and any loss or damage howsoever caused will be limited to the higher of: (a) ten thousand pounds (£10,000); or (b) a sum equivalent to Fees paid by the Customer throughout the term of this Agreement, provided that this **clause 10.3** shall not apply to any claim for the recovery of Fees or Service Revenue payable pursuant to **clause 5** of this Agreement.
- 10.4 Each party's total aggregate liability to the other in respect of loss or damage to tangible property caused by its

negligence shall not exceed one million pounds (£1,000,000).

- 10.5 Subject to **clause 10.1**, The Cloud shall not be liable to the Customer for any loss of profits, loss of business, loss of contract, loss of goodwill, loss of anticipated savings, loss of use or value of any equipment including software, loss of data, wasted management or other time (in each case whether such loss is direct, indirect or consequential) or any indirect or consequential loss howsoever arising (including without limitation by reason of misrepresentation (whether made prior to or in this Agreement), negligence, breach of statutory duty, other tort or breach of contract) and irrespective of whether The Cloud had been advised, knew or should have known of the possibility of such loss.

11. TERMINATION

- 11.1 The Cloud may forthwith terminate this Agreement by notice to the other in any of the following events:
- 11.1.1 if the other party commits a material breach of this Agreement and where such breach is capable of remedy, fails to remedy such breach within thirty (30) days from the service on the other of a written notice specifying the breach and requiring it to be remedied; or
- 11.1.2 if the other party enters into liquidation (not being a voluntary liquidation for the purposes only of reconstruction or amalgamation) or has an administrator, administrative receiver, or like person appointed over its assets or any material part of its assets or shall enter into any voluntary arrangement with its creditors.
- 11.2 The termination of this Agreement shall not prejudice or affect any right of action or remedy that shall have accrued or shall thereafter accrue to either party.
- 11.3 Upon the termination of this Agreement for any reason:
- 11.3.1 all monies owed to either party shall be paid on demand; and
- 11.3.2 the Customer shall return The Cloud's equipment used for the provision of the Services to The Cloud's registered address.

12. CONFIDENTIALITY

- 12.1 Each party shall keep confidential any confidential information disclosed to it by the other. Confidential information includes, without limitation, information which is marked or expressed as being confidential, the contents of this Agreement, and any information which could reasonably be deemed to be confidential, from its nature, content or the circumstances in which it is provided. Neither party shall disclose confidential information to anyone else except to its employees, agents and sub-contractors who need the information to effect proper performance of this Agreement and/or to its professional advisers. Each party shall be responsible for ensuring that any person to whom information is disclosed by them complies with the terms of this **clause 12**. These obligations of confidentiality shall survive termination of this Agreement.
- 12.2 **Clause 12.1** shall not apply to any information that is generally available to the public unless such availability results from a breach of this Agreement, to information the receiving party already possesses or which it obtains independently in circumstances in which the receiving party is free to disclose it to others and/or to information that is required to be disclosed for legal reasons.

13. FORCE MAJEURE

- 13.1 Neither party to this Agreement shall be deemed to be in breach of this Agreement or otherwise liable to the other party in any manner whatsoever for any failure or delay in performing its obligations under this Agreement due to any event beyond its reasonable control ("Force Majeure"), including without limitation and by way of example only, lightning, flooding, exceptionally severe weather, fire, explosion, severe computer virus, war, terrorism, civil disorder, industrial disputes, acts of local or central

Government or other competent authority, acts of that party's suppliers or partners, legal or regulatory constraint on The Cloud offering WLAN Services, or legislation requiring licensing of the presently unregulated spectrum used by WLAN.

14. NOTICES

- 14.1 All notices made or that are required under this Agreement shall be in writing and shall be sent by electronic mail or first class pre-paid letter or fax transmission, or delivered by hand and shall be deemed to have been received:
- 14.1.1 by first class post, 48 hours after the date of mailing;
- 14.1.2 by hand, immediately upon delivery; and
- 14.1.3 by fax or electronic mail, immediately upon transmission.
- 14.2 Notices to be sent to the Customer shall be sent to the address set out on the front page of this Agreement (or such other address as may be notified to The Cloud in writing from time to time).
- 14.3 Notices to be sent to The Cloud shall be sent to The Cloud's registered office and marked for the attention of the Legal Department.

15. GENERAL

- 15.1 Where the Customer issues a purchase order to The Cloud relating to the Services, the Customer agrees that unless otherwise agreed the terms of such purchase order shall not apply and such purchase order shall be accepted by The Cloud for the sole purpose of referencing invoices.
- 15.2 Any publicity to be issued in connection with this Agreement (including any dispute arising) shall only be issued subject to prior written consent from the parties, such consent shall not be unreasonably withheld.
- 15.3 Except as expressly provided in this Agreement the Customer will have no rights in respect of any intellectual property rights however used by The Cloud in relation to the Services or The Cloud's confidential information, and the Customer acknowledges that all such intellectual property rights are and shall remain vested in or controlled by The Cloud.
- 15.4 If any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement will remain in full force.
- 15.5 The parties to this Agreement do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.
- 15.6 This Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the parties other than the contractual relationship expressly provided for in this Agreement and neither party has, nor may it represent that it has, any authority to act or make any commitments on the other party's behalf.
- 15.7 No variation to this Agreement shall be effective unless in writing and signed by a Director or other duly authorised officer of each of the parties.
- 15.8 The waiver by either party of any default or breach of this Agreement shall not constitute a waiver of any other or subsequent default or breach.
- 15.9 This Agreement and other documents referred to which are incorporated into and form part of this Agreement contain all the terms which the parties have agreed in relation to the subject matter of this Agreement and those documents and supersede any prior written or oral agreements, representations or understandings between the parties. In the event of conflict between this Agreement and an Order, the Order shall prevail to the extent necessary to resolve the conflict. Nothing in this

clause 15.9 limits or excludes any liability for fraudulent misrepresentation.

15.10

This Agreement is subject to English law and the parties agree to submit to the exclusive jurisdiction of the English courts.

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