

The following are the terms of an agreement ("Customer Terms") between You and Us (the "Parties" and each a "Party"). By completing an Order Form to purchase a chargeable subscription to use the Services provided by Us, Each of the Parties acknowledges that they have read, understood, and agree to be bound by these terms, SLA and DPA.

**These terms do not become active until May 03 2022.**

If You do not wish to be bound by these Customer Terms, SLA and DPA, You may not purchase a subscription to use the System or Services.

## 1. Definitions

All capitalised terms used in this Agreement shall have the following meanings.

- 1.1. **"Affiliate"** means any person or entity that controls, is controlled by, or is under common control with a party to this Agreement.
- 1.2. **"Agreement"** means these Customer Terms, each Order Form, the DPA and the SLA, together with any other documents referred to in them.
- 1.3. **"Business Day"** means: (i) where Fresh Relevance, Inc is named in the Order Form, any day other than a Saturday, Sunday, or a day which is a federal legal holiday in the United States; or (ii) where Fresh Relevance Limited is named in the Order Form, any day other than a Saturday, Sunday, or a day which is a public holiday in the United Kingdom.
- 1.4. **"Business Hours"** means: (i) where Fresh Relevance, Inc is named in the Order Form, between 9:00 a.m. and 5:30 p.m. Eastern Time USA on Business Days; or (ii) where Fresh Relevance Limited is named in the Order Form, between 9:00 a.m. and 5:30 p.m. in the UK on Business Days;
- 1.5. **"Compatible Third-Party System"** means any system, application, program or software specified as compatible with the System on Our website.
- 1.6. **"Customer"** means the organisation named in the Order Form who enters into the Agreement to use the System and Services. It will also be referred as "You", "Your".
- 1.7. **"Confidential Information"** means all confidential information disclosed by or otherwise obtained from a Party (**"Disclosing Party"**) to or by the other Party (**"Receiving Party"**), whether orally, visually or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Confidential Information of each Party shall include the terms and conditions of the Agreement as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by or on behalf of such party.
- 1.8. **"Content"** means any data whether in digital format such as text, voice, videos, images, and sound, or optical or other format, including metadata, email templates, newsletters, distribution lists, links, images, graphs and photos that conveys essence, substance, information, meaning, purpose, intent, or intelligence, either singularly or when in a combined form, in either its unprocessed or processed form.
- 1.9. **"Your Data"** means all Content defined in 1.8 above and any other materials:
  - i. uploaded or imported into the Services via the System which is processed or transmitted by or on behalf of You; or
  - ii. by any person or application or automated system using Your account for the purposes of providing the Services to You; or
  - iii. collected from your website or online content by the System; or
  - iv. otherwise any information You provide to Us in connection with this Agreement.
- 1.10. **"Customer Terms"** means these terms and conditions
- 1.11. **"Defect"** means a defect, error or bug having a major adverse effect on the appearance, operation or functionality of the System, but excluding any defect, error or bug caused by or arising as a result of:
  - i. an act or omission of You or of one of Your employees, officers, agents, suppliers or sub-contractors;
  - ii. an incompatibility between the System any other system, application, program or software that is not a Compatible Third-Party System; or
  - iii. an incompatibility between the System and a Compatible Third-Party System, caused by a problem or change in a Compatible Third-Party System.
- 1.12. **"Documentation"** means Our user documentation provided to You that describes the System and Services.
- 1.13. **"DPA"** means Our data processing agreement referenced in Annex A, as amended from time to time.
- 1.14. **"Effective Date"** means (i) in relation to the Agreement the effective data set out in the first Order Form; and (ii) in relation to each Order Form the effective date set out in each Order Form.
- 1.15. **"Feedback"** means feedback, innovations or suggestions created by You, Your Affiliates or Your users regarding the concerning the attributes, functionality and performance of the System or Services (including but not limited to identifying issues, errors, potential issues, or errors and improvements).
- 1.16. **"Fees"** means any fee which You will pay in accordance with each Order Form.
- 1.17. **"Force Majeure"** means anything outside the reasonable control of a party, including but not limited to, acts of God, fire, storm, flood, earthquake, explosion, accident, acts of the public enemy, war, rebellion, insurrection, sabotage, epidemic, pandemic, quarantine restriction, labour dispute, labour shortage, where We cease to be able to access the Internet (for any reason not caused

by Us or Our sub-contractors), transportation embargo, failure or delay in transportation, any act or omission (including laws, regulations, disapprovals or failures to approve) of any government or government agency.

1.18. **"Fresh Relevance"** means the entity named in the Order Form that enters into this Agreement with You. It will also be referred as "We", "Us", "Our" in these Customer Terms.

1.19. **"Initial Term"** means the initial term set out in each Order Form.

1.20. **"Intellectual Property Rights"** means all copyrights, patents, utility models, trademarks, service marks, trade names, business names, logos, domain names, moral rights, design rights (whether registered or unregistered), technical information, know-how, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, design rights, database rights, computer data, semiconductor topography rights, generic rights, trade secrets, proprietary information rights and any other intellectual property rights, whether registered or unregistered and including all applications and rights to apply for registration, renewals or extensions of such rights as may exist anywhere in the world, and all similar or equivalent rights or forms of protection in any part of the world.

1.21. **"Other Services"** means third party products, applications, services, software, products, networks, systems, directories, websites, databases or information which You may connect to or enable in conjunction with the System or Services, including any of the foregoing which may be integrated directly into Your systems.

1.22. **"Order Form"** means each online order form made available by Us and completed by You for the purchase of access to the System and/or Services.

1.23. **"Permitted Purpose"** means real-time marketing of Your products or services to Your Shoppers.

1.24. **"Professional Services"** means any professional services included in an Order Form, which may include setup of email designs, HTML, email triggering sequences, and/or consulting or other services.

1.25. **"Renewal Term"** means the renewal term set out in each Order Form.

1.26. **"Services"** means System Services, Support Services, Professional Services and any Other Services supplied by Us to You and set out in an Order Form.

1.27. **"Shoppers"** or **"Your Shoppers"** means any people who You treat as potential customers, for example by showing them marketing or content of interest to them, or sending them email

1.28. **"Support Services"** means support and maintenance services provided or to be provided by Us to You for use of the System set out in the SLA.

1.29. **"System"** means the real-time marketing software-as-a-service platform currently located at [freshrelevance.com](https://freshrelevance.com) (as may be updated from time to time by Us in Our sole discretion) and associated infrastructure that is owned and/or operated by Fresh Relevance Inc. and its parent company Fresh Relevance Ltd;

1.30. **"System Services"** means the real-time marketing services to be supplied by Us to You in accordance with the Documentation and as set out in each Order Form;

1.31. **"SLA"** means Our service level agreement(s), as amended from time to time, see Appendix 2.

1.32. **"Term"** means: (i) in relation to each Order Form, the Initial Term plus any Renewal Term(s) set out in each Order Form; and (ii) in relation to the Agreement, the term as set out in Clause 10.1.

1.33. **"User"** means an individual who is authorized by You to access the System and use the Services via a user identification and credentials. Users may include only Your employees, officers, partners (where You are a partnership), members (where You are a limited liability company), and Your consultants, contractors, and agents.

1.34. **"Virus"** means any computer code, files, scripts, agents, programming instruction or set of instructions that is intentionally and specifically constructed with the ability to damage, corrupt, destroy, steal data from, interfere with or otherwise adversely affect computer programs, data files or hardware without the consent or intent of the computer user and whether its operation is immediate or delayed including wilfully, negligently or without knowledge of its existence. This definition includes, but is not limited to, self-propagating programming instructions commonly called viruses, trojans or worms.

1.35. **"Data Protection Laws"** means any law statute, declaration, decree, directive, legislative enactment, order, ordinance, regulation, rule or other binding restriction which relates to the protection of individuals with regards to the processing of personal data to which a Party is subject for the purposes of this Agreement under the law applicable to this Agreement as per clause 14 below, including providing that the law of England is applicable to this Agreement (a) the Data Protection Act 2018 and the General Data Protection Regulation 2016/679 (EU GDPR) as each is amended in accordance with the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (as amended by SI 2020 no. 1586) and incorporated into UK law under the UK European Union (Withdrawal) Act 2018, as amended, respectively; and (b) any statutory code of practice published by the Information Commissioner's Office from time to time.

## 2. Licence to use the System and Services

- 2.1. **Ordering.** You engage Fresh Relevance and we agree to provide access to the System and Services to You in accordance with the terms of this Agreement. During the Term of the Agreement, You shall purchase access to the System and Services by completing Order Forms. We will provide you with access to the System and Services described in each Order form from the Effective Date and for the Initial Term of each Order Form. Once both Parties execute each Order Form, the Order Form shall be incorporated into and shall be subject to the terms of this Agreement.
- 2.2. **License.** Subject to Your payment of the Fees, Fresh Relevance grant You a non-exclusive, non-transferable, and non-sublicensable license for You, Your Affiliates and Users to use the System and Services solely for the Permitted Purpose, during the Term in accordance with the Documentation and the terms of this Agreement. Such licence permits You to make cache copies of software or other information necessary for You to receive the Services via the Internet. Where open-source software is used as part of the System or Services, such software use by You will be subject to the terms of the open source licences. No additional implied rights are granted beyond those specifically mentioned in this clause.
- 2.3. **Provision of the System and Services.** Fresh Relevance will, subject to these Customer Terms:
- set up and implement the System for the websites(s) specified in each Order Form;
  - make the System and System Services available to You in accordance with the Order Form and the Documentation;
  - provide Support Services to You in accordance with the SLA; and
  - provide a contact for Customer's technical and support questions relating to the System.
- 2.4. **System Defects.** Fresh Relevance will use commercially reasonable efforts to resolve any Defect in the System identified by You or otherwise brought to Our attention in accordance with the provisions of the SLA.
- 2.5. **Suspension.** Fresh Relevance may suspend access to the System and/or Services, or portion thereof, at any time, if in a commercially reasonable manner, the integrity or security of the System or Services is in danger of being compromised by acts of You, Your Affiliates Users, or persons unknown. Where possible, We shall give You 24 hours written notice, before suspending access to the System or Services, giving specific details of Our reasons.

## 3. Use of the Services and Restrictions

**Your Access and Use.** You, Your Affiliates and Users may access the System and use the Services during the Term as set out in each Order Form.

- 3.1. **Your Responsibilities.** You will:
- be responsible for Your and Your Users' use of the System and Services in accordance with the terms of the Agreement. If You and Your Affiliate or User breach or neglect or act against a term of this Agreement, You shall be deemed to be responsible for the breach;
  - be responsible for the accuracy, quality, and legality of Your Data;
  - prevent and will ensure Users prevent unauthorized access to or use of the System and Services and notify Us promptly as soon as you become aware of any unauthorized access or use;
  - use and ensure Your Affiliates and Users use the System and Services only in accordance with the usage and access restrictions set forth below, the Documentation, and law applicable to You, Your Affiliates or Users; and
  - comply with and ensure Your Affiliates and Users comply with the terms applicable to any Other Services.

You shall ensure that the credentials You use to access the System are kept confidential. You shall use all reasonable efforts to ensure that no unauthorized person could access the System or Services using such credentials. You shall immediately inform us if You have any reason to believe that the confidentiality of such credentials has been compromised.

- 3.2. **Usage Restrictions.** You and Your Users shall not:
- attempt to access the object code or source code of the System or its related systems or networks;
  - sell, resell, license, sublicense, distribute, rent, or lease any Service, or include any Service in a service bureau or outsourcing offering, or otherwise make the System or Services available to, or use the System or Services for the benefit of, anyone other than You, Your Affiliates, Users or Shoppers;
  - use the System or Services to store or transmit infringing, libellous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights;
  - use the System or Services to store or transmit any passwords, social security numbers, passport numbers, financial account numbers, or credit card information;
  - use the System or Services to store or transmit Viruses or malicious code;
  - interfere with or disrupt the integrity or performance of the System, Services or third-party data contained therein;
  - copy, frame or mirror the System, Services or any part, feature, function, or user interface thereof;
  - access the System or Services in order to build competitive software or services;
  - attempt to decompile, reverse engineer or disassemble the System or otherwise create or enable the creation of derivative works, modifications, or adaptations of the System;
  - interfere with the functionality or operation of the System or Services or the use of the System or Services by third parties; or
  - use the System or Services in connection with any fraudulent or harmful purpose or activity, or otherwise in a manner that violates any applicable law.

3.3. **Export Restrictions.** Each party will comply with all laws and regulations applicable to it, including U.S. export control laws. Neither party will have any liability to the other for any non-performance of their obligations under this Agreement to the extent that the non-performance is mandated by applicable law. Each party represents and warrants to the other that neither it nor its Affiliates, nor any of its or their users, officers or directors, are persons, entities or organisations with whom the other party is prohibited from dealing (including provision of software, products or services) by virtue of any applicable law, regulation, or executive order, including US export control laws, and names appearing on the U.S. Department of the Treasury's Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List.

#### 4. Other Services

- 4.1. **Acquisition of Other Services.** Fresh Relevance or third parties may make Other Services available to You. When Fresh Relevance provides an integration for one of these Other Services, We will support the Integration. We will also support any Other Services when this is explicitly stated in the relevant Order Form. Otherwise any acquisition by Your of Other Services, and any exchange of data between You and any Other Services, is solely between You and the applicable Other Services, and is not supported by Us.
- 4.2. **Other Services and Customer Data.** If You install or enable any Other Services for use with the Services, You grant Us permission to allow the provider of such Other Services to access Your Data which includes personal data, ("**Your Personal Data**") provided by You as required for the interoperation of such Other Services with the Services. For the avoidance of doubt the choice to purchase, install, enable or otherwise use the Other Services is solely decided by You. We are not responsible for any disclosure, modification or deletion of Your Personal Data resulting from access to the Services by the provider of Other Services.
- 4.3. **Integration with Other Services.** The Services may contain features designed to interoperate with Other Services. To use such features, You may be required to obtain access to Other Services from their providers and may be required to grant Us access to Your account(s) on such Other Services. If a provider of Other Services ceases to make the Other Services available for interoperation with the corresponding Service features on reasonable terms to Us, We may cease providing those Service features without entitling You to any refund, credit or other compensation.

#### 5. Your Data

- 5.1. **Ownership.** All Intellectual Property Rights in Your Data will remain, as between the Parties, Your property.
- 5.2. **License.** You grant Fresh Relevance a non-exclusive, royalty-free, revocable license to copy, store, modify, reproduce, distribute, display, disclose and otherwise use Your Data on the System solely for the purposes of operating the System, providing the Services, fulfilling its obligations under this Agreement, and exercising its rights under this Agreement.
- 5.3. **Representation and Warranty.** You represent and warrant to Fresh Relevance that Your Data, and its use by Us in accordance with the terms of this Agreement will not:
- i. breach any applicable laws;
  - ii. infringe any Intellectual Property Rights or other legal rights of a third party; or
  - iii. give rise to any cause of action against Us, its Affiliates or any other third party engaged by or on behalf of Us. We reserve the right to edit or remove any of Your Data or Your Generated Content that is submitted to the System, stored on Our servers, or hosted or published by Our System. Notwithstanding the foregoing, We do not assume any responsibility for monitoring Your Data or Your Generated Content submitted or published on the System or website.
- 5.4. **Your Generated Content.** You grant to Fresh Relevance, solely to the extent necessary to provide the Services hereunder, a worldwide, non-exclusive, royalty-free, revocable license to use, reproduce, adapt, publish, translate, and distribute Your Content in any existing or future media. Those include without limitation Your Data, text, images, audio material, video material, and audio-visual material that is submitted to or made available Us. You will not submit any of Your Data to the System that is illegal or unlawful, or that is or has been the subject of any threatened or actual legal proceedings.
- 5.5. **Removal of Content.** If Fresh Relevance receives information that content provided by You may violate applicable law or third-party rights, We will promptly notify You. In such event, You will promptly remove or stop using this content, or if You do not do so then We can choose to promptly remove or stop using this content, until the issue is resolved.
- 5.6. **Breach.** In accordance with the above terms in this Clause 5, Fresh Relevance:
- i. reserve the right to disable Your credentials, Your use of the System or Services, or to restrict access to all or part of the System in a commercially reasonable manner, and,
  - ii. where necessary in the circumstances, to block computers using Your IP addresses from accessing the System or Services without notice, if We reasonably believe that there has been a violation or breach of Clause 5.

#### 6. Fees, Payments and Taxes

- 6.1. **Fees.** You will pay the Fees specified in each Order Form during the Initial Term and for each Renewal Term (if any) the commercial list price in effect at the start of each Renewal Term. Payment obligations are non-cancellable, and quantities purchased cannot be decreased during the Initial Term. At the start of any Renewal Term quantities can be reduced for that Renewal Term. We shall post its commercial list prices on its website from time to time, but such changes to Fees shall only apply from the beginning of the next Renewal Term after the price lists is published.

- 6.2. **Invoicing and Payment.** You will provide Us with valid and current credit card information or banking particulars for all Fees. You will notify Us of any changes to such information. You hereby authorize Us to charge credit card or process charges for all Fees specified in all Order Forms, for the Initial Term and any Renewal Terms.
- 6.3. **Form of Payment.** You shall pay as all Fees as set out in each Order Form or as the Parties agree in writing from time to time.
- 6.4. **Taxes.** If any authority imposes upon any transaction subject to this Agreement a duty, tax, levy, or fee, then You agree to pay that amount as specified in an Order Form or an Invoice, unless You supply exemption documentation. All fees, rates and estimates exclude all Taxes.
- 6.5. **Late Payments.** If You do not pay any Fees when due,
- i. We may charge You interest on the overdue amount at the rate of 4% per year above the base rate of NatWest Bank Plc from time to time (which interest will accrue daily and compounded quarterly),
  - ii. We may, without liability to You, disable Your password, account and access to all or part of the System and Services,
  - iii. We shall be under no obligation to provide any or all of the System or Services while the invoice(s) concerned remains unpaid, and
  - iv. We reserve the right to recover any costs and reasonable legal fees We incur in recovering overdue payments.

## 7. Proprietary Rights

- 7.1. **Our Intellectual Property.** Subject to the limited rights expressly granted in this Agreement, Fresh Relevance reserve all rights, title and interest, including all Intellectual Property Rights, in and to the System and Services. We shall own all rights, title and interest, including all Intellectual Property Rights, in and to any improvements to the System or Services. These include any new programs, upgrades, modifications, refinements or enhancements developed by or for Us in connection with providing the System or Services to You, Your Affiliates or Users, even if such improvements result from Your request or suggestion. To the extent, if any, that ownership in such improvements does not automatically vest in Us by virtue of this Agreement or otherwise, You hereby transfer and assign to Us all rights, title, and interest that You may have in and to such improvements.
- 7.2. **Your Intellectual Property.** As between Us and You, You exclusively own all rights, title and interest in and to all Your Data, and all Content created by You, or by Us for You, during performance of the Services, including email templates, newsletters, distribution lists, links, images, graphs and photos ("**Work Product**"), shall be owned exclusively by You. We will not use the same Work Product created for You under this Agreement for another customer. However, We shall not be restricted from using the same functionality, format, code, design, concepts, workflows, integrations or other ideas and underlying pre-existing Intellectual Property Rights represented in the Work Product.
- 7.3. **Feedback.** If You provide any Feedback to Us You hereby assign to Us all right, title, and interest in and to such Feedback. We are free to use that Feedback without payment or restriction and it shall be deemed to be a derivative work of the System or Services. Feedback expressly excludes Your Data and Your Confidential Information.
- 7.4. **Federal Government End Use Provisions.** Fresh Relevance provide the Services, including access to the System, solely for the end use of Your named in an Order Form. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defence transactions, DFAR 252.227-7015 (Technical Data – Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If a government agency has a need for rights not granted under these terms, You must negotiate with Us to determine if there are acceptable terms for granting those rights, and any use modification, reproduction, release, performance, display or disclosure of such commercial software or commercial software documentation by the U.S. Government will be governed solely by the terms of this Agreement and will be prohibited except to the extent expressly permitted by the terms of this Agreement.

## 8. Data Protection

- 8.1. Each Party undertakes to comply with its obligations under relevant applicable Data Protection Laws, principles, and agreements.
- 8.2. When we are providing the System or Services to You, such collection and processing shall be in accordance with Our privacy policy published at <https://www.freshrelevance.com/legal/privacy-policy>
- 8.3. When the personal data of Shoppers is processed because You, Your Affiliates or Users, use the System or Services, the Parties acknowledge that (using GDPR terminology) you are in control. Either you are the controller (data controller) and We are your processor (data processor), or if Your contract is with one of Our resellers, You could be a processor and We your sub-processor. In this respect the Parties shall comply with their respective obligations under applicable Data Protection Law and the terms of the DPA.
- 8.4. Where We collect and process the personal data of Your or Your Affiliates' people who have accounts on the Fresh Relevance system, we act as the controller (data controller) for their personal data.
- 8.5. **Our Rights to Retain Summary Data.** We may use anonymous data about Your use of the System or the Services hereunder ("**Summary Data**") to derive statistical information, usage data, and data about the functionality of the System and Services, and for any other lawful business purpose, provided such data cannot be used to identify You, or any Shoppers. We will be the owner of all right, title and interest in and to Summary Data.
- 8.6. **Your Personal Data.** When you are in control, as in section 8.3, You or Your Affiliate shall ensure that You have taken all necessary actions to allow Us to process personal the personal data legally, including providing any necessary information to Shoppers and obtaining any necessary consents.

## 9. Confidentiality

- 9.1. Both Parties shall use all reasonable endeavours to ensure that all Confidential Information received from the other party is not disclosed to any third party and is not used for any purpose other than in the proper performance of obligations hereunder.
- 9.2. Information belonging to the other party may be disclosed or used (as appropriate) by a party without the consent of that other (the disclosing party) if: it is now or subsequently becomes publicly known to that party through no wrongful act by that party; or if it is at the time of disclosure already known by the party to whom disclosure is made; or it is required to be disclosed by either party by an order of law or other binding regulation; or it is to be disclosed to the professional advisors of that party where the principle of client confidentiality would prevent the further release of that disclosed information by the advisor concerned.
- 9.3. The foregoing obligations as to confidentiality shall remain in full force for a period of five (5) years after the expiration or termination of the Agreement.

## 10. Term; Renewal; Termination; Default; Remedies.

- 10.1. **Term of the Agreement.** This Agreement commences on the date set up in the first Order Form which is Effective Date and continues until all Order Forms under the Agreement are terminated as set out below.
- 10.2. **Order Forms.** Each Order Form commences on the Effective Date set out in the Order Form and continues for the Initial Term set out in the Order Form.
- 10.3. **Renewal.** Unless otherwise excluded by You in writing, each Order Form automatically renews upon expiry of the Initial Term for a same length agreement period until either party gives the other at least thirty (30) days written notice of its decision not to renew an Order Form, prior to expiration of the Initial Term or then current Renewal Term of each Order Form.
- 10.4. **Fee Increase.** Upon every like-for-like renewal, the Fees will increase by (UK RPI + 3)%, unless agreed otherwise during the previous Term or the Order Form specifies otherwise. If You do not agree to any increase, either party can terminate the Order Form by giving notice as set out above in Clause 10.3.
- 10.5. **Material Breach.** Each of the following shall without limitation constitute a material breach of This Agreement: (i) Your failure to pay any Fees when due; (ii) either Party's failure to perform any of its material obligations in this Agreement.
- 10.6. **Termination.**
- a. Either Party may terminate this Agreement and all Order Forms immediately by giving written notice to the other Party if:
    - i. the other Party commits any material breach of any terms of this Agreement, and (a) the breach is not remediable, or (b) the breach is remediable, but the other Party fails to remedy the breach within thirty (30) days of receipt of a written notice requiring it to do so;
    - ii. the other Party:
      - a) is dissolved;
      - b) ceases to conduct all (or substantially all) of its business;
      - c) is or becomes insolvent or is declared insolvent; or
      - d) convenes a meeting or makes or proposes to make any arrangement or composition with its creditors; or
      - e) becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.
  - b. You may terminate:
    - i. this Agreement in the circumstances set out in the section entitled "Service Credits/Remedy" in Addendum A (Service Levels);
    - ii. any affected Services in accordance with paragraph 6.4 of Addendum B (Fresh Relevance Data Protection Addendum).
- 10.7. **Consequences of Termination.** Upon termination of any Order Form(s), or this Agreement as a whole:
- 10.7.1.** You will pay Us all Fees or other amounts due up to the end of the current Initial Term or Renewal Term as applicable for each Order Form. Unless any Order Form is terminated by You pursuant to clause 10.6, the Fees payable shall be prorated up to the effective date of termination of each Order Form. No Fees paid in advance that apply to periods after the effective date of termination shall be refunded, unless termination is solely by You pursuant to clause 10.6.
- 10.7.2.** Each party agrees to promptly delete Confidential Information of the other party from its systems subject to each party's customary backup and archival processes. Without limiting the foregoing, a party may retain copies of Confidential Information to the extent required to comply with applicable laws. Such Confidential Information, as applicable, will remain subject to the disclosure and use restrictions herein but provided that We shall have no obligation to maintain Your Data after termination, except as may be required by law.
- 10.7.3.** All licences and rights granted to You, Your Affiliates and Users to use the System and Services set out in each Order Form(s) terminated, shall immediately cease.
- 10.7.4.** At Your option, following receipt of a request from You, We shall delete (in accordance with the terms of the DPA) or return all Your Data in its then current format, provided that such request is made within 30 days of termination. Fresh Relevance shall in addition, if so requested by the Customer, provide all assistance reasonably required by the Customer to facilitate the smooth transition of the Services to the Customer or any replacement supplier appointed by it, in return for fees as specified in Our ratecard.

- 10.7.5.** Except as expressly set forth in these Customer Terms, any and all liabilities accrued prior to the effective date of the termination will survive,
- 10.7.6.** The obligations under Clauses 5.5, 6, 7, 8, 9.4, 10, 11, 12, 13,14,16.6, 16.8, 16.10 and any other provision that by its nature is intended to survive, shall survive the termination or expiration of this Agreement.



## 11. Representations and Warranties

- 11.1. Mutual Representations and Warranties. Each party represents that:
- i. it has the legal power to enter into this Agreement, and that, when executed and delivered;
  - ii. this Agreement will constitute the legal, valid and binding obligation of such party, enforceable in accordance with its terms and conditions; and
  - iii. it shall comply with all applicable laws and regulations, governmental orders and court orders, which relate to this Agreement.
- 11.2. Your Representations and Warranties. You represent and warrant that:
- 11.2.1.** You own all Your Data or otherwise have the legal right to have them uploaded onto and maintained on the System;
- 11.2.2.** Your Data does not and will not infringe Intellectual Property Rights of any other party;
- 11.2.3.** that Your Data does not and will not violate any applicable law;
- 11.2.4.** You rightfully own the necessary user rights, copyrights and ancillary copyrights and permits required for You to fulfil Your obligations under this Agreement; and
- 11.2.5.** Your use of the System and Services (including Affiliate and Users' use) will comply with applicable law.
- 11.3. Our Representations and Warranties. Fresh Relevance represent and warrant that:
- 11.3.1.** the System and Services will perform materially in accordance with the applicable Documentation;
- 11.3.2.** We have the right to license the System and Services; (ii) the Services shall be performed with reasonable skill and care and in a professional manner in accordance with good industry practice;
- 11.3.3.** the Services shall be performed with reasonable skill and care and in a professional manner in accordance with good industry practice;
- 11.3.4.** in performing the Services We will not infringe the Intellectual Property Rights of any third party or be in breach of any obligations We may have to a third party.  
The foregoing warranties shall not: (i) cover deficiencies or damages relating to any third party components not furnished by Us; or (ii) any third party provided connectivity necessary for the provision or use of the System or Services.
- 11.4. **Updates to the System.** You acknowledge that the System is an on-line, subscription-based platform for providing Services to multiple customers. You also agree that in order to increase and improve the capabilities of the System and to provide expanded and improved benefits to its customers, We expect that We will make changes to the System from time to time. These changes shall not materially reduce the functionality of the System as at the commencement of this Agreement.
- 11.5. **Disclaimer of Warranties.** Fresh Relevance will perform the Services in a professional manner. All third-party materials are provided "as is". Save as otherwise provided for in this Agreement, all warranties implied by statute or common law are, excluded from this Agreement. We grant no warranties to You, regarding the system or Services or the third party services or the Products, including but not limited to implied warranties as to their fitness for any purpose that they will operate without interruption and will be error-free. Third-Party Materials is strictly between You and the third-party owner or distributor of the Third-Party Materials.

## 12. Indemnities

- 12.1. Fresh Relevance at Our own expense, shall:
- i. defend, or at its option, settle any claim or suit brought against You by a third party on the basis of infringement of any Intellectual Property Rights by the System or Services (excluding any claim deriving from any of Your Data or any Customer or User provided item or any third party service); and
  - ii. pay any final judgement entered against You on such issue or any settlement thereof, provided that:
    - a) You notify Us promptly of each such claim;
    - b) We are given sole control of the defence and/or settlement; and
    - c) You fully co-operate and provide all reasonable assistance to Us in the defence or settlement.
- 12.2. If all or any part of the System and Services breaches any third-party rights, or in Our opinion may breach any third-party rights, including Intellectual Property Rights, we shall at Our own expense and in a commercially reasonable manner:
- i. procure for You the right to continue to use the System and Services or the affected part thereof;
  - ii. modify or replace the System or Services of affected part thereof while providing materially equivalent features and functionality; and/or
  - iii. by written notice to You, terminate this Agreement.

Upon termination You and all Users shall immediately cease using the System and/or Services and shall be refunded any Fees paid in advance for usage periods after the effective date of termination, including for Services not available as described in an Order Form and in this Agreement.

- 12.3. Fresh Relevance will have no liability, responsibility, or obligations under Clause 12.1 or 12.2 to the extent that a claim is based upon or arises from:
- i. You or Your Users' use of the System and Services in breach of the terms of this Agreement or outside of the scope of the licences granted under the Agreement;
  - ii. Your Content or any other Customer or User or third party generated content or Other Services;
  - iii. any modification of the System or Services not authorised by Us in writing; and

- iv. use of the System and Services in combination with Other Services or other third party products or services, if the infringement would not have arisen in the absence of such combination.

12.4. Fresh Relevance shall defend, hold harmless and indemnify You and Your Affiliates together with their respective directors, officers, agents and employees from and against any losses, fines, damages, costs, liabilities and expenses (including reasonable legal fees) arising out of or in connection with any breach of Our obligations under data protection laws or the DPA.

12.5. You shall defend, hold harmless and indemnify Fresh Relevance and Our Affiliates together with their respective directors, officers, agents and employees from and against any losses, fines, damages, costs, liabilities and expenses (including reasonable legal fees) arising out of or in connection with:

- i. Our use of Your Materials in accordance with the terms of this Agreement;
- ii. any breach of Clause 2;
- iii. any breach of the terms of this Agreement by Your Affiliate or a User;
- iv. any breach of Your obligations under data protection laws or the DPA.

However, this does not include any claims that result from Our negligence.

### 13. Limitation of Liability

13.1. Nothing in this Agreement excludes or limits either Party's liability for death or personal injury caused by either Party's negligence, either Party's fraud or fraudulent misrepresentation, or wilful misconduct or any other liability which cannot be excluded or limited by applicable law.

13.2. Subject to Clause 13.1 and any indemnity given under this Agreement, in no event shall either party be liable in contract, tort (including negligence or breach of statutory duty) misrepresentation or however arising for any special (including nominal and exemplary damages), moral, incidental or indirect or consequential loss or damage of any nature whatsoever, whatever the cause thereof arising out of or in connection with the Agreement even if the other has been advised of the possibility of such damages.

13.3. Subject to Clauses 13.1 and 13.2, both Parties' liability in respect of breach of contract, tort, negligence, breach of statutory duty or howsoever arising shall be limited to a sum equivalent to the Charges paid by You pursuant to the Agreement during the twelve-month period preceding such incident, or if the Agreement has run for less than 12 months the Charges specified to be paid by You pursuant to the Agreement during the first twelve-month period.

13.4. You shall be liable for any breaches of this Agreement caused by the acts, omissions or negligence of any Users who access the System or Services as if such acts, omissions, or negligence had been committed by You.

### 14. Governing Law and Jurisdiction

This Agreement will be governed by and interpreted in accordance with the laws of the states or countries specified below, without regard to conflicts of laws principles. The Parties will submit to the exclusive jurisdiction of and venue in the applicable courts set out below. Each party waives all defences of lack of personal jurisdiction and inconvenient forum:

- i. if the Fresh Relevance entity that is a party to this Agreement is Fresh Relevance, Inc, this Agreement (including these Customer Terms) shall be governed by and construed in accordance with the laws of Massachusetts, and the courts of Massachusetts shall have exclusive jurisdiction in connection with any dispute arising from this Agreement; or
- ii. if the Fresh Relevance entity that is a party to this Agreement is Fresh Relevance Limited, this Agreement (including these Customer Terms) shall be governed by and construed in accordance with the laws of England, and the courts of England shall have exclusive jurisdiction in connection with any dispute arising from this Agreement.

### 15. Notices

15.1. All notices to be sent under this Agreement shall be in writing, in English and deemed to have been duly given:

- i. when received, if sent by a nationally recognized overnight courier, signature required;
- ii. one day after being sent, if by e-mail, (in each case, with confirmation of transmission); and
- iii. on the fifth (5<sup>th</sup>) day after the date mailed, if sent by certified or registered mail, return receipt requested, postage prepaid.

#### Notices to Us:

- To Fresh Relevance, Inc:
  - For the attention of Mike Austin: Fresh Relevance Inc, 6 Liberty Square, Unit 248, Boston, MA 02109 / Email: [mike.austin@freshrelevance.com](mailto:mike.austin@freshrelevance.com)
- To Fresh Relevance Limited:
  - For the attention of Eddy Swindell: Kenneth Dibben House, Enterprise Road, Southampton Science Park, Southampton, SO16 7NS / Email: [eddy.swindell@freshrelevance.com](mailto:eddy.swindell@freshrelevance.com)

#### Notices to You:

As stated on the Order Form or to the postal or email address of Your primary contact with Us.

## 16. Force Majeure

16.1. In no event will either party be liable or responsible to the other party or be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any obligation under this Agreement, (except for any obligations to make payments), when and to the extent such failure or delay is caused by Force Majeure. In the event of Force Majeure, the affected party shall give prompt written notice to the other party stating the period of time the occurrence is expected to continue and use diligent efforts to end the failure or delay and minimize the effects of such Force Majeure Event. Provided it has complied with the foregoing obligations, either party may terminate this Agreement if a Force Majeure event affecting the other party continues for a period of thirty (30) days or more.

## 17. General

17.1. **Anti-Corruption.** Each party agrees and acknowledges that it has not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from any of the other party's employees, contractors or agents in connection with the Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction. If either party learns of any violation of the above restriction, such party will use reasonable efforts to promptly notify the other party.

17.2. **Assignment.** No party may assign or transfer its rights under this Agreement without the prior written consent of the other party, such consent shall not be unreasonably withheld, however either party shall be entitled to assign the Agreement to: (i) any company in its group of companies; or (ii) any entity that purchases the shares or assets of the assigning party as the result of a merger, takeover or similar event, provided the assignment is not to a competitor of the non-assigning party. This Agreement is binding upon and inures to the benefit of the Parties hereto and their respective permitted successors and assigns.

17.3. **Sub-contractors.** Fresh Relevance may engage subcontractors or other third parties to perform certain duties under the Agreement, in accordance with the terms of this Agreement. We shall be liable for any breaches of this Agreement caused by the acts, omissions or negligence of any sub-contractors its uses to provide the System or Services as if such acts, omissions or negligence had been committed by Ourselves.

17.4. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but together shall constitute one and the same instrument.

17.5. **Construction and Interpretation.** Clause and paragraph headings are used solely for convenience of reference and shall not affect the interpretation of this Agreement. Use of the word "including" shall be interpreted to mean "including without limitation" and "including but not limited to" unless expressly stated otherwise. A "person" shall mean a natural person or any corporate or other entity, whether or not having separate legal personality. A reference to a party shall include that party's personal representatives, successors and permitted assigns. In interpreting any provision of this Agreement, no weight shall be given to, nor shall any construction or interpretation be influenced by, the fact that one of the Parties drafted this Agreement, each party recognizing that it has had an opportunity to review this Agreement and accept or reject it or request changes to it.

17.6. **Entire Agreement; Modifications.** These Agreement together with any documents expressly referred to in this Agreement contain the entire agreement between Us and You and supersede and replace any prior written or oral agreements, representations or understandings between the Parties relating to subject matter of this Agreement.

17.7. **Prevails clause.** In the event of a conflict between the content of an Order Form, these Customer Terms, DPA and the SLA, the terms of the Order Form shall prevail in relation to the Services included therein, followed by these Terms, the DPA and then the SLA. No usage of trade or other regular practice or method of dealing between the Parties will be used to modify, interpret, supplement, or alter the Customer Terms.

17.8. **Exclusion of Third-Party Rights.** This Agreement is not intended to benefit any third party and shall not be enforceable against or by any third party under any applicable legislation.

17.9. **Independent Contractors.** This Agreement shall create an independent contractor relationship between Us and You. Neither party shall have any authority to act in any way as a representative of the other, or to bind the other to any third party, except as specifically set forth herein. The Parties shall not be deemed to be partners, joint ventures or the like by virtue of the provisions hereof.

17.10. **Non-Competition.** Neither party will, without the other party's prior written consent, either during the Term of the Agreement or within six (6) months after the effective date of termination of the Agreement, engage, employ, or otherwise solicit for employment any employee, agent or contractor of the other party who has been involved in the performance of this Agreement.

17.11. **Publicity.** Neither party may issue press releases or other public announcements of any kind relating to the Agreement without the other party's prior written consent, and neither party may use the names, trademarks or logos (collectively the "Marks") of the other party without its prior written consent. Notwithstanding the foregoing, during the Term of the Agreement either party may include the Marks of the other party in presentations, marketing materials, customer, supplier or partner lists, financial reports, and website information about customers, suppliers or partners, provided that the other party follows the licensing party's standard logo/trademark usage guidelines if these have been supplied.

17.12. **Severability.** Should any term and condition of the Agreement be declared illegal or otherwise unenforceable, it shall be severed from the remainder of this Agreement, or the relevant portion of the Agreement, without affecting the legality or enforceability of the remaining portions of the Agreement.

**Schedule 1: This Schedule only applies if it is referenced in the Order Form**

**Payment Plans**

**Monthly Payment Plans**

On each Monthiversary, We will charge the monthly Fees agreed for Contract Month's Pageviews, in advance. Starting from the third Monthiversary, We will also calculate the rolling average of Your previous three Calendar Months' Pageviews (to smooth out usage peaks). If this average traffic is higher than the agreed level of Pageviews, You will also be charged an additional pro-rata proportion of the Invoice Value specified in the Order Form

**Annual Payment Plans**

We will calculate the rolling average of Your previous Contract Year's Pageviews. If this average traffic is higher than the agreed level of Pageviews, You will also be charged an additional pro-rata proportion of the Invoice Value specified in the Order Form.

If during the Term, the actual number of Monthly Pageviews is significantly and consistently higher than the Contract Month Pageviews, additional pro-rata fees will be applied.

**For both types of Payment Plan**

An online report shows Your current Pageview usage. We will notify You if usage is approaching the pre-agreed level. You can contact Us at any time to increase the agreed level of Pageviews to a higher amount.

**Payment Plan Definitions:**

- Contract Start Date, as specified in the Order Form, or if not mentioned it defaults to the Effective Date
- "Monthiversary" is the date in each month with the closest day number to that of the Contract Start Date
- "Contract Month" is the period between two adjacent Monthiversaries
- "Yearly Anniversary" is the date in each year with the closest day number and same month as the Contract Start Date
- "Contract Year" is the period between two adjacent Yearly Anniversaries
- "Invoice Value" is the subscription amount of an invoice, excluding any services work and taxes

## Schedule 2: Service Level Agreements

### Which SLA Applies?

The SLA documentation in this schedule is linked from <https://www.freshrelevance.com/legal/legal-documents> and included by reference. There is a document for each of the following:

#### **Platinum Support SLA**

If you have purchased Platinum Support (mentioned on your Order Form), the Platinum Support SLA applies

#### **SLA for Fresh Relevance Inc**

If Fresh Relevance Inc is named in the Order Form, the SLA for Fresh Relevance Inc applies.

#### **SLA for Fresh Relevance Ltd**

Or if Fresh Relevance Ltd is named in the Order Form, the SLA for Fresh Relevance Ltd applies.

## Annex A

### Data Protection Addendum

The “GDPR Data Protection Addendum” and “GDPR Data Processing Addendum: Approved Sub-processors” linked from <https://www.freshrelevance.com/legal/legal-documents> are included by reference.