



**THIS MASTER SERVICES AGREEMENT (Agreement)** is dated \_\_\_\_\_, 20\_\_ (the **Effective Date**)

**BETWEEN**

(1) 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

(2) [\_\_\_\_], a company incorporated in [\_\_\_\_] under company number [\_\_\_\_] whose registered office is at [\_\_\_\_] (**Customer**), each a **Party** and together the **Parties**.

**Background:**

- a. Freshwave is a provider of indoor and outdoor wireless technology and services.
- b. Customer has requested, and Freshwave has agreed to provide Services to the Customer, subject to the terms and conditions of this Agreement.

**Therefore, it is agreed as follows:**

1. This Agreement comprises of the following documents:
  - a. this main body of this Agreement;
  - b. Schedule 1 Freshwave General Terms and Conditions;
  - c. Schedule 2 Service Specific Additional Terms; and
  - d. Schedule 3 Service Orders.
2. Customer may order, and Freshwave may accept orders, for additional Services, the additional terms associated with such additional Services shall automatically be deemed incorporated into this agreement at schedule 2.
3. This Agreement will commence on the Effective Date and shall continue until the expiry of five (5) years, or the expiry of all Service Orders (as defined in Schedule 1) entered into under this Agreement, whichever is the later.
4. Save as agreed otherwise, in the event of conflict between the terms and provisions of any of the documents, the terms and conditions of the Service Order (**Schedule 3**) shall prevail, followed by the applicable Service Specific Additional Terms (**Schedule 2**) and then the Freshwave General Terms and Conditions (**Schedule 1**).

**SIGNED AND AGREED BY**

FRESHWAVE SERVICES LIMITED  
SIGNATURE:

[\_\_\_\_]  
SIGNATURE:

\_\_\_\_\_  
(AUTHORISED SIGNATORY)  
NAME:

\_\_\_\_\_  
(AUTHORISED SIGNATORY)  
NAME:

TITLE:

TITLE:

DATE:

DATE:

## Schedule 1- Freshwave General Terms and Conditions

### 1 Definitions and Interpretation

1.1 Capitalised terms have the meaning ascribed to them below.

<b>Acceptance</b>	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.
<b>Acceptance Period</b>	5 (five) Business Days from the Handover Date.
<b>Acceptance Tests</b>	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 Agreement and the relevant Service Order.
<b>Act</b>	the Communications Act 2003 (as amended).
<b>Advance Service Fee</b>	An agreed prepayment of the Service Fee as set out in a Service Order.
<b>Affiliate</b>	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%.
<b>Business Day</b>	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.
<b>Contract Price Index</b>	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.
<b>Data Protection Laws</b>	the EU General Data Protection Regulation (Regulation (EU) 2016/679) ("EU GDPR"); the EU GDPR as amended and incorporated into UK law under the UK European Union (Withdrawal) Act 2018 ("UK GDPR"); the Data Protection Act 2018; the Privacy and Electronic Communications (EC Directive) Regulations 2003 (as amended); any binding code, guidance, policy or standard to which a party is subject and/or which is applicable to the Services; and any other relevant and applicable data protection legislation or regulations.
<b>Effective Annual Service Fee</b>	an amount equivalent to the Service Fees divided by the number of years in the Initial Term.
<b>Emergency</b>	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.

<b>Equipment</b>	all the physical electronic hardware, software, 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 Agreement.
<b>Fees</b>	all fees due and payable under this Agreement.
<b>Good Industry Practice</b>	the exercise of the degree of skill, care, professional judgment, prudence and foresight which would reasonably be expected from a skilled and experienced person engaged in the same type of undertaking under the same or similar circumstances and which would be expected from a leading company within the relevant industry or business sector.
<b>Initial Term</b>	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.
<b>Handover Date</b>	the Date notified to Customer by Freshwave that Freshwave has successfully completed Acceptance.
<b>Landlord</b>	the landlord(s) (or any lessor to Customer or its Affiliates) of the Premises and its delegates and any managing agents.
<b>Law</b>	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.
<b>Liability</b>	liability in or for breach of contract, in tort (including negligence), misrepresentation, restitution, breach of statutory duty or any other cause of action whatsoever relating to or arising under or in connection with this Agreement, including without limitation liability expressly provided for under this Agreement or arising by reason of the invalidity or unenforceability of any term of this Agreement (and for the purposes of this definition, all references to "this Agreement" shall be deemed to include any collateral contract).
<b>Monthly Service Fees</b>	the monthly recurring fees set out in a Service Order.
<b>Outage</b>	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.
<b>Premises</b>	the location(s) where the Services are delivered as set out in the Service Order.
<b>Quarter</b>	a period of three calendar months beginning on a Quarterly Payment Date.
<b>Quarterly Payment Date</b>	1 January, 1 April, 1 July or 1 October, as applicable.
<b>Renewal Term</b>	a period of Twelve (12) months for which each Service Order will continue after the expiry of the Initial Term, or then-current Renewal Term, in accordance with Clause 17.1.
<b>Review Date</b>	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.

<b>Service Credit</b>	the compensation arrangements for a breach of the Service Levels as set out in the relevant Schedule 2.
<b>Service Fees</b>	the fees payable by Customer to Freshwave pursuant to a Service Order or as otherwise referred to in this Agreement.
<b>Service Levels</b>	the terms governing the support of the Services in the event of an Outage as further set out in the relevant Schedule 2.
<b>Service Order</b>	an agreement between Freshwave and Customer for the provision of Services by Freshwave to Customer in the form of Schedule 3.
<b>Service Ready Date</b>	the date the Service is ready for commercial use by Customer and upon which the charging of Monthly Service Fees shall commence.
<b>Service Term</b>	the period comprising the Initial Term and any Renewal Term as appropriate unless terminated earlier in accordance with this Agreement.
<b>Services</b>	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.
<b>Site Design Document</b>	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.
<b>Site Rules</b>	in relation to any 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.
<b>Term</b>	the period commencing on the Effective Date and ending on the expiry of the Service Term.

1.2 In this Agreement, unless the context requires otherwise:

- a. references to a Clause or Schedule are, as the case may be, references to a Clause or Schedule to this Agreement; and
- b. where it is stipulated that a Party shall act in "good faith" this means that a Party must act considerately and genuinely towards the other Party, meeting with and openly discussing issues where relevant, and giving due and proper consideration to the views and needs of the other Party as against their own views and needs, all in a professional and responsible manner. To avoid doubt, good faith does not mean a Party needs to act contrary to its own interests.
- c. any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

## 2 Ordering

2.1 To request a Service, a completed Service Order must be submitted to Freshwave. Freshwave is under no obligation to accept Service Order.

2.2 An order form shall only become a Service Order binding on both Parties and subject to the terms and conditions set out in this Agreement on signature by Freshwave and Customer. Upon

signature of a Service Order by both Parties, the Service Order shall be incorporated into and form part of this Agreement.

- 2.3 Where a Service Order is stated to be subject to survey, Freshwave reserves the right to propose 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.
- 2.4 If Freshwave amends the details of a Service on a Service Order in accordance with Clause 2.3, Freshwave will notify Customer and provide Customer with a new Service Order for the affected Service only. Customer shall have ten (10) Business Days to accept the changes or to cancel the affected Service. Where a Service Order is cancelled Freshwave will be entitled to recover its design and survey costs from the Customer.
- 2.5 Any terms and conditions contained in a Customer order form, purchase order (other than a 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 Following signature of a Service Order, 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 the Equipment is removed from the Premises the rights (i) to enter the Premises and execute any works on a Premises for, or in connection with, the survey, cabling, installation, maintenance, inspection, adjustment, enhancement, repair, alteration, moving, replacement, renewal or removal of the Equipment; (ii) to keep and operate the Equipment installed at the Premises; (iii) that are otherwise necessary to perform the Services in the Premises (collectively the **Rights**);
  - b. to the extent necessary has obtained (or will obtain prior to commencement of the installation of the Services) and will maintain throughout the Term, all rights, licenses or consents required (including any required from its Landlord or the building manager) to enable Freshwave to exercise the Rights;
  - c. will at its own cost procure the provision to Freshwave at all times of suitable accommodation, assistance, facilities and environmental conditions for the Equipment and all reasonably necessary electrical and other installations and fittings relating to the Equipment and shall ensure that any necessary preparation is effected before the Equipment is delivered and installed;
  - d. will comply or procure the compliance in all material respects with Freshwave's reasonable instructions and requirements relating to the preparation of the Premises and the location of the Equipment including ensuring that equipment rooms are kept sufficiently clean, dry and dust free to assure the proper operation of the Equipment;
  - e. will be responsible for providing a safe environment for Freshwave in accordance with Good Industry Practice and will confirm that there is no asbestos present at the Premises and will provide an asbestos register or report if applicable; and
  - f. will not or 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 Handover Date agreed between the Parties.
- 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 Customer reserves the right, at its own cost, to escort personnel of Freshwave or its Subcontractors at the Premises.
- 3.6 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.

## 4 Acceptance

- 4.1 Following the installation of the Service, Acceptance Tests shall be carried out by Freshwave. If Customer requires, all Acceptance Tests shall be witnessed by Customer provided Customer's representative is available at such reasonable times as Freshwave may specify.
- 4.2 Freshwave shall notify Customer of the Handover Date. 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.
- 4.3 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 Agreement). 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 do anything or knowingly allow to subsist any circumstance, matter or thing, which is likely to damage the Equipment or detract from or impair its performance or operation;
  - d. be responsible for all liabilities and costs in relation to any damage to or destruction of all or any part of any Equipment which results from any act or omission of Customer or any third

- party (other than subcontractors of Freshwave) authorised by Customer to enter the Premises;
- e. 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
  - f. promptly notify Freshwave if any Equipment is lost or stolen or is being used for illegal or fraudulent purposes.

## 6 Service Obligations

6.1 Freshwave shall (and/or shall ensure any Subcontractor shall):

- a. provide the Services and perform its other obligations under this Agreement in a lawful manner, using sufficient appropriately qualified and experienced personnel, and in accordance with Good Industry Practice and the Schedules;
- b. ensure that Equipment used by Freshwave to provide the Services is safe and maintained in accordance with the manufacturer's guidelines;
- c. ensure that it has all required licences and authorisations (including any telecoms licences, spectrum licenses and software licences) to provide and operate the Services; and
- d. implement the Equipment on a separate network to any other in-building equipment.

6.2 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 and the acts and omissions of its personnel and its Subcontractors' personnel as if they were Freshwave's own acts and omissions. Freshwave shall ensure that all Subcontractors:

- a. are subject to confidentiality obligations no less stringent than the terms of this Agreement;
- b. comply with applicable Site Rules and reasonable instructions of Customer, Landlord or tenants (if applicable) while at any Premises;
- c. comply with the other terms of this Agreement; and
- d. are compliant with Freshwave's Subcontractor security requirements.

6.3 Customer will use the Services in accordance with all applicable legislation and in accordance with this Agreement.

6.4 Customer acknowledges that Customer's timely provision of, and Freshwave's (and Subcontractors') 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 Agreement (**Cooperation**) is essential to the performance of the Services. Freshwave shall inform Customer without delay of any known or suspected non-provision of Cooperation and highlight the impact of continued non-Cooperation on the delivery or performance of the Services. Freshwave reserves the right to suspend a project (acting reasonably) if continuing without Cooperation could expose Freshwave to unplanned costs.

6.5 To facilitate the provision of the Services, Customer shall use its reasonable efforts to procure, at its own expense, a secure electricity supply of such type, at such points as Freshwave shall reasonably require for each Service. No electricity will be supplied by Freshwave through Customer's or any third party's System. Customer shall also procure the provision of back-up power with sufficient capacity to conform to the stand-by requirement of the relevant British Standards as needed if the Service, including the provision of access to emergency services, is

required to continue uninterrupted in the event of a power failure in the principal power supply for Equipment at Customer Premises.

- 6.6 Customer undertakes not to use or knowingly permit anyone else to use the Service:
- a. To send a message or communication which is offensive, abusive, indecent, obscene or menacing;
  - b. To cause annoyance or inconvenience; or
  - c. In a manner which is contrary to any Law.

## **7 Operations and Maintenance**

- 7.1 Customer will look after the Equipment and maintain the required operating conditions, namely power, temperature and humidity, as set out in the Site Design Document.
- 7.2 Freshwave will continuously monitor the Service for faults or degradation and will liaise with its suppliers as necessary to resolve any service issues or faults in line with the relevant SLA.
- 7.3 Freshwave will occasionally need to perform planned maintenance activities for the Services which may require that 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. Maintenance activities will usually be delivered remotely however should a visit to the Premises be required Freshwave will provide a minimum of three (3) Business Days' notice and Customer will cooperate with Freshwave to provide the required access to the Premises (including access for Subcontractors and suppliers) at a mutually agreed time (each Party acting reasonably). Customer may require Freshwave personnel to be escorted when on Premises at Customer's cost.
- 7.4 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 SLA. 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.
- 7.5 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.
- 7.6 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 Agreement.

## **8 Service Levels**

- 8.1 Freshwave shall use reasonable endeavours to provide the Service(s) in accordance with the Service Levels set out in the relevant Schedule 2.
- 8.2 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.

- 8.3 Requests for Service Credits will be paid only against validated claims, provided Customer has paid Freshwave all sums due under the Agreement, any credit balance due to Customer will be carried forward to the next billing period.
- 8.4 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.
- 8.5 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.
- 8.6 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 Agreement;
  - 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.

## 9 Change Control, Relocation

- 9.1 Each Party acknowledges that changes to the Services may be necessary or desirable. Accordingly, 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 Agreement shall be effective unless a revised Service Order is entered into by the Parties.
- 9.2 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 Agreement to continue to deliver Services at the new Premises or within the new layout of the Premises, subject to the following:

- a. 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;
- b. 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
- c. 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.

## 10 Payment

10.1 Unless stated otherwise in the Service Order:

- a. Freshwave will invoice any Advance Service Fee, and any other non-recurring Fees, in accordance with the terms of the relevant Service Order;
- b. 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);
- c. upon the first Quarterly Payment Date after Service Ready Date, Monthly Service Fees will be paid by direct debit for the Service Term;
- d. Freshwave shall invoice any other Fees not covered by (a) and (b) above as and when incurred; and
- e. Customer shall pay all Fees, within thirty (30) days of the date of the relevant invoice.

10.2 All Service Fees expressed to be payable under this Agreement shall be exclusive of VAT. Customer shall, in addition to the other amounts payable under this Agreement, pay any applicable VAT on receipt of a valid VAT invoice.

10.3 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 10.

10.4 All invoices shall be expressed and payable in British pound sterling.

10.5 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.

10.6 Where Customer requires a technology refresh or additional services during the Term, Freshwave will, upon request, provide a quote, and if acceptable to Customer, the Parties will discuss changes to the Service Fees and this Agreement. No such changes are effective unless set out in a revised or new Service Order signed by both Parties.

10.7 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 10.7b), Customer may elect to terminate this Agreement 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 10.7b).

- 10.8 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.

## 11 Confidentiality; Publicity

- 11.1 **Confidential Information** means i) the existence and contents of this Agreement; 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 Agreement, 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 Agreement.
- 11.2 Each Party to this Agreement is referred to as the **Recipient** when it receives or uses the Confidential Information disclosed by the other Party.
- 11.3 Recipient will not use any Confidential Information for any purpose not expressly permitted by this Agreement 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 Agreement and who are under a duty of confidentiality no less restrictive than Recipient's duty under this Clause.
- 11.4 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.
- 11.5 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 Agreement; (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.

- 11.6 No press or public announcements, circulars or communications relating to this Agreement 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.
- 11.7 Notwithstanding Clause 11.6, Freshwave may refer to Customer in its marketing materials, including, without limitation, on its website and in correspondence with prospective customers.
- 11.8 Each Party agrees and acknowledges that any breach or threatened breach of this Clause 11 or Clause 12 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 Agreement 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.

## 12 Data Protection

- 12.1 The Parties acknowledge that 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 Agreement (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.
- 12.2 Both Parties will comply with all applicable requirements of the Data Protection Laws.
- 12.3 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.
- 12.4 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 Agreement).
- 12.5 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.

## 13 Proprietary Rights

- 13.1 As used in this Agreement, **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.
- 13.2 Intellectual Property rights in all documents, drawings and information supplied by Freshwave to Customer in connection with this Agreement 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.

- 13.3 Intellectual Property rights in all documents, drawings and information supplied by Customer to Freshwave in connection with this Agreement shall remain vested in Customer or the rights owner. Such documents, drawings and information are confidential and shall not be copied, disclosed or used (except for the purposes for which they were supplied) without the prior written consent of Customer.

## 14 Disclaimer

- 14.1 Except as specifically provided in this Agreement, 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.

## 15 Indemnities

- 15.1 Freshwave shall indemnify and hold harmless, and keep indemnified and held harmless, Customer, its officers, directors, employees, subcontractors, agents, successors and assigns against all costs, expenses, damages and losses, including any interest, fines, legal and other professional fees and expenses arising from or in connection with any third-party action against Customer or its officers, directors, employees, subcontractors, agents, successors and assigns to the extent based upon a claim that the Services infringe the Intellectual Property rights of a third party (a "**Third Party IP Claim**"), provided that Customer:
- a. notifies Freshwave promptly in writing of any such action;
  - b. gives Freshwave sole control of the defence and/or settlement of such action, provided that Freshwave shall not settle any claim without Customer's prior written consent, which consent shall not be unreasonably withheld; and
  - c. gives Freshwave all reasonable information and assistance on request.
- 15.2 Should any Services become, or in the reasonable opinion of Freshwave be likely to become, the subject of a Third-Party IP Claim, Freshwave shall, at Freshwave's option and at no additional cost to Customer:
- a. procure for Customer the right to use such Services;
  - b. replace or modify, in whole or in part, such Services to make it non-infringing (provided that such replacement or modification provides no less material functionality than the original Services); or
  - c. terminate this Agreement and refund to Customer a pro rata portion of the Advance Service Fee (if any), paid for such Services.
- 15.3 Indemnification by Customer. Customer shall indemnify and hold harmless, and keep indemnified and held harmless, Freshwave, its officers, directors, employees, subcontractors, agents, successors and assigns against all costs, expenses, damages and losses, including any interest, fines, legal and other professional fees and expenses arising from or in connection with

any third-party action against Freshwave or its officers, directors, employees, subcontractors, agents, successors and assigns to the extent based upon any breach by Customer of its obligations in Clause 5, provided that Freshwave:

- a. notifies Customer promptly in writing of any such action;
- b. gives Customer sole control of the defence and/or settlement of such action, provided that Customer shall not settle any claim without Freshwave's prior written consent, which consent shall not be unreasonably withheld; and
- c. gives Customer all reasonable information and assistance on request.

## 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 12 or 13 and subject to Clause 16.1, in no event shall the Liability of Freshwave, or Customer liability arising under or in connection with this Agreement:

- a. exceed £5,000,000 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 Agreement, 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 Agreement.

## 17 Term and Termination

17.1 A 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 Agreement. 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 Agreement and the Service Orders granted herein upon written notice in the event the other Party:
- fails to perform or observe any material term or condition of this Agreement 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
  - has wound up or liquidated, whether voluntarily or otherwise.
- 17.4 Either Party shall have the right to terminate this Agreement and the Service Orders granted herein 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 Agreement, in which event Freshwave shall give Customer the maximum period of notice of termination practicable in the circumstances.
- 17.5 If Customer wishes to leave the Premises, Customer (with the reasonable Cooperation of Freshwave) shall use reasonable endeavours to novate the relevant Service Orders to the new owner or tenant of the Premises (as applicable). If Customer fails to novate the relevant Service Orders to the new owner or tenant of the Premises, Customer may (subject to Clause 17.10) terminate the Agreement by giving Freshwave not less than sixty (60) days' prior written notice.
- 17.6 Freshwave may terminate the relevant Service Orders 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
  - For the reasons stated in the relevant Schedule 2.
- 17.7 In the case of any termination of this Agreement or a Service Order:
- all Fees (if any) due to Freshwave up to the date of termination shall become immediately due and payable to Freshwave;
  - 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
  - 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 Agreement 11 (Confidentiality), 12 (Data Protection), 13 (Proprietary Rights), 14 (Disclaimer), 15 (Indemnities), 16 (Limitation of Liability) and 19 (Miscellaneous).
- 17.9 If Customer cancels a 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 and/or the Agreement 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 of all Service Orders so terminated.
- 17.11 Nothing contained herein shall limit any other remedies that a Party may have for the default of the other Party under this Agreement 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 Agreement and otherwise at law, Freshwave may suspend the performance of its obligations under this Agreement or a specific Service Order:
- a. on prior written notice if Freshwave is entitled to terminate this Agreement in accordance with Clause 17;
  - b. 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 Agreement pursuant to Clause 18.1b, Freshwave shall use its reasonable endeavours to minimise such period of suspension; or
  - c. 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 Agreement. Customer shall not assign, novate, delegate or otherwise deal with all or any of its rights or obligations under

this Agreement (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 Agreement, to an Affiliate.

- 19.2 *Entire Agreement; Rights of Third Parties; Modification; Waiver.* This Agreement, 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 Agreement, 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 Agreement based on any representations other than those contained herein. No modification of or amendment to this Agreement, nor any waiver of any rights under this Agreement, 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 Agreement 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 Agreement.
- 19.4 *Severability.* If any provision of this Agreement 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 Agreement will remain in full force and effect.
- 19.5 *Relationship of the Parties.* Nothing in this Agreement is to be construed as creating an agency, partnership, or joint venture relationship between the Parties hereto. Neither Party shall have any right or authority to assume or create any obligations or to make any representations or warranties on behalf of the other Party, whether expressed or implied, or to bind the other Party in any respect whatsoever.
- 19.6 *Notices.* All notices under or in connection with this Agreement (i) shall be in writing; (ii) shall be in the English language; and shall be sent for the attention of the CEO to [commercial@freshwavegroup.com](mailto:commercial@freshwavegroup.com) or to the registered office address listed in the case of Freshwave, \_\_\_\_\_ or to \_\_\_\_\_, to \_\_\_\_\_ or to the address above, in the case of Customer. 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 1<sup>st</sup> class post.

19.7 *Counterparts.* This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.

*Governing Law.* This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall in all respects 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 Agreement or its subject matter or formation (including non-contractual disputes or claims) shall be subject to the exclusive jurisdiction of and venue in the courts of England. Each Party hereby consents to the personal and exclusive jurisdiction and venue of these courts.