

Dated: (Date)

(1) FRESHWAVE SERVICES LIMITED

- and -

(2) (Customer)

AGREEMENT FOR THE PROVISION OF A WiFi MANAGED SERVICE



THIS AGREEMENT is dated (date)

PARTIES:

- A. **FRESHWAVE SERVICES LIMITED**, a private limited company incorporated under the laws of England with company number 05940742 whose registered office is at 1st Floor Independent House Independent Business Park, Imberhorne Lane, East Grinstead, West Sussex, RH19 1TU (**Freshwave**); and
- B. (**Customer**) registered in England with the company number (company number) and whose registered office is at (Address) (the **Customer**).

AGREED TERMS:

1 Interpretation

1.1 The following definitions and rules of interpretation in this clause apply in this agreement:

Business Day	a day, other than a Saturday or Sunday, on which banks are normally open for ordinary bank business in London;
Business Hours	09:00 to 17:30 on a Business Day;
Fees	the Fees payable by the Customer for provision of the Service as set out in the Term Sheet;
End User	any person who uses the Service;
Force Majeure Event	any event arising beyond the reasonable control of Freshwave that prevents or delays Freshwave from performing any of its obligations under this agreement (including (without limitation) strikes, lock-outs or other industrial disputes (whether involving the workforce of Freshwave or any third party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, act of terrorism, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery or computers, fire, flood, storm or default of suppliers or subcontractors);
HotSpot	the physical location where a provider of wireless internet services provides wireless access to the internet;
Intellectual Property Rights	all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;
Landing Page	the dedicated webpage through which End Users can gain access to the Service;
Location	the Customer's location or locations as specified in the Term Sheet;
Minimum Term	the minimum term as set out in the Term Sheet;
Partner Networks	Any other partner networks engaged by Freshwave from time to time;

Renewal Term	a period of Twelve (12) months for which each Term Sheet will continue after the expiry of the Minimum Term, or then-current Renewal Term, in accordance with Clause 2;
Roaming Platform Provider	the operator of a WiFi roaming platform which connects the WiFi networks operated by individual providers of wireless internet services and their HotSpots;
Service	the provision to End Users of WiFi access to the internet at a Location through the Landing Page;
Software	the software programs or components used by Freshwave to provide the Service;
Start Date	The date from when Service is commercially available, and charging commences;
Support	the support services (if any) provided by Freshwave to the Customer pursuant to the terms of the schedule;
Term Sheet	the term sheet setting out certain specific terms as identified therein attached to and forming part of this agreement;
WiFi	the wireless fidelity technology based on the IEEE 802.11 standards, which allows WiFi-enabled devices to connect to the internet;

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 The schedule and the Term Sheet form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the schedule and the Term Sheet.
- 1.5 Words in the singular shall include the plural and vice versa.
- 1.6 A reference to writing or written includes e-mail.
- 1.7 Any obligation in this agreement on a person not to do something includes an obligation not to agree, allow, permit or acquiesce in that thing being done.
- 1.8 References to clauses and schedules are to the clauses of and the schedule to this agreement.
- 1.9 Reference to this agreement is to this agreement as amended or supplemented from time to time.

2 Commencement and duration

Freshwave shall provide the Service from the Start Date. This agreement shall continue for the Minimum Term and thereafter provided that either party may terminate this agreement on giving the other not less than ninety (90) days written notice (or such other period as may be set out in the Term Sheet), such notice to expire on the last day of the Minimum Term. If such notice is not received this agreement shall automatically be renewed for the Renewal Term until terminated by either party by giving not less than ninety (90) days written notice in writing, in advance effective on the expiry of the Minimum Term (or a subsequent Renewal Term).

3 Access to the Service

- 3.1 From the Start Date, Freshwave shall deliver the Software and provide the Customer with all appropriate access codes to enable the provision of the Service (subject always to the Customer's compliance with clause 5). Title to the Software shall at no time pass to the Customer.
- 3.2 The Customer shall ensure that each End-User shall treat any username, password or any other security information provided by Freshwave as confidential. Freshwave shall not be liable for any loss or damage arising out of the disclosure of any such information by any End-User.

3.3 Freshwave has the right to disable any access code, username, password or other information it has provided to the Customer at any time if the Customer fails to comply with any of the provisions of this agreement.

4 Use of the Service

4.1 Freshwave shall deliver the Service with all reasonable skill and care.

4.2 Freshwave shall have no responsibility for providing, installing and maintaining any equipment used by the End-User to connect to or use the Service (save in respect of the provision of any Equipment Support).

4.3 It is the Customer's responsibility to obtain and keep in force any licence necessary for End Users to use the Service in any country in which it is provided.

4.4 Freshwave is not responsible for any sites which an End User accesses whilst using the Service or for any activities which an End User carries out on the internet. It is the Customer's responsibility to ensure that the End User's access to the internet through the Service is in accordance with any applicable terms of use.

4.5 Access to the Service is provided to the Customer for End Users' use only. The Customer shall not re-sell the Service to any third party.

4.6 Freshwave shall have no responsibility for ensuring that adequate security measures are in place to prevent unauthorised use of the Service or to ensure that adequate virus protection software is installed in the Adopted Equipment.

4.7 Freshwave does not warrant or guarantee the performance of the internet or that the transmission of information over the internet will be secure or that the internet will be accessible at all times or at any particular speed.

4.8 The Customer acknowledges that End Users may be facilitated access to the Service via a Roaming Platform Provider utilising HotSpots which are located outside of the Location. Freshwave shall have no liability for the acts or omissions of any Roaming Platform Provider, and shall not be liable for the infringement of any Intellectual Property Rights as a result of the Customer or any Location being identified or replicated in any directories or other information produced by any Roaming Platform Provider.

4.9 Freshwave may deliver the Service through one or more Partner Networks.

4.10 From time to time Freshwave may:

4.10.1 (for operational reasons) change access codes, usernames, passwords or other security information necessary to access the Service or change the technical specification of the Service;

4.10.2 issue instructions to the Customer, which Freshwave believes are necessary for reasons of health, safety, security or the quality of any telecommunications service provided by Freshwave to the Customer (and the Customer shall procure that the End-User complies with any such instructions that Freshwave issues to the Customer);

4.10.3 temporarily suspend the Service because of an emergency or for operational maintenance or improvements or for the purpose of ensuring network or information security (in which case Freshwave shall aim to restore the Service as soon as reasonably practical and shall aim to give the Customer as much notice as possible of any emergency or scheduled suspension of the Service).

4.11 Freshwave shall be entitled to suspend the Service immediately in the event of a breach by the Customer of any of the provisions of this agreement including without limitation:

4.11.1 if the Adopted Equipment is materially defective or illegal;

4.11.2 if the Customer or any End-User causes any technical or other problems to the Equipment;

4.11.3 if the Customer or any End-User causes any technical or other problems to Freshwave or Freshwave's Partner Networks;

- 4.11.4 if in Freshwave's reasonable opinion any End-User is involved in fraudulent or unauthorised use of the Service; or
- 4.11.5 if the Customer resells access to the Service in breach of clause 4.5 above.

5 Customer's responsibilities

- 5.1 The Customer shall:
 - 5.1.1 pay to Freshwave the Fees;
 - 5.1.2 co-operate with Freshwave in all matters relating to the Service;
 - 5.1.3 provide, in a timely manner, such material and other information as Freshwave may require to provide the Customer with the Service, and ensure that it is accurate in all material respects;
 - 5.1.4 not do, or permit any End User to do, anything that is likely to adversely interfere with the provision of the Service;
 - 5.1.5 not reproduce, duplicate or copy or otherwise disclose or disseminate the Software, and not make use of such information except under the terms of this agreement;
 - 5.1.6 ensure that its Adopted Equipment is in good working order and suitable for the purposes for which it is used in relation to the provision of the Service and conforms to all relevant standards or requirements;
 - 5.1.7 ensure that any data, equipment or other materials employed by the Customer in the use of the Service or for the purposes of the Landing Page shall not infringe any Intellectual Property Rights of any third party and shall not be obscene or defamatory of any person; and
 - 5.1.8 obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the End Users' use of the Service.
- 5.2 In the event of any breach of the Customer's obligations in clause 5.1, Freshwave shall (in addition to any other right it may have pursuant to this agreement or at law) have the right to suspend immediately the Customer's use of the Service if deemed necessary to protect the proper interests of Freshwave or its other customers until such breach has been remedied.
- 5.3 The Customer shall be liable to pay to Freshwave, on demand on an indemnity basis, all reasonable costs, Fees or losses sustained or incurred by Freshwave (including any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) that arise directly or indirectly from the Customer's fraud, negligence, failure to perform or delay in the performance of any of its obligations contained in clause 5.1 or under this agreement generally, subject to Freshwave confirming such costs, Fees and losses to the Customer in writing.

6 Intellectual Property Rights & Data Collection

- 6.1 Freshwave grants to the Customer a non-exclusive revocable licence during the term of this agreement to use the Software solely for the purposes of using the Service on the terms set out in this agreement.
- 6.2 As between the Customer and Freshwave, the Customer acknowledges that all Intellectual Property Rights in the Software (including the Landing Page) and the provision of the Service belong and shall belong to Freshwave, and the Customer shall have no rights therein or thereto other than the right to use them in accordance with the terms of this agreement.
- 6.3 Any End User data or other information collected through the use of the Service will be owned by Freshwave. Personal information collected by Freshwave may be used to communicate with the End User. Freshwave may occasionally make personal information available to select other organisations, including but not limited to, affiliated organisations, agents working on Freshwave's behalf, companies or organisations with whom Freshwave has a contractual relationship. Freshwave may also provide aggregated data to these and other organisations.

Although Freshwave may make reasonable inquiries to determine that such other organisations maintain privacy policies comparable to Freshwave's, Freshwave is not responsible for the enforcement of such policies. Freshwave may engage reputable third-party vendors in order to help Freshwave manage the Service and allow Freshwave to better assist the End User. These may include third-party vendors engaged to analyze, for marketing purposes, the information collected by Freshwave. The way third parties handle and use the End User information related to the use of their services is governed by their policies and Freshwave has no responsibility for their policies, or third parties' compliance with them.

7 Data protection and lawful intercept

- 7.1 Freshwave is not responsible for the accidental loss or destruction of any personal data any End-User transmits using the Service, and Freshwave excludes all liability of any kind in relation to the content or security of personal data that any End-User sends or receives through the Service.
- 7.2 The Customer agrees and acknowledges that Freshwave may be required by law to provide assistance to law enforcement, governmental agencies and other authorities. Accordingly, the Customer agrees, and shall procure that all End Users agree:
 - 7.2.1 that Freshwave and/or its Partner Networks may implement and maintain an interception capability suitable to meet these requirements where Freshwave and/or any Partner Networks are obliged by law to ensure or procure that such a capability is implemented and maintained;
 - 7.2.2 that Freshwave and its Partner Networks may implement and maintain a data retention capability for the Service to meet requirements where Freshwave and/or its Partner Networks are obliged by law to ensure or procure that data is retained; and
 - 7.2.3 Freshwave may at times co-operate with law enforcement authorities in the investigation of any suspected or alleged illegal activity by the Customer or any End Users (including disclosure of the End Users' contact information to law enforcement authorities).

8 Fees

- 8.1 The Customer shall pay the Fees for the Service from the Start Date.
- 8.2 If Freshwave terminates the Service due to non-payment and/or breach of this agreement, the Customer may be required to pay a reconnection fee, if the Service is reactivated.
- 8.3 Freshwave may, at any time after the Minimum Term, revise the Fees by giving the Customer no less than 30 days' notice in writing (or by e-mail) of any such increase.
- 8.4 Freshwave will invoice and the Customer shall pay all amounts due under this agreement in pounds sterling, unless otherwise stated. Any such amounts are exclusive of value added tax or any other sales, usage or similar tax applicable in any country where the Service or the Support is provided.
- 8.5 The Customer shall pay any amounts under this agreement within thirty (30) Business Days of the date of Freshwave's invoice. Freshwave reserves the right to claim interest on a late payment under the Late Payment of Commercial Debts (Interest) Act 1998.
- 8.6 Time for payment shall be of the essence for the purpose of the payment by the Customer of any amount due under this agreement.

9 Limitation of liability

- 9.1 This clause 9 sets out the entire financial liability of Freshwave (including any liability for the acts or omissions of its employees, agents, consultants and subcontractors) to the Customer in respect of:
 - 9.1.1 any breach of this agreement;
 - 9.1.2 any use made by the Customer of the Software;
 - 9.1.3 the provision of the Service and Support; and

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- 9.1.4 any representation, statement or tortious act or omission (including negligence) arising under or in connection with this agreement.
- 9.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this agreement.
- 9.3 Nothing in this agreement limits or excludes the liability of Freshwave:
- 9.3.1 for death or personal injury resulting from negligence; or
- 9.3.2 for any damage or liability incurred by the Customer as a result of Freshwave's fraud or fraudulent misrepresentation.
- 9.4 Subject to clause 9.2 and clause 9.3:
- 9.4.1 Freshwave shall not be liable for:
- a) loss of actual or anticipate profits; or
 - b) losses caused by business interruption;
 - c) depletion of goodwill and/or similar losses; or
 - d) loss of contract; or
 - e) loss of use; or
 - f) any special, indirect, consequential or pure economic loss, costs, damages, Fees or expenses,
- even if such cost, expense, loss or damage was reasonably foreseeable or might reasonably have been contemplated by the parties and whether arising from breach of contract, tort, negligence, breach of statutory duty or otherwise; and
- 9.4.2 Save as may be provided in the schedule, Freshwave's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of this agreement shall be limited to the greater of £10,000 and the Fees actually paid by the Customer to Freshwave pursuant to this agreement.

10 Termination

- 10.1 Without prejudice to any other rights or remedies which the parties may have, Freshwave may terminate this agreement immediately on giving notice to the Customer if the Customer:
- 10.1.1 fails to pay any amount due under this agreement on the due date for payment and remains in default not less than ten (10) Business Days after being notified in writing to make such payment; or
- 10.1.2 repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement.
- 10.2 Without prejudice to any other rights or remedies which the parties may have, either party may terminate this agreement immediately on giving notice to the other if:
- 10.2.1 the other party commits a material breach of any of the material terms of this agreement and (if such a breach is remediable) fails to remedy that breach within ten (10) Business Days of that party being notified in writing of the breach; or
- 10.2.2 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due; or
- 10.2.3 the other party commences negotiations with all, or any class of, its creditors with a view to rescheduling any of its debts, or makes a proposal for, or enters into any compromise or arrangement with, its creditors other than for the sole purpose of a scheme for a solvent amalgamation; or

- 10.2.4 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or on connection with the winding up or bankruptcy of that other party; or
 - 10.2.5 an application is made to court, or an order is made, for the appointment of an administrator, a notice of intention to appoint an administrator is given, or an administrator is appointed over the other party; or
 - 10.2.6 a floating charge holder over the assets of that other party has become entitled to appoint, or has appointed, an administrative receiver; or
 - 10.2.7 a person becomes entitled to appoint a receiver (or in the case of an individual, a trustee in bankruptcy) over the assets of the other party, or a receiver (or in the case of an individual, a trustee in bankruptcy) is appointed over the assets of the other party; or
 - 10.2.8 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within fourteen (14) days; or
 - 10.2.9 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 10.2.2 to clause 10.2.8 (inclusive); or
 - 10.2.10 the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business.
- 10.3 Without prejudice to any other rights or remedies which the parties may have, either party may give notice to terminate this agreement in accordance with clause 2 or clause 12.2
- 10.4 On termination of this agreement for any reason:
- 10.4.1 the Customer shall immediately pay to Freshwave all of Freshwave's outstanding unpaid invoices and interest in respect of all amounts due, including without limitation any remaining Fibre / Lease Line Fees, Service Hardware Fees, WiFi Service Fees and Added Value Service Fees;
 - 10.4.2 Freshwave shall terminate the Customer's access to the Software and the provision of the Service;
 - 10.4.3 Freshwave shall terminate the Support;
 - 10.4.4 the Customer shall immediately return to Freshwave all Freshwave's property and materials; and
 - 10.4.5 the accrued rights and liabilities of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.
- 10.5 If, at any time during the Minimum Term:
- 10.5.1 the parties agree to terminate the agreement; or
 - 10.5.2 Freshwave exercises its rights to terminate the agreement pursuant to clauses 10.1 or 10.2,
- then the Customer shall immediately pay to Freshwave (in addition to any amount due pursuant to clause 10.4.1) an amount equal to all Fees payable in respect of the period from the date of termination to the end of the Minimum Term.
- 10.6 On termination of this agreement (however arising) clauses 5.3, 6, 7, 9, 10, 11, 12, 15, 16, 17, 18, 19, 20 and 22 shall survive and continue in full force and effect.

11 Confidentiality

- 11.1 Each party undertakes that it shall not at any time during the term of this agreement, and for a period of three (3) years thereafter, disclose to any person any confidential information

concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 11.2.

11.2 Each party may disclose the other party's confidential information:

11.2.1 to its employees, officers, representatives or advisers who need to know such information for the purposes of carrying out the party's obligations under this agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 11; and

11.2.2 as may be required by law, court order or any governmental or regulatory authority.

11.3 No party shall use any other party's confidential information for any purpose other than to perform its obligations under this agreement.

12 Force majeure

12.1 Freshwave shall have no liability to the Customer under this agreement if it is prevented from, or delayed in performing, its obligations under this agreement or from carrying on its business by a Force Majeure Event.

12.2 If the Force Majeure Event prevails for a continuous period of more than six months, either party may terminate this agreement by giving thirty (30) days' written notice to the other party. On expiry of this notice period, this agreement will terminate. Such termination shall be without prejudice to the rights of the parties in respect of any breach of this agreement occurring prior to such termination.

13 Variation

The Customer shall not vary this agreement unless it is in writing and signed by or on behalf of each of the parties. However Freshwave may vary this agreement by providing not less than thirty (30) days written notice to the Customer, and such changes shall come into effect if such changes are not rejected.

14 Waiver

14.1 Failure to exercise, or any delay in exercising, any right or remedy provided under this agreement or by law shall not constitute a waiver of that (or any other) right or remedy, nor shall it preclude or restrict any further exercise of that (or any other) right or remedy.

14.2 No single or partial exercise of any right or remedy provided under this agreement or by law shall preclude or restrict the further exercise of any such right or remedy.

14.3 A waiver (which may be given subject to conditions) of any right or remedy provided under this agreement or by law shall only be effective if it is in writing and shall apply only to the party to whom it is addressed and for the specific circumstances for which it is given. It shall not prevent the party who has given the waiver from subsequently relying on the right or remedy in other circumstances.

14.4 Unless specifically provided otherwise, rights arising under this agreement are cumulative and do not exclude rights provided by law.

15 Severance

15.1 If any provision of this agreement (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of the agreement, and the validity and enforceability of the other provisions of the agreement shall not be affected.

15.2 If a provision of this agreement (or part of any provision) is found illegal, invalid or unenforceable, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

16 Entire agreement

- 16.1 This agreement constitutes the whole agreement between the parties and supersedes any previous arrangement, understanding or agreement between them relating to the subject matter of this agreement.
- 16.2 Each party acknowledges that, in entering into this agreement, it does not rely on any statement, representation, assurance or warranty (a **Representation**) of any person (whether a party to this agreement or not) other than as expressly set out in this agreement. Each party agrees that the only remedies available to it arising out of or in connection with a Representation shall be for breach of contract as expressly provided in this agreement.
- 16.3 Nothing in this clause shall limit or exclude any liability for fraud.

17 Assignment

- 17.1 The Customer shall not, without the prior written consent of Freshwave assign, transfer, charge, mortgage, subcontract or deal in any other manner with all or any of its rights or obligations under this agreement.
- 17.2 Freshwave may at any time assign, transfer, charge, mortgage, subcontract or deal in any other manner with all or any of its rights or obligations under this agreement.
- 17.3 Each party that has rights under this agreement is acting on its own behalf and not for the benefit of another person.

18 No partnership or agency

Nothing in this agreement is intended to, or shall operate to, create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

19 Rights of third parties

A person who is not a party to this agreement shall not have any rights under or in connection with it.

20 Notices

- 20.1 A notice or other communication given to a party under or in connection with this agreement:
- 20.1.1 shall be in writing in English (or accompanied by a properly prepared translation into English);
 - 20.1.2 shall be signed by or on behalf of the party giving it (other than in respect of any e-mail communication);
 - 20.1.3 shall be sent, in the case of Freshwave, by email: commercial@freshwavegroup.com and, in the case of the Customer, to the postal address or email address specified in the Term Sheet and (or, in either case, to such other postal address, e-mail address or person as a party may notify to the other, in accordance with the provisions of this clause); and
 - 20.1.4 shall be:
 - a) delivered personally; or
 - b) sent by commercial courier; or
 - c) sent by e-mail; or
 - d) sent by pre-paid first-class post or recorded delivery; or
 - e) sent by airmail requiring signature on delivery.
- 20.2 If a notice or other communication has been properly sent or delivered in accordance with this clause, it will be deemed to have been received as follows:

- 20.2.1 if delivered personally, at the time of delivery; or
 - 20.2.2 if delivered by commercial courier, at the time of signature of the courier's receipt; or
 - 20.2.3 if sent by e-mail, at 9am on the next day following transmission; or
 - 20.2.4 if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second day after posting; or
 - 20.2.5 if sent by airmail, five days from the date of posting.
- 20.3 For the purposes of this clause:
- 20.3.1 all times are to be read as local time in the place of deemed receipt; and
 - 20.3.2 if deemed receipt under this clause is not within business hours (meaning 9.00 am to 5.30 pm Monday to Friday on a day that is not a public holiday in the place of receipt), the notice or other communication is deemed to have been received when business next starts in the place of receipt.
- 20.4 To prove delivery, it is sufficient to prove that:
- 20.4.1 if sent by e-mail, the notice was transmitted by e-mail to the e-mail address of the party; or
 - 20.4.2 if sent by pre-paid first class post, the envelope containing the notice was properly addressed and posted.
- 20.5 The provisions of this clause 20 shall not apply to the service of any process in any legal action or proceedings.

21 Dispute resolution

- 21.1 If any dispute arises in connection with this agreement, Freshwave and the Customer shall, within thirty (30) days of a written request from one party to the other, meet in a good faith effort to resolve the dispute.
- 21.2 If the dispute is not resolved at that meeting, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator will be nominated by CEDR. To initiate the mediation, a party must give notice in writing (the **ADR notice**) to the other party requesting mediation. A copy of the request should be sent to CEDR Solve. The mediation will start not later than 30 days after the date of the ADR notice.
- The commencement of mediation will not prevent the parties commencing or continuing court proceedings.

22 Governing law and jurisdiction

- 22.1 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 be governed by, and construed in accordance with, the law of England and Wales.
- 22.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

This agreement has been entered into on the date stated at the beginning of it.

THE SCHEDULE

Support

1 Interpretation

The following definitions and rules of interpretation in this paragraph apply in this schedule.

Adopted Equipment	any equipment provided by the Customer in connection with the provision of the Service;
Email Support	the provision of support via Email during Business Hours. The Customer can email our support team with any questions about the system. No SLA is provided for any fix but reasonable endeavours will be taken to fix any issues remotely.
Equipment	any equipment provided by Freshwave to the Customer for the provision of the Service;
Equipment Problem	a problem encountered by the Customer in respect of the use of the Equipment;
Equipment Support	the provision of equipment support in respect of any Equipment Problem as agreed to be provided in the Term Sheet and as more particularly described in paragraph 4;
Equipment Support Hours	Business Hours;
Fees	the fees payable for the provision of the Support (as applicable) as set out in the Term Sheet;
Technical Problem	a problem encountered in respect of the use of the Service (other than an Equipment Problem);
Technical Support	the provision of technical support in respect of any Technical Problem as agreed to be provided in the Term Sheet and as more particularly described in paragraph 3;
Technical Support Hours	As detailed on the Term Sheet;

2 Support - general

- 2.1 Freshwave shall provide the Support from the Start Date in accordance with all applicable laws and regulations and with all reasonable skill and care.
- 2.2 Freshwave shall provide sufficient support staff to fulfil its obligations under this schedule, who shall be suitably trained and experienced in delivering the Support.
- 2.3 The Customer shall co-operate with Freshwave in performing the Support and provide any on-site assistance or information as may reasonably be required by Freshwave.
- 2.4 In consideration of Freshwave providing the Support, the Customer shall pay the relevant Fees in accordance with clause **Error! Reference source not found.**8 of the agreement and paragraph 6 of this schedule (as applicable).

3 Technical Support

- 3.1 The Technical Support shall be provided during the Technical Support Hours on the following basis, depending on which Support Option has been chosen and detailed on the Term Sheet :

Support Level

Guest Support (24/7)

Definition	End User Understanding or End User Device support
Within Scope	<p>Support agents will be available during the contracted hours to answer calls from end users or venue staff.</p> <p>The agent will be responsible for remotely identifying and resolving end-user onboarding, authentication and device related issues:</p> <ul style="list-style-type: none"> • How to associate with the correct SSID • Static IP / MAC address related issues • Available WiFi packages (where applicable) • User credential / password issues
Outside Scope	<p>Unscheduled network configuration changes & amendments for specific events or situations (e.g. conferences & events)</p> <p>Hardware issues on End User devices</p> <p>New Packages or Portal Amendments</p>
Escalation Path	Venue Technical Support (Business Hours Only if selected on the Term Sheet)
Support Level	VIP / Venue Technical Support (Business Hours Only)
Definition	Generic Infrastructure Support
Within Scope	<p>Support agents will be available during the contracted hours to answer calls from venue staff.</p> <p>The agent will be responsible for remotely identifying and resolving issues with WAN & LAN Infrastructure issues (such as ISP outages/router, switch access point outages & failures/power supply issues).</p> <p>Assistance by site representatives may be required as detailed in paragraph 4.3 of this schedule.</p> <p>The Agent will be responsible for:</p> <ul style="list-style-type: none"> • remotely identifying and resolving escalated issues with WAN & LAN Infrastructure issues (packet level analysis & investigation) where possible remotely • remotely investigate specialist hardware issues (such as load balancers, public access gateways, wireless LAN controllers) • where remote resolution not possible, the engineer will raise work package for on-site engineering resource (if selected on Term Sheet) • remotely identifying and resolving escalated issues with product & platform dependencies • carry out pre-arranged amendments to product & Service delivery platform • Identification & analysis of intermittent or repeating issues that affect multiple end users
Outside Scope	<p>Unscheduled network configuration changes & amendments for specific events or situations (e.g. conferences & events)</p> <p>New Packages or Portal Amendments</p>
Escalation Path	Freshwave Service Desk Manager (Business Hours Only) or Emergency Engineering resource (Freshwave internal escalation path) if entire site is not providing Service (24/7)

Support Level	On-Site Support (Business Hours Only – only available if selected on Term Sheet, otherwise Fees applicable at the applicable rates)
Definition	On-Site Field Engineers, Hardware Specialists & Network Engineers & Product Developers
Within Scope	Offsite build & testing of equipment to be used for on-site remedial & repair work. On-site fault identification & resolution
Outside Scope	Unscheduled network configuration changes & amendments for specific events or situations (e.g. conferences & events) New Packages or Portal Amendments
Escalation Path	Freshwave Service Desk Manager (Business Hours Only) or Emergency Engineering resource (Freshwave internal escalation path) if entire site is not providing Service (24/7)

3.2 No representation or warranty is given by Freshwave that a Technical Problem will be fixed or remedied within a specified period of time.

3.3 Freshwave shall have no obligation to provide Technical Support where a Technical Problem has arisen from:

3.3.1 serious misuse of or damage to the Software or any equipment which is necessary for the performance of the Software; or

3.3.2 failure to maintain the necessary environmental conditions for use of the Software; or

3.3.3 relocation or installation of the Software or equipment by any person other than a representative of Freshwave or a person acting under Freshwave's instructions; or

3.3.4 any breach of the Customer's obligations under this agreement;

3.3.5 any issues related to the Adopted Equipment.

4 Equipment Support

4.1 The Equipment Support shall be provided during the Equipment Support Hours and shall comprise a telephone help line to provide technical support in respect of any Equipment Problem.

4.2 Freshwave shall respond and shall use reasonable endeavours to identify the nature and cause of an Equipment Problem and will use reasonable endeavours to remedy the Equipment Problem or (where, in Freshwave's opinion the Equipment Problem is not capable of being remedied) to replace the relevant item of Equipment. No representation or warranty is given by Freshwave that a replacement will be sent or installed within a specified period of time.

4.3 Any replacement Equipment provided and / or installed by Freshwave in accordance with paragraph 4.2 shall be without any additional charge to the Customer.

4.4 Freshwave shall have no obligation to provide Equipment Support where faults arise from:

4.4.1 serious or intentional misuse of or accidental damage to the Equipment; or

4.4.2 repeated misuse of or damage to Equipment (not otherwise falling under paragraph 4.4.1);or

4.4.3 failure to maintain the necessary environmental conditions for use of the Equipment; or

- 4.4.4 any repair or maintenance of the Equipment having been carried out by persons not authorised by Freshwave; or
- 4.4.5 any breach of the Customer's obligations under this agreement; or
- 4.4.6 any issues related to the Adopted Equipment.

5 Customer premises

- 5.1 Freshwave shall ensure that, while on the Customer's premises, all persons who enter such premises with the authority of Freshwave in connection with the provision of the Support adhere to the Customer's security procedures and health and safety regulations, as from time to time notified to Freshwave or otherwise brought to Freshwave's notice. The Customer shall be entitled to remove or to refuse admission to any person who is, or has been, in material breach of such procedures and regulations, but Freshwave shall incur no liability for any delay in performing or failure to perform its obligations under this agreement as a result of compliance with the terms of this paragraph 5.1.
- 5.2 Without prejudice to paragraph 5.1, the Customer shall provide Freshwave's personnel and all persons duly authorised by Freshwave with full, safe and uninterrupted access including remote access to the Customer's premises, the Equipment and the Software as may reasonably be required for the purpose of performing the Support. Where an element of the Support is to be performed at any of the Customer's premises, the Customer shall provide adequate working space and facilities for use by Freshwave's personnel and take reasonable care to ensure their safety.

6 Fees

- 6.1 Fees shall be paid from the Start Date annually in advance by the Customer to Freshwave within thirty (30) Business Days of the date of Freshwave's invoice.
- 6.2 The Customer shall pay all costs (at Freshwave's then prevailing rates) and reasonable expenses incurred by Freshwave for work carried out by Freshwave in connection with any fault which is not covered under this schedule.

7 Changes to the Support

- 7.1 Freshwave shall be entitled, on prior notice to the Customer, to make changes to the Support, provided (in Freshwave's reasonable opinion) such changes are not materially different from the nature and scope of the Support provided hereunder.
- 7.2 Notwithstanding paragraph 7.1, Freshwave may, from time to time and without notice, change the Support in order to comply with any applicable safety or statutory requirements.
- 7.3 If either party requests a change to the scope or execution of the Support (other than as provided in accordance with paragraphs 7.1 or 7.2), Freshwave shall, within a reasonable time, provide a written estimate to the Customer of:
 - 7.3.1 the likely time required to implement the change;
 - 7.3.2 any variations to the Fees arising from the change; and
 - 7.3.3 any other impact of the change on the terms of this agreement.
- 7.4 No change shall be effective unless and until Freshwave has agreed in writing the necessary variations to the Fees and any other relevant terms of this agreement to take account of the change.

8 Liability

If, during the term of this agreement, Freshwave receives written notice from the Customer of any breach by Freshwave of its obligations in respect of the provision of Technical Support or Equipment Support (as applicable) hereunder, Freshwave shall, at its own option and expense, remedy that breach within a reasonable period following receipt of such notice, or immediately cease to provide such Support on written notice to the Customer and repay to the Customer all Fees in respect of such Support which the Customer has paid to Freshwave during the year in which the cessation occurs, less a charge equivalent to the Fees in respect of the Support performed up to the date of such cessation. The

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Customer shall provide all information reasonably necessary to enable Freshwave to comply with its obligations under this paragraph 8. This paragraph sets out the Customer's sole remedy and Freshwave's entire liability for any breach in connection with the provision of the Support.

Signed by _____ for
and authorised on behalf of
**FRESHWAVE SERVICES
LIMITED**

.....

Director

Signed by
for and authorised on behalf
(Customer)

.....

Director