

Standard Terms and Conditions

These **Standard Terms and Conditions** are incorporated into a Service Order and apply between Freshwave Services Limited (**Freshwave**), a company registered in England under company number 05940742 whose registered office is at 1st Floor Independent House Independent Business Park, Imberhorne Lane, East Grinstead, West Sussex, RH19 1TU; and the Customer identified as such on the Service Order (**Customer**), each a **Party** and together the **Parties**.

1 Definitions and Interpretation

1.1 Capitalised terms have the meaning ascribed to them below.

Acceptance	the successful completion of the Acceptance Tests testing of the Services in accordance with the criteria and processes for Acceptance set out in the relevant Schedule 2.
Acceptance Period	5 (five) Business Days from the Handover Date.
Acceptance Tests	a series of installation, commissioning and testing procedures to be carried out by Freshwave in accordance with the relevant Schedule 2; to confirm that the Services comply in all material respects with the requirements of this Service Order.
Act	the Communications Act 2003 (as amended).
Advance Service Fee	an agreed prepayment of the Service Fee as set out in the Service Order.
Affiliate	any entity now or in future controlled by, under common control with or controlling Customer (but excluding any private equity portfolio companies); "control" for this purpose includes a shareholding or other equity interest of more than 50%.
Business Day	a day (not being a Saturday or a Sunday) on which banks generally are open in the United Kingdom for the transaction of normal banking business.
Contract Price Index	means: (i) when first applied, the rate of increase of the Retail Price Index from the Effective Date to any date up to and including the relevant Review Date;; and (ii) for following adjustments, the rate of increase of the Retail Price Index from the date previously used to calculate the increase to any date up to and including the current relevant Review Date.
Data Protection Laws	the EU General Data Protection Regulation (Regulation (EU) 2016/679) ("GDPR"); the Data Protection Act 2018; the Privacy and Electronic Communications (EC Directive) Regulations 2003 (as amended); and any other relevant and applicable data protection legislation or regulations.
Emergency	any event or circumstance which results or could reasonably be expected to result in a risk of personal injury or death or material damage to property and, without prejudice to the generality of the foregoing, an event or circumstance defined as an Emergency in the Act.
Equipment	all the physical electronic hardware, radio frequency devices, routers and switching equipment, racking and cabling infrastructure, detailed in the Site Design Document, installed in the Premises by Freshwave to deliver the Services and/or otherwise provided or made available by Freshwave to Customer under this Service Order.
Fees	All fees due and payable under this Service Order.

Initial Term	commencing upon the first Service Ready Date to be declared and continuing for the Initial Term stated of each Service Order as set out therein.
Handover Date	the Date notified to Customer by Freshwave that Freshwave has successfully completed Acceptance.
Landlord	the landlord(s) (or any lessor to Customer or its Affiliates) of the Premises and its delegates and any managing agents.
Law	the Act and any other law, statute or regulation, code of conduct (whether or not having the force of law), to which Freshwave or Customer is from time to time subject.
Mobile Network Operator or MNO	those companies using the Equipment to provide mobile voice and data services to end users at Customer's Premises using their licensed spectrum.
Monthly Service Fees	The monthly recurring fees set out in the Service Order.
Outage	an event or action (not attributable to the act or omission of Customer or arising at the request of Customer), which prevents or restricts Services and mobile phone usage.
Premises	the location(s) where the Services are delivered as set out in the Service Order.
Quarter	a period of three calendar months beginning on a Quarterly Payment Date.
Quarterly Payment Date	1 January, 1 April, 1 July or 1 October, as applicable.
Renewal Term	a period of Twelve (12) months for which the Service Order will continue after the expiry of the Initial Term, or then-current Renewal Term, in accordance with Clause 17.1.
Review Date	any date after the expiry of the Initial Term and which, in respect of second and following Review Dates, is no less than one year from the previous Review Date.
Service Credit	the compensation arrangements for a breach of the Service Levels as set out in the relevant Schedule 2.
Service Fees	the fees payable to Freshwave pursuant to the Service Order or as otherwise referred to in this Service Order.
Service Levels	the terms governing the support of the Services in the event of an Outage as further set out in the relevant Schedule 2.
Service Ready Date	the date the Service is ready for commercial use by Customer and upon which the charging of Monthly Service fees shall commence.
Service Term	The period comprising the Initial Term and any Renewal Term as appropriate unless terminated earlier in accordance with this Service Order.
Services	The services to be provided by Freshwave to Customer as set out in the relevant Service Order and described further in the relevant Schedule 2.
Site Design Document	the reference design document for the Equipment installed in the Premises by Freshwave to deliver the Services, that will be provided to Customer within 3 months of the Service Ready Date, and as may be amended by Freshwave (subject to Customer's approval (which shall not be unreasonably withheld or delayed)) during the design process and up issued as the as-built document.
Site Rules	in relation to the Premises, any site rules and procedures provided to Freshwave such as the terms of any Landlord consent, work instructions, loading bay rules, work permit system rules and site notices and signs.
Term	the period commencing on the Effective Date, and ending on the expiry of the Service Term.

2 Order

- 2.1 Where the Service Order is stated to be subject to survey Freshwave reserves the right to propose reasonable changes to the specification, delivery date or price of a Service as a consequence of the outcome of the survey if such survey reveals information that was unknown to Freshwave at the time of quoting and which could affect the Service availability, performance, delivery timeframes and/or Service Fees offered.
- 2.2 Any terms and conditions contained in a Customer order form, purchase order (other than this Service Order), letter or other document generated or managed by Customer shall be invalid with respect to the Services provided hereunder.

3 Site Design, Site Access, Wayleaves and Installation

- 3.1 Freshwave shall prepare the Site Design Document in cooperation with Customer.
- 3.2 Customer, at its own cost:
 - a. hereby grants to Freshwave, during the Term and thereafter until Freshwave's Equipment is removed from the Premises the rights (i) to keep and operate the Equipment installed at the Premises an (ii) to enter the Premises and execute any works reasonably necessary to perform the Services (collectively the **Rights**);
 - b. will obtain and maintain throughout the Term, all rights, licenses or consents required to enable Freshwave to exercise the Rights;
 - c. procure suitable accommodation, assistance, facilities and environmental conditions for the Equipment and all reasonably necessary electrical and other installations and fittings relating to the Equipment in accordance with Freshwave's reasonable requirements ensuring that equipment rooms are kept sufficiently clean, dry and dust free to assure the proper operation of the Equipment;
 - d. will be responsible for providing a safe environment for the Equipment and will confirm that there is no asbestos present at the Premises and will provide an asbestos register or report if applicable; and
 - e. will not do nor allow to be done at the Premises anything which might damage the Equipment in any way and that it will take all steps reasonably necessary to ensure that no one interferes with or tampers with the Equipment.
- 3.3 Subject to Clause 3.2, Freshwave will use all reasonable endeavours to provide, install and test the Service on or before the delivery date requested in the Service Order.
- 3.4 Freshwave will:
 - a. undertake any work at the Premises in a safe and professional manner in accordance with any applicable Site Rules notified to Freshwave in writing in advance causing as little disturbance, damage and inconvenience as reasonably possible;
 - b. ensure that any tools, dust or waste items are cleaned away promptly, and that work is undertaken only in accordance with agreed plans and scheduling for the work; and
 - c. promptly make good and rectify any damage caused by Freshwave or any Subcontractor to tangible property at the Premises.
- 3.5 Save in case of Emergency, Freshwave will use reasonable endeavours to notify Customer a minimum of three (3) Business Days in advance if Freshwave wishes to access the Premises to

exercise the Rights. Customer reserves the right, at its own cost, to escort personnel of Freshwave or its Subcontractors or any MNOs at the Premises.

4 Acceptance

- 4.1 Following the installation of the Service in respect of each MNO, Acceptance Tests shall be carried out by Freshwave. If Customer requires, all Acceptance Tests shall be witnessed by Customer. Freshwave shall notify Customer of the Handover Date in respect of each MNO. Customer shall confirm within the Acceptance Period whether or not they are satisfied with the installation. If Customer does not confirm within the Acceptance Period, then the Service Ready Date will be deemed to be the same as the Handover Date
- 4.2 Where Customer raises material non-compliance within the Acceptance Period in good faith, Freshwave will repeat the process set out in this Clause 4 until the earlier of (i) Acceptance occurring or (ii) the Customer putting the Service to commercial use. Each Service may have a separate Service Ready Date.

5 Title and Risk

- 5.1 Freshwave holds title to all Equipment and Customer shall have no right, title or interest in or to the Equipment (save the right to possession and use of the Equipment subject to the terms and conditions of this Service Order). Customer shall:
 - a. keep the Equipment in safe custody and maintained and kept in good condition until returned to Freshwave or its successors or assigns;
 - b. not (and will ensure that no other person shall) sell, let, transfer, dispose of, mortgage, charge, modify, repair, service, tamper with, remove or interfere with the Equipment or suffer any distress, seizure or execution to be levied against or of the Equipment or otherwise do anything prejudicial to Freshwave's rights in the Equipment;
 - c. not remove, tamper with or obliterate any words or labels on the Equipment or any part thereof and in any event to ensure the Equipment can be identified as belonging to Freshwave or its supplier; and
 - d. promptly notify Freshwave if any Equipment is lost or stolen or is being used for illegal or fraudulent purposes.

6 The Services

- 6.1 The Services are further described in the relevant schedule 2 available at www.Freshwavegroup.com/legal.
- 6.2 The Services support calls to the emergency services; however, Customer should have an adequate power supply and should additionally maintain a fixed line as backup, and Freshwave shall have no liability arising out of any inability of Customer to contact emergency services to the extent Customer fails to maintain such fixed line or have an adequate power supply.
- 6.3 Freshwave will share the location of the Equipment with the MNOs and the emergency services in order to fulfil regulatory requirements. Customer shall initially supply and keep its contact details up to date and promptly notify Freshwave of any changes.

7 Service Obligations

- 7.1 Freshwave shall (and/or shall ensure any Subcontractor shall):
- a. provide the Services and perform its other obligations under this Service Order in a lawful manner, using sufficient appropriately qualified and experienced personnel, and
 - b. ensure that it has all required licences and authorisations (including any telecoms licences, spectrum licenses and software licences) to provide and operate the Services;
- 7.2 Freshwave may subcontract any part or all of the Services to any third party (each, a Subcontractor) as Freshwave determines in its sole discretion; provided that Freshwave shall remain liable for all of its obligations hereunder
- 7.3 Customer will use the Services in accordance with all applicable legislation and in accordance with this Service Order.
- 7.4 Customer acknowledges that Customer's timely provision of, and Freshwave's (and Subcontractors' and any MNO's) access to and use of, Customer's facilities, equipment, assistance, cooperation, and complete and accurate information and data from Customer's officers, employees and agents reasonably required for the performance of Freshwave's obligations under this Service Order (Cooperation) is essential to the performance of the Services.

8 Operations and Maintenance

- 8.1 Freshwave will continuously monitor the Service for faults or degradation and will liaise with the MNOs as necessary to resolve any service issues or faults in line with the relevant SLA.
- 8.2 Freshwave will occasionally need to perform planned maintenance activities for the Services which may require the all or part of the Service to be off-line during such maintenance activities. Freshwave will use reasonable endeavours to notify Customer of such planned maintenance activities five (5) Business Days in advance and will use its reasonable endeavours to undertake this work at a mutually agreed time. However, if the Parties cannot agree the timing of planned maintenance, then the decision of Freshwave shall be final. Freshwave will provide a minimum of three (3) Business Days' notice if a Site visit is required.
- 8.3 Customer understands and agrees that from time to time any MNO may, in its sole discretion, make modifications to the external radio environment. Such modifications are outside of Freshwave's control and may require re-configuration and optimisation of the Service including a visit to the Premises.
- 8.4 If Freshwave becomes aware of any material service issues with the Services, it shall notify Customer in accordance with the procedure set out in the relevant Schedule 2. Restoration of the Services may require Customer to perform certain actions at the Premises under the instruction of Freshwave. Customer shall provide reasonable support and Cooperation to Freshwave in such circumstances to mitigate the need for a visit to the Premises by Freshwave.
- 8.5 If Customer becomes aware of any service issues with the Services, it shall notify Freshwave in accordance with the procedure set out in the relevant Schedule 2.
- 8.6 Freshwave will be entitled to charge Customer and Customer will pay a call out fee at Freshwave's then current reasonable charging rates to the extent that (i) Customer prevents or delays the performance of maintenance; or (ii) the need for any maintenance results from any one or more of the following:
- a. misuse or neglect of or accidental or wilful damage to the Equipment in the Premises; or
 - b. failure by Customer to comply with any of the provisions of this Service Order.

- 8.7 The MNOs are contractually obligated to support the MTPAS (Mobile Telecommunication Privileged Access Scheme) to ensure emergency responders are able to communicate during an incident. This may result in a requirement to switch off the Services with little or no notice.

9 Service Levels

- 9.1 Freshwave shall provide the Service(s) in accordance with the Service Levels set out in the relevant Schedule 2.
- 9.2 Customer's sole and exclusive remedy for a cause of action that results in a deviation from the Service Levels is the Service Credits as set out in the relevant Schedule 2. Customer agrees that the compensation provided under relevant Schedule 2 represents a reasonable pre-estimate of all of its losses and Freshwave shall have no further liability to Customer for the failure to achieve the Service Levels. Customer shall not be able to claim for more than one Service Level failure arising from the same occurrence.
- 9.3 Requests for Service Credits will be paid only against validated claims, provided Customer has paid Freshwave all sums due under the Service Order, any credit balance due to Customer will be carried forward to the next billing period.
- 9.4 In the event that a Service Credit is due to Customer, Freshwave will issue a credit note upon Customer's request. Customer shall not be entitled to any Service Credits in respect of a claim unless and until Freshwave has received notice of the claim in writing within twenty one (21) days of the end of the month for which a credit is requested. Customer must submit a documented claim, setting out the reason for the claim and providing such evidence as shall be reasonably necessary to support the claim. Service Credits will be calculated by Freshwave and credited to Customer on a quarterly basis.
- 9.5 For the first quarter of a Service, the Service Levels and the Service Fees used to calculate the Service Credits will be prorated from the Service Ready Date until the end of the first quarter. If a Service is cancelled during a quarter, no Service Credit will be payable in respect of that Service for that quarter.
- 9.6 Service Credits will not be payable by Freshwave to Customer where the failure to meet a Service Level is caused by any of the following:
- a. the fault or negligence of Customer, its employees, agents or contractors;
 - b. customer failing to comply with the terms of this Service Order;
 - c. any Event of Force Majeure described in Clause 19.3;
 - d. a failure by Customer to give Freshwave necessary access to any Equipment and/or Premises after being requested to do so by Freshwave;
 - e. maintenance during any Planned Outage;
 - f. failure of any equipment, racking and cabling infrastructure owned by the Customer, tenant or the Landlord at the Premises but utilised by Freshwave as part of the Service; or
 - g. any outages or degradation to existing Service that may be the result of Customer requested Service changes or upgrades.

10 Change Control, Relocation

- 10.1 If either Party believes that a change to the design in the provision of the Services (which is not minor) is necessary or desirable, the Parties shall discuss changes in good faith, taking into consideration: (a) the estimated impact on the Services, if any, and the modifications to the Services that will be required as a result of such changes; and (b) an estimate of the cost to implement such changes. For the avoidance of doubt, no changes to this Service Order shall be effective unless a revised Service Order is entered into by the Parties.
- 10.2 The Parties acknowledge that Customer, tenant or Landlord may wish to carry out works to refurbish, demolish or substantially reconstruct all or part of the Premises and/or require the Equipment to be removed or relocated or altered. If requested by Customer, Freshwave shall, discuss in good faith to define and agree variations to this Service Order to continue to deliver Services at the new Premises or within the new layout of the Premises, subject to the following:
- Customer, tenant or the Landlord at the Premises will not intentionally move any Equipment or disable any power to the Equipment without obtaining written authorisation from Freshwave in advance;
 - Customer will ensure that the location and position of all Equipment comply with all applicable health and safety regulations. Customer shall pay for the relocation of any and all Equipment found to be in breach of any such regulations; and
 - Customer shall give the maximum notice reasonably practicable (but not less than two (2) months' notice in writing) of any requirement to remove, relocate or alter the Equipment and shall not do so without Freshwave's prior written consent.

11 Payment

- 11.1 Unless stated otherwise in the Service Order:
- Freshwave will invoice any Advance Service Fee, and any other non-recurring Fees, upon the date of the Service Order;
 - Freshwave will invoice all Monthly Service Fees Quarterly in advance (the payment for the period from the Service Ready Date to the next Quarter Payment Date being prorated);
 - upon the first Quarterly Payment Date after Service Ready Date, Monthly Service Fees will be paid by direct debit for the Service Term;
 - Freshwave shall invoice any other Fees not covered by (a) and (b) above as and when incurred; and
 - Customer shall pay all Fees, within thirty (30) days of the date of the relevant invoice.
- 11.2 All Service Fees expressed to be payable under this Service Order shall be in pounds sterling and are exclusive of VAT. Customer shall, in addition to the other amounts payable under this Service Order, pay any applicable VAT on receipt of a valid VAT invoice.
- 11.3 The Monthly Service Fee due in a Renewal Term, pursuant to Clause 17.1, will be calculated based on the Effective Annual Fee divided by twelve (12), unless otherwise agreed between the Parties and will be charged as per this clause 11.
- 11.4 If Customer fails to make a payment by its due date, Freshwave shall be entitled to charge interest at the rate of one and one-half percent (1.5%) per month above the Bank of England's base lending rate from time to time, or the highest interest rate permitted by applicable law,

whichever is more, from the due date of payment until the payment is made in full, whether before or after judgment.

- 11.5 The Service Fees shall remain fixed during the Initial Term. Thereafter, Freshwave reserves the right to raise the Effective Annual Fee:
- a. on a Review Date by the Contract Price Index; and
 - b. for any other reason on three months' notice to Customer, provided that in the event of a price raise pursuant to Clause 11.5b, Customer may elect to terminate this Service Order on three months' notice provided such notice is serviced within 14 days of Freshwave notifying Customer of an intention to raise the Effective Annual Fee pursuant to Clause 11.5b.
- 11.6 In the event that Freshwave is unable to proceed with the installation of Equipment due to acts or omissions of Customer which are unreasonable and which prevent or delay installation beyond an agreed Service Ready Date, then Freshwave shall have the right to invoice Customer (which invoice Customer shall pay) for all costs incurred in provisioning such Equipment in readiness for that agreed Service Ready Date notwithstanding any such delay in actual installation of Equipment.

12 Confidentiality; Publicity

- 12.1 **Confidential Information** means i) the existence and contents of this Service Order; and (ii) any information which is designated as 'Confidential', 'Proprietary', or some similar designation or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure of the information including product, business, market, strategic or other information or data relating to the subject matter of this Service Order, or the business or affairs of the disclosing Party. Disclosed means disclosed whether in writing, orally, or by any or by inspection of tangible objects (including, but not limited to documents, prototypes, samples, plant, and equipment) or by any other means or medium (including but not limited to information retained on all types of medium including written, diagrammatical, software or other storage medium), and whether such disclosure takes place before or after the date of this Service Order.
- 12.2 Each Party to this Service Order is referred to as the **Recipient** when it receives or uses the Confidential Information disclosed by the other Party.
- 12.3 Recipient will not use any Confidential Information for any purpose not expressly permitted by this Service Order, and will Disclose the Confidential Information only to the employees or contractors of Recipient or its Affiliates who have a need to know the Confidential Information for purposes of this Service Order and who are under a duty of confidentiality no less restrictive than Recipient's duty under this Clause.
- 12.4 Recipient will protect the Confidential Information from unauthorised use, access, loss, theft or disclosure in the same manner as Recipient protects its own confidential or proprietary information of a similar nature and with no less than reasonable care.
- 12.5 Confidential Information will not include any information that: (i) is, or becomes publicly known through no action or inaction of the Recipient in breach of this Service Order; (ii) is already in the possession of the Recipient at the time of disclosure by the disclosing Party, as shown by the Recipient's files and records; (iii) is obtained by the Recipient from a third party without a breach of the third party's obligations of confidentiality; or (iv) is independently developed by

the Recipient without use of or reference to the disclosing Party's Confidential Information, as shown by documents and other competent evidence in the Recipient's possession.

- 12.6 No press or public announcements, circulars or communications relating to this Service Order or the subject matter of it shall be made or sent by either of the Parties without the prior written approval of the other Party such approval not to be unreasonably withheld or delayed.
- 12.7 Notwithstanding Clause 12.6, Freshwave may refer to Customer in its marketing materials, including, without limitation, on its website and in correspondence with prospective customers.
- 12.8 Each Party agrees and acknowledges that any breach or threatened breach of this Clause 12 or Clause 13 may cause irreparable injury to the disclosing Party and that, in addition to any other remedies that may be available, in law, in equity or otherwise, the disclosing party shall be entitled to seek injunctive relief against the threatened breach of this Service Order or the continuation of any such breach by Recipient, without the necessity of proving actual damages, in addition to any other rights or remedies provided by law.

13 Data Protection

- 13.1 For the purposes of the Data Protection Laws **Agreed Purpose** means (i) for each Party to meet their respective obligations as set out in this Service Order (including but not limited to the supply of Services); (ii) to comply with a legal obligation that each Party is subject to; and where it is necessary for the legitimate interest of a Party (or those of a third party) where the Data Subjects' (as defined in the Data Protection Laws) interests or fundamental rights do not override those interests.
- 13.2 Both Parties will comply with all applicable requirements of the Data Protection Laws.
- 13.3 Each Party shall take appropriate technical and organisational measures to ensure that personal data is protected against unauthorised or unlawful processing of the personal data (including unauthorised access or use) and against accidental loss or destruction of, or damage to, such personal data.
- 13.4 Customer warrants that it has all necessary consents and notices in place to enable the lawful transfer and processing of the Personal Data by Freshwave which it has obtained in the course of its business with Customer (including, without limitation, the provision of Services under this Service Order).
- 13.5 Each Party warrants that it will only use Personal Data for the Agreed Purpose and, Freshwave shall whenever required in the ordinary course of business, be entitled to pass such Personal Data on to its suppliers.

14 Proprietary Rights

- 14.1 As used in this Service Order, **Intellectual Property** means (a) patents, patent applications, patent disclosures and inventions (whether patentable or not), (b) trademarks, service marks, and registrations and applications for the registration thereof, together with all goodwill associated therewith, (c) copyright (including within computer programs), (d) trade secrets, know-how and other confidential and proprietary information, and (e) all other forms of intellectual property or industrial property.
- 14.2 Intellectual Property rights in all documents, drawings and information supplied by Freshwave to Customer in connection with this Service Order shall remain vested in Freshwave or the rights owner. Such documents, drawings and information are confidential and shall not be copied,

disclosed or used (except for the purpose for which they were supplied) without the prior written consent of Freshwave.

15 Disclaimer

15.1 Except as specifically provided in this Service Order, Freshwave makes no warranties, express, implied, statutory, or otherwise, with respect to the Services or any other accompanying material provided hereunder. Freshwave specifically disclaims all other warranties, express and implied, including without limitation the implied warranties of merchantability, fitness for a particular purpose and non-infringement and those arising from a course of dealing or usage or trade, and all such warranties are hereby excluded to the fullest extent permitted by law. Freshwave does not warrant that the Services will be uninterrupted or error-free. Except as expressly provided herein, the Services are provided on an “as is” and “as available” basis.

16 Limitation of Liability

- 16.1 Nothing in this Agreement shall limit or exclude any Party's liability for:
- a. death or personal injury caused by its negligence, or the negligence of its personnel, agents or subcontractors;
 - b. fraud or fraudulent misrepresentation; or
 - c. any other liability which cannot be limited or excluded by applicable law.
- 16.2 Nothing in this Clause 16 shall exclude or limit the Liability of Customer to pay the Fees.
- 16.3 Except for any breach of Clauses 13 or 14 and subject to Clause 16.1, in no event shall Freshwave, or Customer liability arising under or in connection with this Service Order, whether arising in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise:
- a. exceed £2,000,000 in respect of loss or damage to tangible property per claim or series of related claims; and
 - b. in any twelve (12) month period exceed the amount paid or payable by Customer to Freshwave under the relevant Service Order (calculated as the Effective Annual Fee actual or projected) during that twelve (12) month period immediately preceding the event or series of events giving rise to the liability.
- 16.4 Save as specifically provided in this Service Order, neither Freshwave nor Customer shall be liable in any circumstance to the other hereunder in contract, tort or otherwise including any liability for negligence for (a) loss of revenue; (b) loss of actual or anticipated profits; (c) downtime costs (d) loss of contracts; (e) loss of the use of money; (f) loss of anticipated savings; (g) loss of business; (h) loss of opportunity; (i) loss of goodwill; (j) loss of reputation; (k) loss of, damage to or corruption of data; or (l) any indirect or consequential loss and such liability is excluded whether it is foreseeable, known, foreseen or otherwise. For the avoidance of doubt, 16.4(a) – 16.4(l) apply whether such losses are direct, indirect, consequential or otherwise.
- 16.5 Customer shall maintain and at the request of Freshwave produce evidence to Freshwave that it has effected and is maintaining suitable insurance in respect of relevant risks in accordance with this Service Order.

17 Term and Termination

- 17.1 The Service Order shall be valid from the date of signature of the Service Order of both Parties, until the expiry of the Service Term, unless terminated earlier in accordance with the terms of this Service Order. At the expiration of the Initial Term (or any Renewal Term), the Service Order shall automatically be renewed for the Renewal Term until terminated by either Party providing at least sixty (60) days' notice in writing, in advance effective on the expiry of the Initial Term (or a subsequent Renewal Term).
- 17.2 Upon completion of the Initial Term it is anticipated that an upgrade to the Service may be required. The Parties agree to enter into good faith discussions in relation to entering into a new Service Order. Should the Parties not enter into a new Service Order, the Service will be provided on a reasonable efforts basis and service commitments set out in the relevant Schedule 2 will not apply and notwithstanding Clause 17.1 either Party may terminate that Service Order by at least 30 days' prior written notice, such notice to be effective on the next Quarterly Payment Date.
- 17.3 Either Party shall have the right to terminate this Service Order upon written notice in the event the other Party:
- fails to perform or observe any material term or condition of this Service Order and such default has not been cured within sixty (60) days after written notice of such default to the other Party;
 - terminates or suspends its business operations, which are relevant to provision of the Services;
 - becomes subject to any bankruptcy or insolvency proceeding (other than as part of a solvent reorganisation);
 - becomes insolvent within the meaning of section 123 of the Insolvency Act 1986 or subject to direct control by a trustee, receiver or similar authority; or
 - is wound up or liquidated, whether voluntarily or otherwise.
- 17.4 Either Party shall have the right to terminate this Service Order if the authorisations and consents granted to Freshwave under the Act necessary for the provision of the Services are revoked or otherwise varied for any reason whatsoever and are not immediately replaced by a new authorisation or consent that would permit Freshwave to continue to provide the Services on the same terms and conditions as set out in this Service Order, in which event Freshwave shall give Customer the maximum period of notice of termination practicable in the circumstances.
- 17.5 Freshwave may terminate this Service Order where:
- Customer, tenant or Landlord of the Premises, intentionally moves any Equipment or disables any power to the Equipment without first obtaining Freshwave's written authorisation; or
 - Freshwave receives from an MNO a notice stating that an MNO Event has occurred and outlining the circumstances surrounding the relevant MNO Event.
- 17.6 Events that may cause MNO to terminate or suspend or limit Customer's use of the Services include, without limitation:
- customer's use of the Services poses a security or service risk to MNO, to any user of the MNO's systems, or may subject MNO or any third party to liability, damages or danger;
 - customer uses the Services in a way that disrupts or threatens an MNO network;
 - customer uses the Services or any component thereof other than as expressly permitted herein;

- d. MNO receives notice or otherwise determines that Customer may be using the Services for any illegal purpose or in a way that violates the law or violates, infringes, or misappropriates the rights of MNO or any third party, including failing to obtain all approvals, consents, and permits required under this Service Order;
- e. MNO determines that providing the Services to Customer is prohibited by applicable law, or has become impractical or unfeasible for any legal or regulatory reason; and
- f. if any regulatory agency or legislative body promulgates any rule, regulation, or order that has the effect of prohibiting or adversely affecting MNO's ability to provide services.

each being an **MNO Event**.

17.7 In the case of any termination of this Service Order:

- a. all Fees due to Freshwave up to the date of termination shall become immediately due and payable to Freshwave;
- b. customer will Cooperate with Freshwave to decommission and recover the Equipment and in particular the rights and obligations in Clause 3.2 and 5 shall survive until the Equipment has been recovered by Freshwave; and
- c. each Party (as the Recipient) shall return to the other Party (as the disclosing Party) or, upon the disclosing Party's request, destroy, at the Recipient's sole expense, all Confidential Information of the disclosing Party and materials containing any Confidential Information of the disclosing Party, including all copies thereof, and deliver to the disclosing Party a certificate, in writing signed by an officer of the Recipient, that such Confidential Information, and all copies thereof have been returned or destroyed, and their use discontinued.

17.8 This Clause and the following Clauses shall survive the termination or expiration of this Service Order 12 (Confidentiality), 13 (Data Protection), 14 (Proprietary Rights), 15 (Disclaimer), 16 (Limitation of Liability) and 19 (Miscellaneous).

17.9 If Customer cancels this Service Order prior to the to the Handover Date, Customer shall upon demand immediately pay the following; (i) all third-party costs directly incurred in consequence of cancellation by the Customer. and (ii) Freshwave reasonable charges commensurate with its design, installation, commissioning and Equipment order commitments.

17.10 If the Service Order is terminated in whole or in part after the Handover Date (i) by Customer for reason not attributable to Freshwave, or (ii) by Freshwave for reason attributable to Customer, the Customer shall pay to Freshwave the equivalent of the Service Fees actual or projected, for each month remaining in the Service Term.

17.11 Nothing contained herein shall limit any other remedies that a Party may have for the default of the other Party under this Service Order nor relieve a Party of any of its obligations incurred prior to such termination.

18 Suspension

18.1 Without prejudice to the Parties' other rights and remedies under this Service Order and otherwise at law, Freshwave may suspend the performance of its obligations under this Service Order:

- a. if any payment is due and unpaid from the Customer. Prior to exercising its right under this Clause, Freshwave shall provide fourteen (14) days' notice which notice shall expressly state that Freshwave intends to exercise its right of suspension under this Clause;
- b. on prior written notice if Freshwave is entitled to terminate this Service Order in accordance with Clause 17;

- c. without notice if, Freshwave is required to suspend such performance in order to comply with any Law or request of any governmental department, emergency services organisation or other competent administrative authority PROVIDED THAT if Freshwave is entitled to suspend this Service Order pursuant to Clause 18.1c, Freshwave shall use its reasonable endeavours to minimise such period of suspension; or
- d. without notice, in the event of an Emergency, but Freshwave shall notify Customer as soon as reasonably practicable following the start of the interruption or suspension and shall use its reasonable endeavours to minimise the period of such interruption or suspension.

18.2 Where the suspension is implemented as a consequence of Customer's negligence, breach, fault, act or misuse of the Equipment, Customer shall reimburse Freshwave for all reasonable costs and expenses incurred by Freshwave in connection with the implementation of such suspension and/or the recommencement of the provision of Freshwave's Services hereunder as appropriate.

19 Miscellaneous

- 19.1 *Assignment.* Freshwave may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Service Order. Customer shall not assign, novate, delegate or otherwise deal with all or any of its rights or obligations under this Service Order (apart from on a solvent amalgamation or reorganisation) without the prior written agreement of Freshwave save that Customer may assign the benefit, always subject to the burden, of this Service Order, to an Affiliate.
- 19.2 *Entire Agreement; Rights of Third Parties; Modification; Waiver.* This Service Order, together with its Schedules, represents the entire agreement between the Parties, and supersedes all prior agreements and understandings, written or oral, with respect to the matters covered by this Service Order, and is not intended to confer upon any third party any rights or remedies hereunder, under the Contracts (Rights of Third Parties Act 1999) or otherwise. Customer acknowledges that it has not entered in this Service Order based on any representations other than those contained herein. No modification of or amendment to this Service Order, nor any waiver of any rights under this Service Order, shall be effective unless in writing and signed by both Parties. The waiver of one breach or default or any delay in exercising any rights shall not constitute a waiver of any subsequent breach or default.
- 19.3 *Delays; Force Majeure.* A Party shall not be deemed in default of any of its obligations under this Service Order other than an obligation to make payment if, and to the extent that, performance of such obligation is prevented or delayed by acts of God or public enemy, civil war, insurrection or riot, fire, flood, explosion, earthquake, labour dispute causing cessation slowdown or interruption of work, national emergency, act or omission of any governing authority or agency thereof, inability after reasonable endeavours to procure equipment, data or materials from suppliers, pandemic, epidemic or widespread infectious disease or any other circumstances beyond its reasonable control (Event of Force Majeure), provided that such Event of Force Majeure is not caused by the negligence of that Party, and that Party has notified the other in writing of the Event of Force Majeure. The Party notifying an Event of Force Majeure shall use all reasonable endeavours to avoid or minimise the effects of an Event of Force Majeure. Upon the occurrence of an Event of Force Majeure, the time for performance shall be extended for the period of delay or inability to perform due to such occurrence, but if an Event

- of Force Majeure continues for a continuous period of more than one month the other Party shall be entitled to terminate this Service Order.
- 19.4 *Severability.* If any provision of this Service Order is held invalid or unenforceable under applicable law by a court of competent jurisdiction, it shall be replaced with the valid provision that most closely reflects the intent of the Parties and the remaining provisions of the Service Order will remain in full force and effect.
- 19.5 *Relationship of the Parties.* Nothing in this Service Order is to be construed as creating an agency, partnership, or joint venture relationship between the Parties hereto.
- 19.6 *Notices.* All notices under or in connection with this Service Order (i) shall be in writing; (ii) shall be in the English language; and shall be sent to the address stated in the Service Order. Unless there is evidence that it was received earlier, a notice is deemed given (i) at the time that the message enters the recipient's email server, if sent by electronic mail, or (ii) two (2) Business Days after posting it, if sent by 1st class post.
- 19.7 *Counterparts.* This Service Order may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.
- 19.8 *Governing Law.* This Service Order and any dispute or claim arising out of or in connection with it shall be governed by and construed in accordance with the laws of England and Wales. Each Party hereby agrees that all disputes arising out of or in connection with this Service Order shall be subject to the exclusive jurisdiction of and venue in the courts of England.