



CRANE Connectivity Solutions

CRANE

MERCHANDISING SYSTEMS



CRANE PAYMENT INNOVATIONS

Last Updated: October 20, 2018

MASTER SERVICES AGREEMENT

Welcome to the Crane simplifi™ Platform and the Crane simplifi™ services provided on it. This Master Services Agreement ("*Terms and Conditions*" or "*Agreement*") forms the agreement between Crane® Merchandising Systems, Inc., on behalf of itself and its corporate affiliates ("*Affiliates*") who provide services under these Terms and Conditions (collectively, "*Crane*"), and the entity that accepts these Terms and Conditions either by clicking the "Accept" button below or by using the Crane Platform ("*Customer*"). This Agreement also includes other documents that are incorporated into this Agreement by reference and other documents the parties agree are incorporated into this Agreement. Customer agrees that by clicking the "Accept" button, it electronically signs and enters into this Agreement with Crane. The individual clicking the "Accept" button below thereby represents and warrants that he or she is duly authorized to enter into these Terms and Conditions on behalf of Customer. If the individual clicking the "Accept" button is not duly authorized by his or her respective employer to be bound by this Agreement, such individual enters into this Agreement in his or her individual capacity and assumes all responsibility and liability as "Customer" under this Agreement. Each of Crane and Customer is referred to herein as a "*Party*" and together as the "*Parties*".

1. SCOPE OF AGREEMENT

The Agreement applies to all services provided by Crane or a Crane Affiliate to Customer using the Crane Platform (collectively "Services"). The Agreement includes the following documents which are incorporated into this agreement by this reference:

- Privacy Policy: <https://cranesimplifi.com/privacypolicy>

Mobile device access is available for certain Services through a Crane mobile app. Each user of the mobile app must agree to the Mobile App End User License Agreement ("EULA") when downloading the app. The Mobile App may only be used to access the Services on behalf of an entity with an Agreement then in effect, as set forth in the EULA.

The Crane Platform and Services are controlled, operated, provided, and administered by Crane from its offices in the United States of America. Crane makes no representation that the Crane Platform or Services are appropriate or available for use at locations outside of the United States. Access to the Crane Platform and the Services from countries or territories where such access is illegal is prohibited under this Agreement. Customer may not access or use the Crane Platform or Services, or export any content or other part of the foregoing, in violation of U. S. export laws or regulations or the import laws or regulations of any other country. If Customer accesses the Crane Platform or any of the Services from outside the U.S., Customer is solely responsible for compliance with all applicable laws and regulations.

Customer understands and agrees that Crane may amend these Terms and Conditions from time to time by posting an updated version of the applicable document with a new "Last Updated" date in the Crane Platform web portal. Customer will be deemed to have accepted the new Terms and Conditions upon Customer's express acceptance of the modified Terms and Conditions, either by clicking "I Agree" for the modified Terms and Conditions, or by accessing or using the Services after such Last Updated date. Where a change in the Terms and Conditions may materially impair Customer's use of the Services, Crane will provide thirty (30) days' advance notice of such amendments by posting a notice through the Crane Platform web portal or email. These Terms and Conditions do not apply to the purchase of hardware products offered or sold by Crane or to warranties offered in connection with such hardware.

In the event of a conflict between these Terms and Conditions and the terms and conditions in any other Service or order specific document making up part of this Agreement, the other Service-specific or order-specific document will prevail as applied to the applicable Service(s) covered by such document.

2. DEFINITIONS

- 2.1 "*Authorized User*" means an individual who is specifically authorized by Customer to access and use one or more Services in accordance with the Agreement, which individual may be a Customer employee, contractor, or agent.
- 2.2 "*Crane Platform*" means the technology, hardware, software, systems, networks, and communications platform maintained by Crane for use in providing the Services and in providing Crane customers access to the Services.
- 2.3 "*Credit*" is the percentage of the monthly Fees for the Service that is credited to Customer for a validated Service Level Claim.
- 2.4 "Customer Data" means Customer's Confidential Information and all data and/or information in any form or format that is submitted by Customer to Crane directly or through Customer's access to or use of a Service and that identifies, or is identifiable to, a Customer, an Affiliate of Customer, or a customer of Customer, including Personal Information.
- 2.5 "*Data Privacy Laws*" means any and all applicable legislation relating to data protection and privacy, including General Data Protection Regulation (EU) 2016/679 together with any national implementing laws in any Member State of the European Union (collectively "GDPR") and, to the extent applicable, in any other country, as amended, repealed, consolidated, or replaced from time to time.
- 2.6 "*Disabling Code*" means viruses, worms, time bombs, Trojan horses, and other harmful or malicious code, files, scripts, agents or programs.
- 2.7 "*Documentation*" means any user materials, information, or documentation made available to Customer by Crane for use with a Service, including documentation available online.
- 2.8 "*Error*" means a material failure of any Service to perform in accordance with its published Documentation, where such failure is reproducible by Crane.
- 2.9 "*Excluded Event*" means any of the following:
- (a) A Force Majeure;
 - (b) Acts or omissions of Customer, Customer's employees, agents, contractors, or vendors, or third parties;
 - (c) The performance by Crane or its suppliers, vendors, and service providers of scheduled, unscheduled, or emergency maintenance, repair, Error correction, and/or upgrades;
 - (d) Suspension by Crane of Customer's access to the Service, termination of Customer's access to the Service for reasons other than for the convenience of Crane or breach by Crane of the Agreement, and deactivation and/or reactivation of Customer equipment used in connection with the Service;
 - (e) All downtime that is not unplanned downtime; or
 - (f) An Incident (as defined below) not reported by Customer in accordance with the reporting provisions of Section 8.4 below.
- 2.10 "*Force Majeure*" means factors, events, and circumstances outside of Crane's reasonable control, including without limitation Acts of God, civil commotion, strikes, labor disputes, power outages, governmental demands or restrictions, changes in applicable law or regulation, terrorism, war, sabotage, failures of third party service providers, and interruptions or failures of the Internet, telecommunications networks or other networks or Customer's connectivity thereto;

- 2.11 "Host Server" means a virtual or a dedicated server owned or leased by Crane or Crane's service provider(s).
- 2.12 "Incident" means any set of circumstances that does not include an Excluded Event and that results in a failure to meet a Service Level.
- 2.13 "Internal Use" means use by employees and contractors of Customer for its internal operations, for whose conduct Customer bears all responsibility.
- 2.14 "Mobile App" means a Crane-developed and mobile device software application which is subject to a separate End User License Agreement and which is used to access features of certain Services provided under the Agreement.
- 2.15 "Personal Information" means any information that directly or indirectly identifies an individual natural person, including Authorized Users or Customer's employees or individual customers, and is subject to Data Privacy Laws.
- 2.16 "Privacy Policy" means the Crane document so named, which is hereby incorporated into these Terms and Conditions by this reference.
- 2.17 "Service(s)" means the provision to Customer by Crane of access to one or more online, web-based software programs, platforms and platform-based service(s) under the Agreement.
- 2.18 "Services Data" means all data, content and information in any form or format that is obtained by Crane during the course of performing the Services, including, for example, machine data (such as device geographic location, machine contents, product sale performance, UPC data, device performance information, device usage information, advertising campaign data, UPC data, and any other anonymous data regarding Customer's use of the Services). Services Data does not include Customer Confidential Information.
- 2.19 "Service Level" means the standard(s) for availability to Customer of the Service set forth in Section 8.4 below.
- 2.20 "Service Level Claim" means a claim submitted by Customer to Crane pursuant to Section 8.4 below that a Service Level has not been met for reasons other than Excluded Events and that a Credit may be due to Customer.
- 2.21 "Uptime" is a fraction, the numerator of which is the total accumulated time in any calendar month, measured in minutes, during which any Service is available for use by Customer with reasonable response times for use, for any reason other than an Excluded Event, and the denominator of which is the total number of minutes in that calendar month.
- 2.22 "Uptime Percentage" is the percentage obtained by multiplying Uptime by 100%.

3. SERVICES.

- 3.1 *Access and Use.* Beginning on the date Customer first uses a Service in live production and for so long as Customer complies with the Agreement, Crane hereby grants to Customer a nonexclusive, nontransferable right to access and use the Service(s) accessed by Customer solely for Customer's Internal Use in accordance with the Agreement. Crane reserves the right to modify, update, or enhance the Services at any time and to do so without advance notice as long as the Services provided to Customer are not materially degraded. All delivery dates given by Crane to Customer are approximate.
- 3.2 *Access by Authorized Users.* Certain Services may only be accessed by Authorized Users. Authorized Users may access and use the Services, subject to the restrictions of their user credentials set by Customer (such as unique security levels, logins and passwords) per Crane's access control protocols on the Crane Platform. Customer is solely responsible for all activities that occur on or through its Authorized Users' accounts, any misuse of Authorized Users' user credentials, the acts and omissions of its Authorized Users, and its or their failure to comply with Crane's access control protocols.

- 3.3 *Third Party Applications and Services.* Customer is responsible for all equipment and services it needs to access and use the Services. Crane may offer Customer the ability to use third party applications or other services (e.g. wireless connectivity service through a telecommunications carrier such as AT&T®) in combination with a Service. Crane reserves the right to pass through to Customer certain third party fees that Crane incurs in providing the Services to Customer but Crane will give Customer at least thirty (30) days' advance written notice prior to charging Customer such fees. If Crane charges Customer any such fees, Crane will itemize any such third party fees on Customer's monthly invoices. Customer acknowledges and agrees that third party applications or services may access Customer Data in the course of Customer's use of the Services. In order to use such third party applications or services, Customer may be required to enter into a separate agreement with the third party application or service provider that will govern Customer's use of that third party application or service. Notwithstanding any terms to the contrary in this Agreement, Crane has no responsibility for the operation of or Customer's use of a third party application or service and, as between Crane and Customer, Customer uses such third party applications and services at its own risk and on an AS IS basis.

4. RESPONSIBILITIES AND RESTRICTIONS.

4.1 *Customer Responsibilities.*

- (a) Customer is solely responsible for all activity and use of the Services that occurs under Customer's accounts by or on behalf of Customer under this Agreement whether by Customer or its Authorized Users, whether or not such users are acting within the scope of their employment. Customer will:
- (i) be solely responsible for all activity of Customer and its Authorized Users and other employees or persons who gain access to the Services through Customer's systems or equipment;
 - (ii) ensure that access by any Authorized User to a Service is personal to that user and cannot be shared or used by more than one individual;
 - (iii) be solely responsible for Customer Data (other than with respect to Crane's express obligations set forth herein);
 - (iv) obtain and maintain all necessary consents, agreements, and approvals from individuals or any other third parties for all actual or intended uses of Customer Data;
 - (v) use commercially reasonable efforts to prevent unauthorized access to, or use of, the Services and notify Crane promptly of any unauthorized access or use; and
 - (vi) use the Services only in accordance with the Agreement and applicable laws and regulations.
- (b) Customer, and not Crane, is responsible for the accuracy of its data, including without limitation all Customer Data. Routine backup services (excluding transfers of backup files) are provided by Crane in accordance with its standard practices for no additional charge. Crane does not represent or warrant that routine or other backup services will result in data recovery.

4.2 *Restrictions.*

- (a) Customer agrees to use the Services in accordance with the terms of the Agreement and will cooperate with any reasonable investigation by Crane regarding an actual or potential violation of their terms. Customer will not:
- (i) use, permit the use of, or take any action with respect to the Services except as expressly authorized under the Agreement or the Documentation;

- (ii) interfere with or disrupt the integrity or performance of the Services, any Mobile App, or any third party application, data, or content, whether by means of the introduction of Disabling Code or otherwise;
 - (iii) disrupt, disable, translate, decompile, disassemble, modify (including without limitation writing to tables and/or changing data), or reverse engineer the Services, any software used in connection with the performance or the delivery of the Services (including without limitation software embedded in any device), or any Mobile App, or use any third party software or products or services that do any of the foregoing;
 - (iv) grant any rights in or access to the Services in any form to any third party, or
 - (v) download or copy or attempt to download or copy the Services, in whole or in part.
- (b) Customer agrees to use the Crane Platform only for lawful purposes. Transmission, distribution or storage by Customer or its Authorized Users of any material in violation of any applicable law or regulation is prohibited. This includes, without limitation, material protected by copyright, trademark, trade secret or other intellectual property right used without proper authorization, and material that is libelous, defamatory, constitutes an illegal threat, violates export control laws or regulations, or encourages conduct that would constitute a criminal offense or give rise to civil liability.
- (c) Violations and attempted violations of Crane Platform security are prohibited. Examples of Crane Platform security violations include, without limitation:
 - (i) Unauthorized access to or use of data, systems or networks, including any attempt to probe, scan, or test the vulnerability of a system or network or to breach security or authentication measures without express authorization of the owner of the system or network;
 - (ii) Unauthorized monitoring of data or traffic on any network or system without express authorization of the owner of the system or network; and
 - (iii) Interference with service provided to any user, host, or network including, without limitation, mail bombing, flooding, computer worms or viruses, deliberate attempts to overload a system or network, and broadcast attacks.
- (d) Crane reserves the right to determine, in its sole discretion, whether any particular conduct constitutes a Crane Platform security violation. INDIRECT OR ATTEMPTED VIOLATIONS AND ACTUAL OR ATTEMPTED VIOLATIONS BY A THIRD PARTY ON BEHALF OF CUSTOMER OR CUSTOMER'S AUTHORIZED USER(S) SHALL BE DEEMED VIOLATIONS BY CUSTOMER.
- (e) Crane may immediately (and without prior notice) block Customer's access to any Service, data, information, or other content (i) that Crane believes violates the law, misappropriates or infringes the intellectual property rights of a third party, or violates any term or condition of the Agreement; or (ii) pursuant to the Digital Millennium Copyright Act, a subpoena, or an order issued by a court or government agency.
- (f) Customer will immediately report to Crane any event or issue that could compromise the stability, service, or security of the Crane Platform or any Service and any known violation of the Agreement. In the event of any actual or potential violation, Crane reserves the right to (i) suspend or terminate, either temporarily or permanently, any or all Services, (ii) block and/or filter any abusive activity, or (iii) take any other actions as deemed appropriate by Crane in its sole discretion, including without limitation the termination of the Master Agreement or any Service. Nothing contained herein shall be construed to limit Crane's actions or remedies in any way with respect to any violation of the Agreement, and Crane may refer violators to civil or criminal authorities for prosecution and will cooperate fully with applicable government authorities.

(g) Customer shall pay and is liable for all fees incurred with respect to the Services, whether or not resulting from unauthorized use.

4.3 *Privacy Policy.* Customer understands and agrees that the Privacy Policy applies to the processing of Personal Information collected from or about Authorized Users.

5. FEES AND PAYMENT

5.1 *Fees.* The fees for the Services may be paid by Customer under this Agreement or under a separate agreement Customer has with a third party that allows Customer to access the Services. For fees Customer agrees in writing to pay under this Agreement ("Fees"), Customer will pay all Fees specified in the Agreement for the Services ordered. If Customer has agreed to pay Fees under this Agreement, the following terms in this Section 5 apply.

5.2 *Use Limits.* If Customer's use of the Services exceeds the applicable limits agreed to between Crane and Customer, Customer shall be billed for such usage and Customer agrees to pay the additional Fees in the manner provided herein. Fees will be quoted and paid in U.S. dollars. Except as expressly provided in the Terms and Conditions, Customer payment obligations are non-cancelable and Fees and other amounts paid are nonrefundable.

5.3 *Fee Changes.* Crane may change or add Fees and/or charges upon notice to Customer. In the event Crane changes or adds Fees and/or charges pursuant to the immediately preceding sentence ("*Fee Change*"), Customer may, subject to the following provisions, terminate the affected Service(s) upon 60 days' advance written notice to Crane provided Crane receives such written notice from Customer of its intention to so terminate within 90 days of the date the Fee Change becomes effective. Upon Crane's receipt of Customer's written notice pursuant to the immediately preceding sentence, Crane shall have 30 days to rescind or waive the Fee Change with respect to Customer, and, in the event Crane elects to rescind or waive the Fee Change, Customer shall not have the right to terminate the affected Service(s) as a result of the Fee Change and the Agreement shall remain in full force and effect notwithstanding Customer's written notice to terminate. Customer acknowledges and agrees that this Section shall not be intended or construed to permit Customer to terminate the Agreement as a result of a change or increase in fees from third parties and/or in pass through fees.

5.4 *Setoff.* Crane may set off against any payments owed by it to Customer any Fees or other amounts owed by Customer to Crane.

5.5 *Invoicing and Payment.* If Customer requires a purchase order for a Service, then Customer will provide it to Crane within five (5) days from its execution of the Agreement. Unless otherwise stated in the Agreement, Fees are due net thirty (30) days from the date of the invoice. Customer will provide Crane with complete, accurate, and up-to-date billing and contact information.

5.6 *Taxes.* The Fees are exclusive of all taxes, levies, duties, or other federal, state, provincial, or local governmental charges or assessments of any nature (collectively, "*Taxes*"). Customer is responsible for paying all Taxes associated with the Agreement except for those based on Crane's net income, property, or employee withholdings. Taxes will not be deducted from any payments to Crane, except as required by law, in which case the amount payable will be increased as necessary, so that after making all required deductions and withholdings, Crane receives and retains (free from any liability for Taxes) an amount equal to the amount it would have received had no such deductions or withholdings been made.

5.7 *Payment Disputes.* To dispute an invoiced amount, Customer must notify Crane in writing and provide detailed Support within ten (10) days of Customer's receipt of invoice. The failure of Customer to do so constitutes Customer's waiver of any right to dispute that invoice. If Customer fails to make any payment when due, other than a payment that is disputed timely and in good faith, then Crane may on five (5) business days' notice technologically interrupt and suspend Customer's access to and use of the Services. Overdue payments may also be assessed interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid. Customer may cure its breach and restore its access and use by making payment in full to Crane prior to termination pursuant to Section 11.3 below.

5.8 *Audit Rights.* Upon reasonable prior written notice, Crane may audit Customer's compliance with the Agreement at any time and from time to time while the Agreement is in effect and for a period of two (2) years thereafter. Customer will cooperate with such audit at its own expense. If Crane determines that additional Fees are owed to Crane, then Crane may invoice Customer for such additional Fees, together with the costs of such audit, and such amounts will be due and payable on receipt.

6. PROPRIETARY RIGHTS; CONTENT AND DATA USAGE

6.1 *Crane Ownership.*

- (a) Subject to any licenses and permissions expressly granted to Customer in the Agreement, Crane and its licensors reserve all right, title, and interest in and to the Services, the software platforms and programs that the Services access, and the Mobile Apps, and all intellectual property rights therein and thereto.
- (b) As between Crane and Customer, Crane owns all Services Data and may use such data for its internal purposes and may disclose or sell such information to third parties. Without limiting the generality of the foregoing, Crane may also collect and report anonymous data and information regarding Customer's use of the Services to Crane's subcontractors, licensors, or suppliers as required to provide Customer with the Services, all of which data and information constitutes Services Data owned by Crane. Crane reserves the sole and exclusive right to access, obtain, use, sublicense, and resell all such data without restriction.
- (c) Customer will not use any trademarks, service marks, trade names, or logos of Crane without Crane's prior written consent in each instance, which may be withheld in Crane's sole discretion.

6.2 *Customer Ownership.* As between Crane and Customer, Customer owns all right, title, and interest in and to all Customer Data and (b) any information supplied by Customer to Crane as may be specified in the Agreement (collectively, "*Customer Materials*"). Customer grants Crane a nonexclusive, royalty-free, perpetual, worldwide right to access use, disclose, and display Customer Materials (1) to provide the Services to Customer, (2) to prevent or address service or technical problems in connection with Support matters, (3) as expressly permitted in writing by Customer, or (4) unless compelled by law in accordance with Section 7.4 below.

6.3 *Feedback and Derivative Works.* Customer is not required to provide (a) any suggestions, enhancement requests, recommendations, or other feedback ("*Feedback*"), or (b) any ideas, technology, developments, derivative works, or other intellectual property ("*Derivative Works*") related to the Services or any test features, services or products to which Customer is given access. If Customer does so, then Customer hereby grants Crane a royalty-free, worldwide, transferable, sublicenseable, irrevocable, perpetual license to use, or incorporate into any of its Services any Feedback or Derivative Works. Customer may only create Derivative Works relating to the Services or any test features, services, or products to which Customer is given access, with prior written consent from Crane.

7. CONFIDENTIALITY, PRIVACY, AND SECURITY

7.1 *Definition.* Each Party acknowledges that it will have access to information concerning the other Party's business, plans, marketing and brand information, customers, technology, and products, and other information held in confidence by the other Party ("*Confidential Information*"). Confidential Information will include all information that is marked or designated as confidential or that, under the circumstances of its disclosure, should be considered confidential, as well as the terms and conditions of the Agreement and Personal Information. Neither Party will use or disclose to any third party (except to that Party's attorneys, accountants, and other advisors as reasonably necessary), any of the other Party's Confidential Information except as expressly permitted by, or required to achieve the purposes of, the Agreement. Each Party will safeguard the confidentiality of the other Party's Confidential Information using not less than that level of effort that it uses to protect its own Confidential Information.

7.2 *Exceptions.* Information will not be deemed Confidential Information if it (a) is or becomes known to the receiving Party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing Party, (b) becomes publicly known or otherwise ceases to be secret or confidential,

except through a breach of the Agreement by the receiving Party, or (c) is independently developed by the receiving Party. The foregoing exceptions shall not apply to Personal Information. The receiving Party may disclose Confidential Information pursuant to the requirements of a governmental agency, court order, or law, provided that it gives the disclosing Party reasonable prior written notice sufficient to permit it to contest such disclosure.

7.3 *Privacy/Security.*

- (a) Crane will comply with all requirements of applicable Data Privacy Laws. Crane will not use, maintain, store, transmit, license, or disclose Personal Information other than as permitted or required by the Terms and Conditions or as required by applicable law or regulation.
- (b) Without limiting the generality of Section 7.3(a), Crane will implement and maintain throughout the Term of the Agreement administrative, physical, and technical safeguards designed to protect the security and confidentiality of Personal Information resident on Host Server(s) that are appropriate to the sensitivity of the Personal Information processed under the Agreement.
- (c) Crane will mitigate, at its sole cost and expense, any losses directly resulting from the unauthorized access to or use or disclosure of Personal Information as a result of its breach of or failure to comply with this Section 7.3. Crane also will cooperate fully, at its sole cost and expense, with any efforts by Customer to mitigate any harmful effects of such unauthorized access, use, or disclosure. Crane also will cooperate fully, at its sole cost and expense, with any efforts by Customer to comply with applicable reporting and notice requirements under the applicable Data Privacy Laws.
- (d) Customer acknowledges that (i) Customer Data and Personal Information are capable of being intercepted by third parties without the knowledge or permission of Crane and its licensors, vendors, and suppliers or of Customer, when transmitted via the Internet, and (ii) Customer is solely responsible for the physical security of its machines, equipment, and hardware.

7.4 *Compelled Disclosure.* The receiving Party may disclose Confidential Information of the disclosing Party to the extent required or compelled by law to do so, if it gives the disclosing Party prior notice of such compelled disclosure and reasonable assistance, at the disclosing Party's cost, if the disclosing Party wishes to contest the disclosure (unless notice is prohibited by law, in which event it need do neither).

8. WARRANTIES, REMEDIES, AND DISCLAIMERS; SUPPORT; SERVICE LEVEL AGREEMENTS

- 8.1 *Warranty Disclaimer.* EXCEPT FOR ANY EXPRESS WARRANTIES MADE IN THIS AGREEMENT, (a) CRANE PROVIDES THE SERVICES ON AN "AS IS" BASIS AND CRANE HEREBY EXPRESSLY DISCLAIMS, AND CUSTOMER HEREBY EXPRESSLY WAIVES, ALL REPRESENTATIONS AND WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION ANY AND ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NONINFRINGEMENT WITH RESPECT TO THE SERVICES, THE CRANE PLATFORM, THE FOBS, AND THE CRANE MEDIA NETWORK, and (b) CUSTOMER USES EACH OF THE FOREGOING AT ITS SOLE RISK.
- 8.2 *Warranties of Customer.* Customer represents and warrants that (a) it has the full and unrestricted right, power, and authority to enter into and perform under the Agreement, and (b) in its entering into the Agreement it has not relied on any representation or warranty other than those expressly set forth in this Section 8.
- 8.3 *Support.* During the Term, Crane provides the following support Services with respect to the use of its Services provided under this Agreement ("*Support*") for so long as Customer complies with the Agreement:
 - (a) During Crane business hours, Crane Customer Support will provide the Customer-designated Crane support contact with the information needed to access and use Crane's Customer Support web site and to submit Support requests on-line.

- (b) Customer agrees to submit reports concerning suspected Errors through its designated Support Contact. The Support Contact will confirm with Customer's system administrator that all supporting systems (*e.g.*, internal network, Internet, cellular networks) are functioning properly and will have a clear description of the suspected Error and any error codes or messages. The Support Contact will be responsible for providing Crane with data that Crane reasonably requests in order to reproduce operating conditions similar to those present when the suspected Error was discovered. Crane may update its Error reporting procedures from time to time and will post updates on its Customer Support web site. Error reports describing loss of critical functionality must be submitted both via email to the address shown on the Crane Customer Support web site and by telephone to Crane Customer Support.
- (c) Crane will investigate each suspected Error reported by a Support Contact and determine whether the reported problem is an Error and, if so, Crane will use reasonable efforts to provide a bug fix, workaround or other error correction. Crane will have discretion as to the method and manner of providing Support, including the use of non-Crane personnel.
- (d) Crane will have no obligations or responsibilities of any kind with respect to Errors caused by Excluded Events. If services are rendered for any problem caused by an Excluded Event or for troubleshooting with respect to an Excluded Event, or if Crane's Support services are increased as a result, Crane reserves the right to impose charges at its then standard commercial time and materials rates for all such services, including travel and *per diem* expenses. The Crane Customer Service representative will notify the Support Contact as soon as the billable status of the call is determined. The Support Contact may terminate the call at that time without charge.

8.4 *Service Levels and Credits.*

- (a) If, during a calendar month, the Uptime Percentage (as defined above, see also Uptime and Excluded Events definitions above) of an eligible Service is less than 99.9% with respect to a Service, then Customer may receive a Credit equal to five percent (5%) of the monthly Fees for that Service applied for the subsequent calendar month. Service Levels and Credits are prorated for partial billing months.
- (b) In order to be eligible to submit a Service Level Claim with respect to any Incident, Customer must first have notified Crane Support of the Incident within five (5) business days following the Incident.
- (c) To submit a Service Level Claim, Customer must contact Support and provide notice of its intention to submit a Service Level Claim. Customer must provide to Crane Support all reasonable details regarding the Claim, including but not limited to, detailed descriptions of the Incident(s), the duration of the Incident, and any attempts made by Customer to resolve the Incident.
- (d) Customer must submit the Service Level Claim, including sufficient evidence to support the Service Level Claim, by the end of the billing month following the billing month in which the Incident that is the subject of the Service Level Claim occurred. *Service Level Claims not submitted within this time period are waived by Customer.*
- (e) Crane will use all information reasonably available to it to validate Service Level Claims and will determine in good faith whether the terms of this Section apply to the Service Level Claim and whether Customer is entitled to a Credit.
- (f) Crane understands that a Service Level may not be met for more than one Service because of the same Incident and that multiple Service Level Claims may apply.
- (g) Service Levels do not apply to any performance or availability disruption or interruption caused by or resulting from an Excluded Event.
- (h) Credits are Customer's sole and exclusive remedy for any violation of this Section 8.4, any Incident, and/or any failure to meet the Service Levels. The Credits awarded in any billing month will not, under any circumstance, exceed Customer's monthly Fees for the Services affected.

- (i) Crane will determine, in its reasonable discretion, Customer's eligibility for Credits and the amount of Credits awarded pursuant to this Section. Credits will be applied to monthly Fees due from Customer and are not paid as refunds. Customer's failure to provide a valid Service Level Claim will cause it to be ineligible for a Credit. Crane's calculations of Uptime, Uptime Percentages, and Credits will be based on its records and data. Any dates and times that Customer previously reported in a Service Level Claim that led to a Credit cannot be used for future Service Level Claims. THE CREDITS DESCRIBED IN THIS SECTION ARE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR THE UNAVAILABILITY OF THE SERVICES.

8.5 *Exclusions.* Customer is responsible for all hardware, peripherals and connectivity to access and use the Services. This includes, without limitation, personal computers, telemetry devices, and internet and cellular service plans. Crane does not represent or warrant that all features or modules of the Services are available for all equipment makes or models, vending machine controllers (VMCs), firmware versions, telemetry devices and telemetry firmware versions. Any warranty or support obligations Crane may have with respect to any hardware or related software are under a separate agreement between Crane and Customer and not under this Agreement.

8.6 *Crane Library Disclaimer.*

- (a) Any vending machine or vending product information accessible through the Crane Library or the Services or otherwise received by Customer from Crane is provided solely as a convenience to Customer ("Product Information"). Crane makes no representation or warranty regarding, and does not assume or have any liability or responsibility for the accuracy, truth, completeness, quality, suitability or reliability of, such Product Information. Such Product Information may contain typographical errors, technical inaccuracies, outdated information or other incorrect information. Crane is not responsible for any errors, omissions or inaccuracies contained in any such Product Information. Further, Crane disclaims any duty to update or otherwise correct such Product Information. Crane reserves the right to add to, change or delete any such Product Information at any time and from time to time and without prior notice. Crane is not a party to, and does not monitor, any transaction between Customers or End Users and third-party providers of products or services.
- (b) SUCH PRODUCT INFORMATION, INCLUDING, WITHOUT LIMITATION, ANY NUTRITIONAL INFORMATION, IS PROVIDED "AS IS," AND CRANE MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO SUCH PRODUCT INFORMATION. CRANE DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NONINFRINGEMENT.
- (c) Neither Crane nor any of its officers, members, directors, employees or other representatives will be liable for any damages, special, consequential, punitive or otherwise, arising out of or in connection with the use of such Product Information even if advised of the possibility thereof. This limitation of liability is comprehensive and applies to all damages of any kind, including, without limitation, loss of data, income or profit, loss of or damage to property and claims of third parties.
- (d) As a recipient of such Product Information, you agree to access and use such Product Information and its contents at your own risk.

9. DAMAGES EXCLUSIONS; LIMITATIONS OF LIABILITY

9.1 *Exclusions.* IN NO EVENT WILL CRANE BE LIABLE TO CUSTOMER UNDER THE AGREEMENT OR OTHERWISE UNDER ANY THEORY, INCLUDING WITHOUT LIMITATION CONTRACT, TORT, OR STRICT LIABILITY, FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES, INCLUDING, BUT NOT LIMITED TO, COSTS OF PROCUREMENT OF SUBSTITUTE GOODS AND SERVICES, AND DAMAGES FOR LOSS OF DATA, LOSS OF USE OF COMPUTER HARDWARE, LOSS OF PROFITS, LOSS OF GOODWILL, LOSS OF BUSINESS, DOWNTIME, AND COMPUTER HARDWARE, HOST SERVER, OR CONNECTIVITY MALFUNCTION, EVEN IF CRANE HAS BEEN ADVISED OF THE POSSIBILITY THEREOF. FURTHER, CUSTOMER ACKNOWLEDGES THAT CERTAIN SERVICE FEATURES RELY UPON THE

AVAILABILITY OF THE INTERNET OR CELLULAR NETWORKS OR SERVICES AND MAY BE IMPACTED OR INTERRUPTED OR MAY CEASE IF THE INTERNET OR CELLULAR NETWORKS OR SERVICES CEASE TO BE AVAILABLE AT ALL OR ON REASONABLE TERMS OR EXPERIENCE AN OUTAGE, MALFUNCTION, OR ANY CHANGE IN THEIR SERVICES, PRACTICES, OR FUNCTIONALITY.

- 9.2 *Limitations.* NOTWITHSTANDING, ANY TERMS TO THE CONTRARY IN THIS AGREEMENT, CRANE'S AGGREGATE LIABILITY TO CUSTOMER FOR ALL CLAIMS PERTAINING TO SERVICES WILL BE LIMITED TO:

THE LESSER OF (1) CUSTOMER'S DIRECT DAMAGES OR (2) THOSE AMOUNTS PAID TO CRANE UNDER THIS AGREEMENT WITH RESPECT TO THE SERVICES GIVING RISE TO THE CLAIM OVER THE SIX (6) MONTHS PRECEDING THE DATE THE CLAIM AROSE.

- 9.3 *Allocation of Risks.* Customer agrees that this Section 9 constitutes a fair allocation between the Parties of the risks under the Agreement as negotiated and accepted by them. The Parties hereby stipulate that, in any proceeding pertaining to the Agreement, this allocation be enforced.

10. INDEMNIFICATION

- 10.1 *Intellectual Property Claims.* Crane will defend Customer against any claims or legal actions arising out of or in connection with any claims that a Service is a direct infringement of any intellectual property right of a third party and will pay all damages awarded by a court of competent jurisdiction attributable to such claim or all amounts in settlement of such claims or actions. Should such Service or any portion thereof become, or in Crane's opinion be likely to become, the subject of a claim for which indemnity is provided under this Section, Crane will, in its sole discretion, (a) obtain for Customer the right to access and use such Service, (b) replace or modify such Service so that it becomes non-infringing, or (c) if neither (a) nor (b) are commercially feasible, terminate the affected Service and refund to Customer those Fees paid to Crane under the Agreement with respect to the affected Service over the six (6) months preceding termination.

- 10.2 *Exclusions.* Crane will have no liability for any infringement or claim that pertains to any component or portion of a Service that is provided by a third party or that results from (a) use of the Service in combination with any equipment, software, or data not provided by Crane, (b) Crane's compliance with Customer's designs or specifications, (c) misuse of a Service, (d) modification of a Service by anyone other than Crane, (e) the wrongful acts or omissions of Customer or its employees, contractors, suppliers, or vendors, (f) use of a Service by Customer or its employees, contractors, agents, or other Authorized Users in violation of the Agreement, including without limitation fraudulent use or abuse of the Service or any services provided by a third party in connection therewith and assistance in such use by others, (g) any breach of the Agreement, (h), Customer Data or Customer Materials, or (i) Customer's failure to use reasonable security precautions.

- 10.3 *Other Claims.* Except for those claims described in Section 10.1 above, Customer will indemnify and hold Crane harmless against any claims, legal actions, losses and other expenses, including attorneys' fees, arising out of or related to (a) Customer's access and use of the Services, and (b) Customer Data, and Customer will pay all damages awarded by a court of competent jurisdiction attributable to such claim or all amounts in settlement thereof.

- 10.4 *Conditions.* The obligations of either Party to indemnify the other hereunder are conditioned on the indemnified Party's (a) providing prompt notice of the claim to the indemnifying Party, (b) giving the indemnifying Party sole control of the defense and settlement of the claim, (c) providing to the indemnifying Party all available information, assistance, and authority to defend, and (d) having not compromised or settled such proceeding without the indemnifying Party's prior written consent.

- 10.5 *Entire Liability.* THE PROVISIONS OF THIS SECTION 10 SETS FORTH THE ENTIRE OBLIGATIONS OF EACH PARTY TO THE OTHER WITH RESPECT TO INDEMNIFICATION.

11. TERM AND TERMINATION

- 11.1 *Term of Agreement.* The term of the Agreement will begin upon the acceptance of Customer's signed Agreement by Crane and will continue until Customer ceases use of the Services under this Agreement. Upon termination of the Agreement, all licenses and all rights to access and use the Crane Platform and the Services will immediately terminate and Customer will cease using the Crane Platform.
- 11.2 *Termination for Cause.* A Party may terminate the Agreement: (a) upon 30 days' written notice to the other Party of a material breach capable of cure (including details sufficient to identify the material breach, and such period is shortened to 10 days if the breach is one of nonpayment, which is deemed material) if such breach remains uncured at the expiration of such period, (b) immediately for material violations of confidentiality obligations or other breaches incapable of cure, or (c) if the other Party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation, or assignment for the benefit of creditors. Customer understands that additional reactivation and other charges may apply following its cure of such breach.
- 11.3 *Termination for Convenience.* Crane may terminate the Agreement or any Service for its convenience on 180 days' prior written notice. In this instance only, Crane shall credit to Customer's account any prepaid annual or monthly Fees paid for such Services, prorated over a twelve (12) month period.
- 11.4 *Other Terminations.*
- (a) In some circumstances where the ability of Crane to deliver the Services is dependent upon Crane's agreements with its licensors, vendors, and suppliers, the termination of those agreements may materially and adversely affect Crane's ability to perform under the Agreement. In the event of any such termination, Crane will endeavor to give Customer as much notice as is practicable and Crane reserves the right at any time to terminate the Agreement and/or the affected Services.
 - (b) Crane may terminate the Agreement and/or suspend or terminate one or more Services on notice if one of the following occurs:
 - (i) Crane determines, in its sole discretion, that Customer's use of the Services poses a threat to the security or performance of the Crane Platform or to any of Crane's customers, clients, licensors, or suppliers;
 - (ii) Crane determines, in its sole discretion, that Customer's use of the Services is illegal or misappropriates or infringes the rights of a third party;
 - (iii) Crane reasonably believes that Customer's use of the Services has or will subject Crane to civil or criminal liability; or
 - (iv) Customer or any of its Authorized Users use or permit the use of the Services in an attempt to gain unauthorized access to computer systems (e.g., "hacking").
 - (c) Crane may suspend or terminate all or part of the Services without liability or prior notice to Customer:
 - (i) in order to maintain, modify, upgrade, patch, or repair the Crane Platform;
 - (ii) as Crane determines may be required by law or regulation;
 - (iii) if its access to the Crane Platform is suspended or terminated by its suppliers, licensors, or service providers;
 - (iv) as Crane determines to be necessary to protect the Crane Platform from unauthorized access or an attack; or
 - (v) if Crane withdraws such Services or part thereof from all of its Customers.

The foregoing notwithstanding, Crane will endeavor in good faith to provide Customer with advance notice of any suspension or termination under this Section and will provide Customer with notice of the suspension or termination as soon as is practicable.

- (d) The Services will be unavailable in whole or in part during any suspension and upon their termination, and Customer may not have access to Customer Data. Fees may continue to accrue during a suspension, and Crane may charge Customer a reinstatement fee following any suspension of the Services.

11.5 *Consequences of Termination.* On termination of the Agreement or the provision of any Service:

- (a) Customer will certify its destruction of or return all full or partial copies of any materials pertaining to the Services affected by such termination within 10 days after termination.
- (b) Crane may immediately deactivate and power down the affected Services. Customer will provide Crane immediate access to Customer facilities and equipment for the foregoing purpose on notice from Crane. Customer will be liable for all deactivation and associated charges as well as additional charges incurred by Crane associated with any delays caused by Customer.
- (c) Except as expressly provided in the Agreement, no refunds or credits of any kind are available.

11.6 *Survival.* Any provision of the Agreement that expressly or by implication is intended to survive termination, regardless of the date, cause or manner of such termination, and including but not limited to licenses, ownership rights, rights of action accruing prior to termination, indemnification obligations, and payment obligations, will survive such termination and will continue in full force and effect.

11.7 *Downloading of Customer Data.* Within thirty (30) days after any termination of the Agreement or a Service, Customer may request that Crane download Customer Data in Crane's possession in a form and format reasonably specified by Customer for an additional Fee. After this thirty (30) day period, Customer acknowledges and agrees that Crane may permanently delete and erase all Customer Data, data, information, and other content stored on the Host Server(s).

12. OTHER TERMS APPLICABLE TO SERVICES

12.1 *Availability of Customer Resources.* Customer will make available to Crane its personnel and information as reasonably required by Crane in the performance of any Services hereunder or as specified in the Agreement. Customer will ensure that competent personnel are available during normal working hours to provide information and other support to Crane while providing the Services. Customer acknowledges that the timeliness or provision of the Services may be dependent on Customer personnel's availability and cooperation.

12.2 *Compliance with Customer or Crane Rules.* While on the premises of the other Party in the course of performing this Agreement, each Party will take reasonable measures to have its personnel comply with the other Party's reasonable rules and policies regarding safety, security, and conduct made known to such Party, and will at the other Party's request promptly remove from the project any of its personnel not following such rules and regulations.

12.3 *Certain Flow Down Terms.* Certain of the software platforms and programs underlying the Crane Platform or Services contain third-party software provided by MicroStrategy Services Corporation. Customer warrants that it will comply with the terms found at <https://www.microstrategy.com/us/oem-terms>, and all applicable statutes, laws, rules, and regulations in connection with its use of those Services. Customer also covenants that it will use the Services to report on data derived from the data models Crane provides and will not materially change such data models to include data elements that are not directly related to the documented, intended uses of those Services.

13. DISPUTE RESOLUTION, GOVERNING LAW, AND NOTICES

13.1 *Dispute Resolution, Governing Law.* The Parties will use reasonable efforts to resolve any dispute between them in good faith prior to initiating legal action. The laws of the Commonwealth of

Massachusetts, excluding its choice of law principles, will govern the Agreement. Any claim or cause of action under or relating to the Agreement must be brought in the state or federal courts located in the Commonwealth of Massachusetts and the Parties hereby agree to submit to the exclusive personal jurisdiction of such courts located in Boston, Massachusetts and hereby waive any claim of forum non conveniens. Notwithstanding the above, if Customer is located in or any Personal Data is sourced from the EU or the United Kingdom, then claims or causes of action relating to such Personal Data will be brought in the courts in London, England and governed by such law as is set forth in the Privacy Policy.

- 13.2 *Notices.* Crane may provide notices to Customer under this Agreement by (a) posting notices through the Crane Platform, (b) by email, or (c) by U.S. Mail to Customer's address on file with Crane. Each such notice will be effective three (3) days' after Crane posts or sends the notice. Customer may provide notice to Crane by U.S. First Class Mail to Crane at Crane Merchandising Systems, Inc., 3330 Dixie Narco Blvd., Williston, South Carolina 293843 which notice will be effective three (3) days after posting.
- 13.3 *Waiver of Jury Trial.* To the fullest extent allowed by applicable laws and regulations, each Party hereby waives any right to jury trial in connection with any action or litigation between the Parties hereto in any way arising out of or related to the Agreement.
- 13.4 *Attorneys' Fees.* In any action or proceeding brought by either Party against the other Party in connection with the Agreement, the prevailing Party will be entitled to an award of its attorneys' fees and costs.

14. GENERAL PROVISIONS

- 14.1 *No Dependence on Future Functionality.* Customer agrees that Customer is not entering into the Agreement contingent on the provision of any future functionality relating in any way to the Services and no statement or other information made or provided orally or otherwise will be binding.
- 14.2 *Export Compliance.* Customer represents that it is not named on any U.S. government list of persons or entities prohibited from receiving exports or otherwise restricted from doing business with any U.S. entity or person, and Customer will not access or use the Services in violation of any U.S. or international export embargo, prohibition, or restriction.
- 14.3 *Force Majeure.* No Party will be in breach of its obligations under this Agreement for failing to perform any obligation hereunder due to a Force Majeure.
- 14.4 *Relationship of the Parties.* The Parties are independent contractors. The Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the Parties.
- 14.5 *No Third-Party Beneficiaries.* There are no third-party beneficiaries to the Agreement except that Crane's Affiliates who perform Services under this Agreement are third party beneficiaries hereunder.
- 14.6 *Waiver; Cumulative Remedies.* No failure or delay by either Party in exercising any right under the Agreement will constitute a waiver of that right or any other rights. The waiver by either Party of a breach hereof will not operate or be construed as a waiver of any subsequent breaches of the same or any other provision. Except as expressly stated otherwise herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a Party at law or in equity.
- 14.7 *Construction.* As used in this Agreement, the singular of a word includes the plural, and the word "includes" and its derivations means "includes without limitation". This Agreement shall not be construed against the drafter.
- 14.8 *Severability.* If any provision hereof is determined by a court of competent jurisdiction to be invalid or unenforceable, that provision will be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law or, if such modification and interpretation is unreasonable or impracticable, deemed severed, and in either case the remaining provisions of the Agreement will continue in full force and effect.
- 14.9 *Assignment.* Crane may at any time assign this Agreement or any of its rights or obligations under this Agreement to a third party. Customer may not assign any of its rights or obligations hereunder, whether

by contract, operation of law, a change in control, or otherwise, without the prior written consent of Crane. The Agreement will bind and inure to the benefit of the Parties and their respective successors and permitted assigns.

- 14.10 *General.* The Agreement, including the Terms and Conditions, the Privacy Policy, and any other document that is expressly incorporated into this Agreement by the agreement of the Parties constitute the entire agreement between the Parties with respect to the subject matter hereof and supersede all prior and contemporaneous agreements, proposals, or representations, written or oral, concerning its subject matter, including any Streamware™ Connect Agreement to which Customer may be a party except that the Addendum to the Streamware™ Connect Agreement titled Digital Advertising Campaign Program Sign-up will remain in effect. Notwithstanding any language to the contrary therein, no terms or conditions stated in a Customer-drafted purchase order or other Customer-drafted order documentation will be incorporated into or form any part of these Terms and Conditions, and all such terms or conditions will be null and void.

*** END OF TERMS AND CONDITIONS

