

This Reseller Agreement (the “**Agreement**”) is entered to between

- 1) Fresh Relevance Inc, a Delaware registered corporation, with its principal 6 Liberty Square, Unit 248, Boston, MA 02109, United States of America (“**Fresh Relevance**”)

and

- 2) [.....],

a [.....]

registered corporation, with its [registered office] / [principal place of business] at

[.....] (“**Reseller**”);

**Background**

- a) Fresh Relevance designs, develops, makes, markets and licenses a software-as-a-service, real-time engagement solution that uses advanced machine learning to personalize communications across the customer journey;
- b) Reseller wishes to obtain from Fresh Relevance a non-exclusive right to distribute and sell access to the Fresh Relevance Solution to end users on and subject to the terms and conditions of this Agreement; and
- c) Fresh Relevance is willing to appoint Reseller as its non-exclusive reseller and to grant to Reseller a non-exclusive right to distribute and sell access to the Fresh Relevance Solution on and subject to the terms and conditions of this Agreement.
- d) In consideration of the mutual covenants, terms, and conditions set forth in this Agreement, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Definitions.

- 1.1. “**Affiliate**” of either Party, means any person or entity that controls, is controlled by, or is under common control with a Party to this Agreement. The term “control” as used in the immediately preceding sentence means the right to exercise, directly or indirectly, more than fifty percent of the voting rights attributable to the shares, partnership interests, membership shares, or similar evidences of ownership of an entity;
- 1.2. “**Applicable Law**” means any applicable national, international, local, state laws and regulations;
- 1.3. “**Applicable Data Protection Law**” means all present and future Applicable Laws relating to the processing of personal data and privacy in the relevant jurisdiction, which shall include but not be limited to, for example, in respect of the US, all federal and state legislations relating to privacy and/or information society, the rules of the Federal Trade Commission, the Children Online Privacy Protection Act (“**COPPA**”);
- 1.4. “**Change of Control**” means any change in the entity ownership occurring when any person or company, directly or indirectly, becomes the beneficial owner of voting equity shares of the entity (to the extent of more than 50 percent of the voting shares) or the rights to acquire such shares, any direct or indirect sale or transfer of substantially all of the assets of the entity or a plan of entity liquidation or an agreement for the sale on liquidation is legally approved and completed;

- 1.5. **“Customer”** means any corporation, partnership, joint venture, limited liability entity, governmental authority, unincorporated organization, trust, association or other entity to whom the Reseller resells or otherwise makes available the Products and any other Fresh Relevance services;
- 1.6. **“Customer Information”** means the data created, delivered or input by Reseller, Customer or End Users into the Fresh Relevance Solution;
- 1.7. **“Documentation”** means user documentation that describes the principles of the operation, support, maintenance and functionality of the applicable Fresh Relevance Solution and/or that are embedded with the Fresh Relevance Solution (e.g., on-line guides);
- 1.8. **“End User”** means an individual who, subject to the terms of this Agreement, is authorised by Reseller or Customer to access the Fresh Relevance Platform and/or other parts of the Fresh Relevance Solution or Support Services, and to whom Customer (or Fresh Relevance at Customer’s request) has supplied a user identification and password. Users may include but are not limited to Customer’s (or its Affiliates’) employees, officers, partners (where Customer is a partnership), members (where Customer is a limited liability company), and (provided they are legally bound by written agreements or are otherwise legally bound to comply with Customer’s obligations pursuant to this Agreement) and/or the Reseller’s or Customer’s consultants, contractors and agents;
- 1.9. **“EULA”** means Fresh Relevance’s End User Licence Agreement setting forth the terms and conditions of the End User’s permitted use of the Fresh Relevance Solution, or a document produced by Reseller that contains the same terms. A copy of the EULA currently in effect, and which may be amended from time to time in Fresh Relevance’s sole discretion in accordance with the terms of this Agreement, is attached hereto as **Exhibit 2**;
- 1.10. **“First Level Technical Support”** means initial support and maintenance services supplied to Customers and End Users which shall **include answering** incoming calls from End Users, the collection of basic information from End Users (for example, the details of the issues and problems, error codes, impact, actions taken by the Customer or End Users), simple or straightforward diagnostics and the application of simple published remedial action;
- 1.11. **“Fresh Relevance Marks”** means the Marks at <https://www.freshrelevance.com/company/press/press-kit> and any other trademark, service mark, trade name, logo, domain name or other indicator of source, affiliation or sponsorship, whether registered or unregistered, of Fresh Relevance;
- 1.12. **“Fresh Relevance Solution”** means all or any part of any of the software-as-a-service platform (**“Fresh Relevance Platform”**) and services identified as the Fresh Relevance Solution at [www.freshrelevance.com](http://www.freshrelevance.com) (as may be updated from time to time by Fresh Relevance in its sole discretion), or any other product or service that Fresh Relevance, by written notice to or agreement with Reseller, expressly permits Reseller to distribute and sell pursuant to this Agreement, and all related Documentation;
- 1.13. **“Fresh Relevance Properties”** means any and all of the Fresh Relevance Solution, Fresh Relevance Marks, Marketing Materials, Fresh Relevance’s Confidential Information, APIs (application programming interfaces), and other technologies, information (including any Customer Information) and materials provided by Fresh Relevance to Reseller to enable Reseller to market, distribute or license, or provide maintenance, support or other services for the Fresh Relevance Solution;
- 1.14. **“Insolvency Event”** means any of the following events: where a party ceases to do business, becomes unable to pay its debts when they fall due, has a receiver, manager, administrator, administrative receiver or similar officer appointed in respect of it or the whole or any part of its assets or business, any composition or arrangement is made with any one or more classes of its creditors, takes or suffers any similar action in consequence of debt, an order or resolution is made or passed for its dissolution, winding-up or liquidation (other than for the purposes of solvent amalgamation or reconstruction), enters into liquidation whether compulsorily or voluntarily or any analogous or comparable event takes place in any jurisdiction;
- 1.15. **“Intellectual Property Rights”** means all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to

# Reseller Agreement (US)

sue for passing off, unfair competition rights, design rights, database rights in computer software, topography 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 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;

- 1.16. **“Marketing Materials”** means any advertising, promotional or marketing materials for or relating to the Fresh Relevance Solution that Fresh Relevance may make available to Reseller from time to time during the Term;
- 1.17. **“Open Source Program”** means any open source software program that is provided under this Agreement as part of the Fresh Relevance Solution and subject to any open source license agreement, including any GNU General Public License or GNU Library or Lesser Public License, or other obligation, restriction or license agreement that substantially conforms to the Open Source Definition prescribed by the Open Source Initiative or that otherwise may require disclosure or licensing to any third party of any source code with which such software program is used or compiled;
- 1.18. **“Order Form”** means an order form signed by Reseller for Fresh Relevance in connection with a sale by Reseller to a Customer;
- 1.19. **“Representatives”** means, with respect to a party, that party’s and its Affiliates’ employees, officers, directors, consultants, agents, independent contractors, service providers, sublicensees, subcontractors and legal advisors;
- 1.20. **“Reseller Products”** means the Fresh Relevance Solution, or the Fresh Relevance Solution sold together with reseller components and reseller products, in any form or medium;
- 1.21. **“Second Line Technical Support”** means support and maintenance services other than First Level Technical Support, including but not limited to advanced diagnostics of problems and issues, problem solving, problem, software workaround implementation and software solution provision;
- 1.22. **“Support Services”** means First Line Technical Support and Second Line Technical Support;
- 1.23. **“Territory”** is as defined in the Exhibit 1;
- 1.24. **“Third Party Materials”** means, other than the Reseller Products and reseller components, all materials and information in any form or medium, including any Open Source Programs or other software, documents, data, content, specifications, products, equipment or components of or relating to the Fresh Relevance Solution, that are not proprietary to Fresh Relevance;
- 1.25. **“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, 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 willfully, 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.

## 2. Reseller Appointment as Authorized Reseller.

- 2.1. Non-Exclusive Appointment. Subject to the Reseller’s compliance with the terms and conditions of this Agreement and in accordance with the terms of this Agreement, Fresh Relevance hereby: (a) appoints Reseller as Fresh Relevance’s non-exclusive reseller in the Territory during the Term; and (b) authorizes Reseller, during the Term, to describe itself in promotional, advertising, and marketing materials relating to the Fresh Relevance Solution as an “authorized reseller” of Fresh Relevance Solution. This appointment is non-exclusive and at any time and in Fresh Relevance sole discretion, Fresh Relevance may itself and may authorize third parties to, without limitation, design and develop, produce, market, distribute and otherwise commercialize or use the Fresh Relevance Solution, any modifications or derivatives of the Fresh Relevance Solution, or any products or services that compete with Fresh Relevance Solution, and perform software-as-a-service, support, and other services for or using such Fresh Relevance Solution, alone or with other products, services, and materials, in and outside the Territory, through any channel, and to any Person,

including resellers, value added resellers, systems integrators, original equipment manufacturers, retailers, and end users.

- 2.2. Acceptance and Conditions of Appointment. Reseller hereby accepts Fresh Relevance's appointment pursuant to Clause 2.1 and agrees, as a condition to such appointment and the continuation of Reseller's authorization as Fresh Relevance's reseller under this Agreement, to perform all of Reseller's obligations hereunder.
- 2.3. No Franchise Relationship. Nothing contained in this Agreement creates any franchise, dealership, agency or business opportunity (each, a "**Franchise**") relationship between the parties. Reseller acknowledges that it does not and will not offer or sell the Fresh Relevance Solution under a business or marketing plan or system prescribed by Fresh Relevance and that Reseller sells access to the Fresh Relevance Solution to Customers at prices set solely by Reseller.
- 2.4. Remedies for Franchise Treatment; Waiver. If any provision of this Agreement is deemed to create a Franchise relationship, or Reseller alleges such a relationship with Fresh Relevance arising out of or in connection with this Agreement, the parties shall negotiate in good faith to modify this Agreement so as to reflect as closely as possible their original intent in entering into this Agreement in order that the transactions contemplated hereby be consummated pursuant to an independent contractor and not a Franchise relationship. Without prejudice to the foregoing or any other provision in this Agreement, Reseller hereby waives and relinquishes to the fullest extent permissible under applicable Law any rights or claims under Franchise or similar Laws arising out of or in connection with this Agreement.

### 3. Distribution Rights.

- 3.1. Fresh Relevance Solution. Subject to Reseller's compliance with the terms and conditions of this Agreement and in accordance with the terms of this Agreement, and solely in connection with Reseller's appointment and for the purposes of its operation as a non-exclusive authorized reseller pursuant to Clause 2, Fresh Relevance hereby grants Reseller, a limited, non-exclusive, non-transferable and non-sublicensable right in the Territory during the Term solely to: (a) demonstrate, market and sell access to the Fresh Relevance Solution to Customers in the Territory solely for such Customers' end use under the EULA; (b) use the Fresh Relevance Solution internally for testing, servicing and supporting the Fresh Relevance Solution; and (c) incorporate the Documentation, in whole or in part, into the documentation for the Reseller Products, and distribute to Customers such Documentation (each of the foregoing items, (a) through (d), a "**Permitted Purpose**"). Reseller's sales process to Customers shall comply in all respects with the policies
- 3.2. Open Source Programs. The Fresh Relevance Solution may incorporate Open Source Programs. Any use of Open Source Programs by Reseller, Customers or End Users is subject to and governed solely by the terms and conditions of the applicable open source license agreement(s). On Reseller's written request, Fresh Relevance will provide Reseller at no additional cost with information on how to obtain a copy of the source code for such Open Source Programs in accordance with the terms of the controlling open source license agreement(s).
- 3.3. Trademark License and Use.
  - 3.3.1. Subject to and conditioned on Reseller's compliance with the terms and conditions of this Agreement, Fresh Relevance hereby grants Reseller a limited, non-exclusive, non-transferable and non-sublicensable, royalty-free license in the Territory during the to use the Fresh Relevance Marks and reproduce and distribute Marketing Materials solely to market and promote the Fresh Relevance Solution under this Agreement in accordance with Fresh Relevance's then current quality control, usage and other Fresh Relevance Mark guidelines as the same may be updated by Fresh Relevance from time to time. All uses of the Fresh Relevance Marks, and all goodwill associated therewith, shall inure solely to the benefit of Fresh Relevance;
  - 3.3.2. Reseller shall not advertise, promote, market or distribute access to the Fresh Relevance Solution using any Marks other than in accordance with the terms of this Agreement;
  - 3.3.3. Reseller shall not use any Fresh Relevance Marks (whether individually or in combination or in whole or in similar part):

- i. in or in connection with the advertising, promotion, marketing or distribution of any goods, services or technologies other than the Fresh Relevance Solution;
- ii. as part of Reseller's corporate or trade name or any domain name;
- iii. in any way that may cause confusion, mistake or deception; or
- iv. in any way that dilutes, tarnishes or otherwise diminishes the Fresh Relevance Marks' distinctiveness, or jeopardizes the reputation of or goodwill associated with the Fresh Relevance Marks, Fresh Relevance Solution or Fresh Relevance or the validity or Fresh Relevance's ownership of the Fresh Relevance Marks or the registrations therein.

3.3.4. Other than such use of the Fresh Relevance Marks as are expressly permitted under this Clause 3.3, Reseller shall not use, register or attempt to register in any jurisdiction any Mark that is identical to or similar to any of the Fresh Relevance Marks or that incorporates any of the Fresh Relevance Marks in whole or in similar part. If Reseller acquires any rights in any Mark that is identical or similar to any of the Fresh Relevance Marks, by operation of law or otherwise, Reseller shall and does hereby assign, at no additional cost, all such rights to Fresh Relevance and its successors, together with all associated goodwill in and applications and registrations for such Mark.

3.3.5. Reseller shall not directly or indirectly engage in any unfair, unethical, misleading or deceptive acts or practices that are or might be detrimental to the public or the goodwill or reputation of Fresh Relevance or any Fresh Relevance Solution or Fresh Relevance Marks, including any dissemination, display or use of any false, misleading or deceptive representations, depictions or materials for or in connection with any advertising, promotion, marketing or distribution of any Reseller Products.

3.3.6. Reseller shall not at any time during or after the Term (i) challenge, or cause, induce, authorize, or assist any Person to challenge, the validity of the Fresh Relevance Marks or Fresh Relevance's ownership, use or registration of or rights in any of the Fresh Relevance Marks or (ii) take any action in derogation of Fresh Relevance's rights in the Fresh Relevance Marks, including by using, licensing or applying to register any Mark that is identical or similar to any of the Fresh Relevance Marks.

3.4. No Implied Rights. The Fresh Relevance Properties are provided to Reseller solely for the Permitted Purpose under the express terms of the licenses granted in this Agreement. Except for the limited rights and licenses expressly granted under this Agreement, nothing in this Agreement grants, by implication, waiver, estoppel, or otherwise, to Reseller or any third party any Intellectual Property Rights or other right, title, or interest in or to any of the Fresh Relevance Solution or other Fresh Relevance Properties. Nothing in this Agreement grants or conveys, or permits Reseller to grant or convey, any ownership or proprietary rights in any of the Fresh Relevance Properties or Third-Party Materials, or any article or copy thereof or Intellectual Property Rights therein.

#### 4. Distribution and Resale Restrictions

4.1. Reseller accepts that the rights granted to it under this Agreement do not permit the use of the Fresh Relevance Solution by the Reseller (and/or its Affiliates) for Reseller or its Affiliates' own internal business use provided that use of the Fresh Relevance Solution as part of the resale process (including training Reseller's support staff) is permitted under the scope of this Agreement. If the Reseller wishes to use the Fresh Relevance Solution for its own internal business purposes, Reseller will notify Fresh Relevance and the Parties will enter into a separate agreement on Fresh Relevance's terms governing the terms of such use.

4.2. Reseller shall not:

4.2.1. authorise any other company or entity to resell the Fresh Relevance Solution (for example, as a sub-distributor) without Fresh Relevance's prior written consent;

- 4.2.2. distribute, sell, license or otherwise make available, or provide support or other services for, the Fresh Relevance Solution outside the Territory or for any actual or potential use outside the Territory;
- 4.2.3. export, re-export or release, directly or indirectly, the Fresh Relevance Solution to any location, jurisdiction or Person outside the Territory;
- 4.2.4. represent itself as an agent of Fresh Relevance, commit Fresh Relevance to any contracts or incur any obligation or liability whatsoever on behalf of Fresh Relevance for any purpose;
- 4.2.5. market, distribute, license or otherwise make available access to the Fresh Relevance Solution to or through any third party other than directly to approved Prospect Customer in accordance with the terms of and requirements set forth in this Agreement.
- 4.2.6. make any representations, warranties, guarantees, indemnities, claims or other commitments either actually, apparently or impliedly on Fresh Relevance's behalf concerning or relating to the Fresh Relevance Solution or any other Fresh Relevance services that are in addition to or inconsistent with any then-existing representations, warranties, guarantees, indemnities, claims or other commitments in this Agreement; and/or
- 4.2.7. otherwise use the Fresh Relevance Solution or license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available to any third party the Fresh Relevance Solution or any part thereof in any way, except as expressly permitted under, and in accordance with this Agreement.

#### 4.3. Customer Approval

- 4.3.1. Reseller shall submit a request for approval (or other such documentation agreed between the parties e.g. an order form for services) to Fresh Relevance for each prospective Customer (each a "**Prospect Customer**") provided that any Prospect Customer shall not be a Restricted Entity as defined below. Reseller shall provide sufficient information to Fresh Relevance in its request for approval to enable Fresh Relevance to make a decision in respect of the Prospect Customer and this information shall include at a minimum:
  - a) the Prospect Customer Name;
  - b) the Products / Services to be supplied to the Prospect Customer; and
  - c) the date from which Reseller intends to give access to the Fresh Relevance Solution to the Prospect Customer and the date on which such access is proposed to end.
- 4.3.2. Following receipt of the Reseller's request under Clause 4.3.1, Fresh Relevance shall determine, in its sole discretion, whether the Prospect Customer is approved to be a Customer of the Reseller and be granted access to the Fresh Relevance Solution for the duration specified in the Reseller's request at 4.3.1. In this Agreement, references to an "Customer" means a Prospect Customer approved by Fresh Relevance in writing.
- 4.3.3. Fresh Relevance shall not be obligated to approve a Prospect Customer.
- 4.3.4. Reseller shall not resell or grants access to the Fresh Relevance Solution to any Prospect Customer without Fresh Relevance's prior written approval.

Failure by the Reseller to comply with the terms of Clause 4.1, Clause 4.2 and Clause 4.3 shall constitute a material breach of this Agreement.

#### 4.4. Restricted Entities.

- 4.4.1. Reseller shall not resell any rights to the Fresh Relevance Solution to:
  - a) any Person that Fresh Relevance has provided a price quote to within the past six (6) months of Reseller first offering the Fresh Relevance Solution;
  - b) current clients of Fresh Relevance who have signed agreements directly with Fresh Relevance. Fresh

- Relevance reserves the right to maintain or renew any existing direct agreements with Reseller's clients;
- c) any entity that may pose a risk to Fresh Relevance or to any of Fresh Relevance's products or services as determined by Fresh Relevance in its sole discretion; or
- d) competitors of Fresh Relevance.

4.4.2. Reseller shall ask Fresh Relevance where necessary to determine whether a potential Prospect Customer is a Restricted Entity. If Fresh Relevance determines that the Reseller has made the Fresh Relevance Solution available to a Restricted Entity, Fresh Relevance may cancel such Customer's account and associated End User accounts at any time.

- 4.5. Reseller may not resell the Products or any Fresh Relevance services to any Prospect Customer unless the Prospect Customer enters into an agreement with Reseller (the "**Customer Agreement**") that at a minimum (a) completely disclaims Fresh Relevance's liability for all matters arising out of or related to the End User Agreement or Products to the extent permissible by law and requires the Customer to look solely to Reseller with respect to such matters, unless otherwise agreed in writing by Fresh Relevance; (b) requires the Customer to agree Customer and its End Users' use of the Fresh Relevance Solution, as applicable, shall be lawful and that Customer and End Users (as applicable) shall comply fully with the applicable terms of the Agreement, including without limitation, any applicable Data Protection Law and the End User Licence Agreement for Fresh Relevance Solution, and all applicable laws and regulations in any of its dealings with respect to the Fresh Relevance Solution; (c) prohibits the Customer End User from reselling or distributing the Fresh Relevance Solution; (d) protects Fresh Relevance's proprietary rights in the Fresh Relevance Solution to at least the same degree as the terms and conditions of the Agreement; (f) makes no representations or warranties on behalf of Fresh Relevance, except to the extent expressly permitted herein; (g) explicitly grants from the Customer and End Users to Fresh Relevance a non-exclusive license to store, copy and otherwise use the Customer Information and Personal Information with the Fresh Relevance Solution for the purposes of providing the Fresh Relevance Solution(h) specifies Fresh Relevance as an express intended third party beneficiary of the provisions in the Customer Agreement relating this Clause 4.5, to the extent permitted by applicable law; and (i) does not grant any rights to the Customer and End User beyond the scope of permitted under this Agreement.
- 4.6. Reseller shall not, and shall not permit any other individual to, access, use or perform any other act on or relating to any Fresh Relevance Properties except as expressly permitted by this Agreement and, in the case of any licensed Third-Party Materials, the applicable third-party license agreement.
- 4.7. Reseller shall be responsible for any use by Customers and End Users use of the Fresh Relevance Solution as if used by the Reseller directly. This provision shall survive any termination or expiration of this Agreement. If an End User breaches the terms of the End User Licence Agreement, Fresh Relevance shall have the right, in its sole discretion, to require Reseller to terminate such End User's access to the Fresh Relevance Solution and Fresh Relevance shall have the right to terminate this Agreement immediately with no obligation to refund any party any amounts received in connection therewith.
- 4.8. Reseller shall not and shall procure that Customers and End Users shall not (a) copy, modify or create any derivative works or improvements of the Fresh Relevance Solution; (b) reverse engineer, disassemble, decompile, decode or otherwise attempt to derive or gain access to the source code of the Fresh Relevance Solution or any part thereof; (c) bypass, breach or disable any security device, copy control or digital rights management tool, or other protection used by the Fresh Relevance Solution or permit, induce or assist any Person to do so; (d) license, purchase or otherwise procure access to the Fresh Relevance Solution from any Person other than Fresh Relevance or the authorised Reseller under this Agreement; (e) access or use the Fresh Relevance Properties for purposes of developing, producing, marketing, distributing, licensing or selling any product or service that may compete with the Fresh Relevance Solution; (f) remove, delete, add to, alter or obscure any Documentation or EULA, warranties, disclaimers, copyright, trademark, patent or other intellectual property, proprietary rights or other notices, or any marks, symbols or serial numbers (including any Fresh Relevance Marks) that appear on or in connection with the Fresh Relevance Solution as provided or directed by or on behalf of Fresh Relevance; (g) under or in connection with any part of this Agreement or its subject matter, perform any act that, or fail to perform any act the omission of which, infringes, misappropriates or otherwise violates any Intellectual Property Right or other right of any Person, or violates any applicable Law.

## 5. Obligations of Reseller and Fresh Relevance

- 5.1. Reseller Obligations. Production, Marketing and Distribution. At all times during the Term, Reseller shall, in accordance with the terms and conditions of this Agreement and at its own cost:
  - 5.1.1. distribute and sell access to the Fresh Relevance Solution solely as permitted under this Agreement and under the EULA and ensure that Customer and End Users receive, are aware of, and accept the terms and conditions of the EULA before accessing the Fresh Relevance Solution and promptly report to Reseller any actual or suspected EULA non-compliance;
  - 5.1.2. advertise, promote, market, distribute and sell access to the Fresh Relevance Solution to Customers using Reseller's best efforts to maximize the distribution of, licensing revenues from, and Customer satisfaction with the Fresh Relevance Solution;
  - 5.1.3. promptly give Fresh Relevance written notice of and investigate and address any notice, complaint or claim of which Reseller becomes aware concerning any data security breach, personal injury, property damage or other injury alleged to have been caused, in whole or in part, by the Fresh Relevance Solution, any use of the Fresh Relevance Solution, or any act or omission of Reseller under or in connection with this Agreement;
  - 5.1.4. conduct business in accordance with applicable Law and in a manner that is consistent with good business practice and reflects favorably at all times on the Fresh Relevance Solution and the good name, goodwill and reputation of Fresh Relevance; and
  - 5.1.5. shall comply and shall ensure Customers and End Users comply with Applicable Data Protection Law.
- 5.2. As a reseller of the Fresh Relevance Solution, Reseller warrants and represents that it will have obtained authorisation from the Data Subject or appropriate authorised representative in accordance with the Applicable Data Protection Laws or that it has the right to obtain the Personal Data of the Data Subject under some other applicable authority under the Applicable Data Protection Laws prior to processing Personal Data and prior to submitting the same Personal Data to Fresh Relevance. Reseller represents and warrants that it is lawfully authorised to engage Fresh Relevance to process the Personal Data as per the terms of this Agreement in order to provide the Products and perform the Services to the Reseller, Customers and End Users.
- 5.3. Fresh Relevance Obligations.
  - 5.3.1. Subject to and conditioned on Reseller's compliance with the terms and conditions of this Agreement, during the Term Fresh Relevance shall:
    - a) provide to Reseller such information as Reseller may reasonably request regarding the marketing of the Fresh Relevance Solution in the Territory;
    - b) allow Reseller to participate, at Reseller's own cost and expense, in any marketing programs, events or opportunities that Fresh Relevance may make generally available to its authorized resellers of the Fresh Relevance Solution in the Territory, provided that Fresh Relevance may modify or eliminate any such program, event or opportunity at any time;
    - c) provide such Marketing Materials as Fresh Relevance, in its sole discretion, may deem appropriate for Reseller's marketing of the Fresh Relevance Solution in accordance with this Agreement; and
  - 5.3.2. Fresh Relevance shall at all times comply with its obligations under Applicable Data Protection Law.
- 5.4. Without prejudice to all other remedies of Fresh Relevance, the Reseller shall defend, indemnify and hold harmless Fresh Relevance, its officers, directors and employees against all claims, actions and proceedings, losses, damages, fines, charges and penalties (financial or otherwise), expenses and costs directly or indirectly arising out of or in connection with a breach by the Reseller, Customer or End Users of the terms of this Agreement and (iii) Reseller's marketing, installation, sale, payment, and/or support in connection with the Fresh Relevance Solution and/or Reseller's Customer Agreements.

- 5.5. If applicable, once executed, the terms of the Fresh Relevance Data Protection Addendum (available here: [https://www.freshrelevance.com/images/uploads/blog/GDPR\\_Data\\_Processing\\_Addendum\\_\(1\).pdf](https://www.freshrelevance.com/images/uploads/blog/GDPR_Data_Processing_Addendum_(1).pdf)) are incorporated into and form part of the terms of this Agreement.
6. Payment.
- 6.1. Expenses. Except where otherwise expressly provided in this Agreement, each party is solely responsible and liable for all costs and expenses it incurs in entering into and performing this Agreement.
- 6.2. Taxes. All amounts payable by Reseller under this Agreement are exclusive of taxes and similar assessments. Reseller is responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state or local governmental or regulatory authority on any amounts payable by Reseller hereunder, other than any taxes imposed on Fresh Relevance's income.
- 6.3. Payment. Reseller shall make all payments when due under this Agreement as follows:
- 6.3.1. Payment terms are as in this Clause 6.3, unless agreed otherwise in the Order Form.
- 6.3.2. within thirty (30) days following the end of each calendar month of the (each, a "**Reporting Period**") Reseller shall pay Fresh Relevance all amounts accrued during such Reporting Period;
- 6.3.3. Reseller shall pay Fresh Relevance for all fees, reimbursable expenses and other amounts payable under this Agreement within thirty (30) days after receipt of Fresh Relevance's invoice;
- 6.3.4. Reseller shall make all payments in US dollars to the address or account specified in Exhibit 1, or such other address or account as Fresh Relevance may specify in writing from time to time; and
- 6.3.5. Reseller shall pay all amounts due under this Agreement without setoff, deduction, recoupment or withholding of any kind, whether under this Agreement, applicable Law or otherwise and whether relating to Fresh Relevance's breach, bankruptcy or otherwise. Reseller bears all credit risk regarding, and is solely responsible for collecting payment for, all sales and distribution of access to the Fresh Relevance Solution. Reseller's inability or failure to collect the purchase price for access to the Fresh Relevance Solution does not affect Reseller's obligation to pay Fresh Relevance in strict accordance with this **Clause 6**.
- 6.4. Late Payment. If Reseller fails to make any payment when due then, in addition to all other remedies that may be available:
- 6.4.1. Fresh Relevance may charge interest on the past due amount at the rate of 1.5% per month calculated daily and compounded monthly or, if lower, the highest rate permitted under applicable Law;
- 6.4.2. Reseller shall reimburse Fresh Relevance for all costs incurred by Fresh Relevance in collecting any late payments or interest, including legal fees, court costs and collection agency fees; and
- 6.4.3. if payments remain overdue for thirty (30) days, Fresh Relevance may disable, or withhold, suspend or revoke its grant of a license of, or performance of services relating to, the Fresh Relevance Solution until all past due amounts and interest thereon have been paid, without incurring any obligation or liability to Reseller, Customer, End User or any other third party by reason of any such action.
- 6.5. Recordkeeping and Reporting. Reseller shall maintain books, records and accounts of all transactions and activities covered by this Agreement and permit full examination thereof by Fresh Relevance and its representatives on reasonable notice.
7. Maintenance, Support and Training.

- 7.1. Customer Support. Reseller is solely responsible for providing First Level Technical Support to Customers for the Fresh Relevance Solution. Reseller shall:
  - 7.1.1. ensure that an adequate number of trained, capable and qualified Reseller technical personnel with sufficient knowledge of the Fresh Relevance Solution are available to serve as the primary points of contact for Customers' requests for First Level Technical Support for, and to effectively and efficiently assist Customers' operation of, the Fresh Relevance Solution;
  - 7.1.2. timely respond to existing and prospective Customers' inquiries and requests regarding the general operation and use of the Fresh Relevance Solution, including: (i) providing general information and installation, configuration and integration support on standard protocols and features of the Fresh Relevance Solution; (ii) collecting relevant technical problem identification information; (iii) providing assistance to Customers in the diagnosis and correction of problems encountered in using the Fresh Relevance Solution; and (iv) acting as a liaison between the Customer and Fresh Relevance in matters that Fresh Relevance determines in its sole discretion require Fresh Relevance's participation;
  - 7.1.3. offer to Customers all other First Level Technical Support services for the Fresh Relevance Solution as set forth under the terms and conditions of a written maintenance and support services agreement on terms approved by Fresh Relevance in advance.
- 7.2. Fresh Relevance shall provide Second Level Support as set out in Exhibit 3.
8. Confidential Information
  - 8.1. From time to time during the Term, either party may disclose or make available to the other party information about its business affairs, products, confidential intellectual property, trade secrets, third-party confidential information, and other sensitive or proprietary information, whether orally or in written, electronic, or other form or media/in written or electronic form or media, and whether or not marked, designated or otherwise identified as "confidential" (collectively, "**Confidential Information**").
  - 8.2. Confidential Information does not include information that, at the time of disclosure is: (a) in the public domain; (b) known to the receiving Party at the time of disclosure; (c) rightfully obtained by the receiving party on a non-confidential basis from a third party; or (d) independently developed by the receiving party.
  - 8.3. The receiving party shall not disclose the disclosing party's Confidential Information to any person or entity, except to the receiving party's employees who have a need to know the Confidential Information for the receiving party to exercise its rights or perform its obligations hereunder.
  - 8.4. Notwithstanding the foregoing, each party may disclose Confidential Information to the limited extent required (i) in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the party making the disclosure pursuant to the order shall first have given written notice to the other party and made a reasonable effort to obtain a protective order; or (ii) to establish a party's rights under this Agreement, including to make required court filings.
  - 8.5. On the expiration or termination of the Agreement, the receiving party shall promptly return to the disclosing party all copies, whether in written, electronic, or other form or media, of the disclosing party's Confidential Information, or destroy all such copies and certify in writing to the disclosing party that such Confidential Information has been destroyed.
  - 8.6. Each party's obligations of non-disclosure with regard to Confidential Information are effective as of the Effective Date and will expire five years from the date first disclosed to the receiving Party; provided, however, with respect to any Confidential Information that constitutes a trade secret (as determined under applicable law), such obligations of non-disclosure will survive the termination or expiration of this Agreement for as long as such Confidential Information remains subject to trade secret protection under applicable law.

## 9. Intellectual Property Rights.

9.1. Intellectual Property Ownership. All right, title and interest in and to the Fresh Relevance Properties and Third-Party Materials, including all Intellectual Property Rights therein, are and will remain, respectively, with Fresh Relevance and the respective rights holders in the Third-Party Materials. Reseller has no right or license with respect to any Fresh Relevance Properties or Third Party Materials except as expressly licensed under Clause 3.1, Clause 3.3, or the applicable third-party license, in each case subject to the requirements and restrictions set forth in this Agreement. All other rights in and to the Fresh Relevance Properties and Third-Party Materials are expressly reserved by Fresh Relevance and the respective third-party licensors. Reseller hereby unconditionally and irrevocably assigns to Fresh Relevance or Fresh Relevance's designee, its entire right, title and interest in and to any Intellectual Property Rights that Reseller may acquire in or relating to any of the Fresh Relevance Properties (including any rights in derivative works or patent improvements relating thereto), whether acquired by operation of law, contract, assignment or otherwise.

## 10. Term and Termination.

10.1. Initial Term. The initial term of this Agreement commences as of the Effective Date and, unless terminated earlier pursuant to any of the Agreement's express provisions, will continue in effect until one (1) year from such date (the "Initial Term").

10.2. Renewal Term. This Agreement will automatically renew for additional successive one (1) year terms unless earlier terminated pursuant to any of the Agreement's express provisions or either party gives the other party written notice of non-renewal at least sixty (60) days prior to the expiration of the then current term (each a "Renewal Term" and, collectively, together with the Initial Term, the "Term").

## 11. Termination. In addition to any other express termination right set forth elsewhere in this Agreement, during the Term:

11.1. either party may without cause, and without incurring any obligation, liability or penalty by reason of such termination, terminate all or any of: (i) this Agreement; (ii) the rights and licenses granted by the parties hereunder; or (iii) any services to be performed under this Agreement, in each of the foregoing cases by providing at least thirty (30) days' prior written notice to the other party.

11.2. Fresh Relevance may terminate this Agreement, effective on written notice to Reseller, if: (i) Reseller fails to pay any amount when due hereunder, and such failure continues for more than thirty (30) days after Fresh Relevance's delivery of written notice thereof; or (ii) there have been three (3) or more such payment failures in the preceding twelve (12) month period, regardless of whether any such failures were timely cured; or (iii) Reseller undergoes a Change of Control; or (iv) Reseller breaches any of its obligations under Clause 2, Clause 3.3, Clause 4, Clause 5.1, Clause 8, or Clause 9.

11.3. Either party may terminate this Agreement, effective on written notice to the other party, if the other party materially breaches this Agreement, and such breach: (i) is incapable of cure; or (ii) being capable of cure, remains uncured thirty (30) days after the non-breaching party provides the breaching party with written notice of such breach.

11.4. Either party may terminate this Agreement, effective immediately, if an Insolvency Event occurs in respect of the other party.

## 12. Effect of Expiration or Termination.

### 12.1. Upon any expiration or termination of this Agreement:

12.1.1. the terms of each EULA shall survive in accordance with its terms;

12.1.2. Fresh Relevance shall be entitled to approach Customers with a view to contracting directly with the relevant Customer(s) and to provide the Fresh Relevance Solution to the Customer(s) directly without restriction.

- 12.1.3. Reseller shall immediately cease to represent itself as a reseller of Fresh Relevance's Fresh Relevance Solution, and otherwise desist from all conduct or representations that might lead the public or trade to believe that Reseller is authorized by Fresh Relevance to sell or distribute access to the Fresh Relevance Solution;
- 12.1.4. all licenses granted to Reseller hereunder will also expire or terminate unless Fresh Relevance otherwise approves an extension of any such licence in writing;
- 12.1.5. Reseller shall cease all use of the Fresh Relevance Solution and other Fresh Relevance Properties, and all copies thereof, in whole and in part, including in any production, marketing, distribution, licensing, sale, maintenance, support, or use of the Reseller Products;
- 12.1.6. Reseller shall within thirty (30) days after such expiration or termination certify to Fresh Relevance in a written instrument signed by Reseller's duly authorised executive officer that it has complied with the requirements of this Clause 12.1.6.
- 12.2. Notwithstanding the provisions of clause 12.1 above, when this Agreement terminates, the parties agree that in relation to Customers the parties shall:
- 12.2.1. continue to provide Support Services to Customers without any reduction in the service level for a period of 30 days;
- 12.2.2. keep their relevant computer systems operating to allow Customers to continue to use and receive the Products as set out in clause 12.2.1 above;
- 12.2.3. temporarily grant any licences which are required for 12.2.1 and 12.2.2 above; and
- 12.2.4. negotiate in good faith to try and reach an agreement on the terms under which Customers may continue using the Products after expiry of the period set out in clause 12.2.1 above, subject to the Reseller continuing to pay fees to Fresh Relevance for any such period agreed in each individual case.
- 12.3. Surviving Terms. The provisions set forth in the following Clauses, and any other right or obligation of the parties in this Agreement that, by its nature, should survive termination or expiration of this Agreement, will survive any expiration or termination of this Agreement: 3.4, 4.2, 6.4, 8, 9, 12, 13, 14, 15, 17, 18.2, 18.3, 18.5, 18.7, 18.8 and 18.9.
13. Representations and Warranties.
- 13.1. Mutual Representations and Warranties. Each party represents and warrants to the other party that:
- 13.1.1. it is duly organized, validly existing and in good standing as a corporation or other entity under the laws of the jurisdiction of its incorporation or other organization;
- 13.1.2. it has the full right, power and authority to enter into, and to perform its obligations and grant the rights and licenses it grants or is required to grant under this Agreement;
- 13.1.3. the execution of this Agreement by its representative whose signature is set forth at the end of this Agreement has been duly authorized by all necessary corporate or organizational action of such party; and
- 13.1.4. when executed and delivered by both parties, this Agreement will constitute the legal, valid and binding obligation of such party, enforceable against such party in accordance with its terms.
- 13.2. Reseller warrants and represents that it is authorised to permit Fresh Relevance to process the Personal Data as set out in this Agreement and the Data Protection Policy at Exhibit 3 and has obtained all required consents and permissions in respect of the same.

- 13.3. Disclaimer of warranties. Except as expressly and specifically provided in this Agreement all warranties, representation, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this Agreement and from Fresh Relevance's supply of its Products and Services, including the Fresh Relevance Solution. All Fresh Relevance Products and Services are provided "as is" and Fresh Relevance makes no warranty of any kind that the Fresh Relevance Products and Services, including the Fresh Relevance Solution, will meet Reseller's or other persons' requirements, operate without interruption, achieve any intended result, be compatible or work with any software, system or other services, or be secure, accurate, complete, free of harmful code or error free. All Third-Party Materials are provided "as is" and any representation or warranty of or concerning any Third-Party Materials is strictly between Reseller and the third-party owner or distributor of the Third-Party Materials.
14. Indemnification.
- 14.1. Fresh Relevance shall defend Reseller against any claim, demand, suit, or proceeding ("**IPR Claim**") made or brought against Reseller by a third party alleging that the use of the Fresh Relevance Solution as permitted under the terms of this Agreement infringes or misappropriates the intellectual property rights of a third party, and shall indemnify Reseller for any damages finally awarded against Reseller and for reasonable attorney's fees incurred by Reseller in connection with any such IPR Claim; provided, that Reseller (a) promptly gives Fresh Relevance written notice of the IPR Claim; (b) gives Fresh Relevance sole control of the defense and settlement of the Claim (provided that Fresh Relevance may not settle any IPR Claim unless the settlement releases Reseller of all liability); and (c) provides to Fresh Relevance all reasonable assistance, at Fresh Relevance's expense.
- 14.2. Fresh Relevance will have no liability, responsibility or obligations under the indemnity at Clause 14.1 to the extent the IPR Claim is based on or arises from the Reseller's (a) use of the Fresh Relevance Solution by Reseller, Customers or End Users in breach of the terms of this Agreement or the EULA, (b) use of the Fresh Relevance Solution by Reseller, Customers or End Users outside of the scope of the licences granted under this Agreement, (c) any modification of the Fresh Relevance Solution not authorised by Fresh Relevance in writing, and/or (d) use of Fresh Relevance Solution in combination with Reseller Products, or Third Party Materials or any other third party products or services.
- 14.3. Mitigation. If the Fresh Relevance Solution is, or in Fresh Relevance's opinion is likely to be, claimed to infringe, misappropriate or otherwise violate any third-party Intellectual Property Right, or if Reseller's ability to resell access to the Fresh Relevance Solution is enjoined or threatened to be enjoined, Fresh Relevance may, at its option and sole cost and expense (i) obtain the right for Reseller to continue to market and sell access to the Fresh Relevance Solution materially as contemplated by this Agreement, (ii) seek to make the Fresh Relevance Solution (as so modified or replaced) non-infringing while providing materially equivalent features and functionality, in which case such modifications or replacements will constitute the Fresh Relevance Solution under this Agreement, and/or (iii) by written notice to Reseller, terminate this Agreement, and require Reseller to immediately cease all distribution and sale of access to the Fresh Relevance Solution.
- 14.4. This Clause 14 states Fresh Relevance's sole and exclusive liability, and Reseller's sole and exclusive remedy, for the actual or alleged infringement or misappropriation of any third-party intellectual property rights by the Fresh Relevance Solution.
15. Limitation of Liability
- 15.1. 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, liability arising out of Reseller's breaches of Clause 6 (Payment and Fees), either Party's indemnity obligations, or any other liability which cannot be excluded or limited under law.
- 15.2. Subject to Clause 15.1, in no event shall either party be liable in contract, tort (including negligence for breach of statutory duty) or otherwise howsoever for any (a) loss of profit; or (b) loss of business; or (c) loss of goodwill or depletion of goodwill; or (d) loss of contracts; or (e) loss of revenues; or (f) loss or corruption of data or information; or (g) loss of anticipated savings; or (h) pure economic loss, irrespective of whether the losses at (a) through (h) are direct or indirect, and/or for any special, 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.

15.3. Subject to Clause 15.1, in no event shall either party's aggregate, cumulative liability arising out of or related to this Agreement, whether in contract, tort, or under any other theory of liability exceed the total amount paid by Reseller to Fresh Relevance in the twelve (12) months preceding the event giving rise to the claim.

15.4. The parties acknowledge that the prices have been set, and the Agreement is entered into in reliance upon the limitations of liability, remedies, damages, and the disclaimers of warranties and damages set forth herein, and that all such limitations and exclusions form an essential basis of the bargain between the parties.

## 16. Force majeure.

16.1. No Breach or Default. 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 term of this Agreement, (except for any obligations to make payments), when and to the extent such failure or delay is caused by any circumstances beyond such party's reasonable control (a "**Force Majeure Event**"), including strikes, riots, fires, acts of God, war, terrorism, and governmental action and/or any other cause beyond the reasonable control of the party whose performance is affected (including mechanical, electronic, hosting, internet service provider or communications failure by the Party or its suppliers). In the event of any failure or delay caused by a Force Majeure Event, 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 substantially uninterrupted for a period of thirty (30) days or more.

## 17. Notices

All notices, requests, consents, claims, demands, waivers and other communication under this Agreement will have legal effect only if in writing in English and addressed to a party as set out below (or to such other address or such other person that such addressee party may designate from time to time). Notices sent in accordance with this Clause 17 will be deemed effectively given: (a) when received, if delivered by hand, with signed confirmation of receipt; (b) when received, if sent by a nationally recognized overnight courier, signature required; (c) one day after being sent, if by facsimile or email, (in each case, with confirmation of transmission), and (d) on the fifth (5<sup>th</sup>) day after the date mailed by certified or registered mail, return receipt requested, postage prepaid.

### If to Fresh Relevance:

- Address: For the attention of Mike Austin: 6 Liberty Square, Unit #248, Boston, MA 02109
- Email: [Sales@freshrelevance.com](mailto:Sales@freshrelevance.com)

If to Reseller: As stated on the Order Form or to the postal or email address of Reseller's primary contact with Fresh Relevance.

## 18. General

18.1. **Assignment and Subcontracting.** Reseller shall not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance, under this Agreement, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without Fresh Relevance's prior written consent, which consent Fresh Relevance shall give or withhold in its sole discretion. For purposes of the preceding sentence, and without limiting its generality, any merger, consolidation or reorganization involving Reseller (regardless of whether Reseller is a surviving or disappearing entity) will be deemed to be a transfer of rights, obligations or performance under this Agreement for which Fresh Relevance's prior written consent is required. No delegation or other transfer will relieve Reseller of any of its obligations or performance under this Agreement. Any purported assignment, delegation or transfer in violation of this Clause 18.1 is void. This Agreement is binding upon and inures to the benefit of the parties hereto and their

respective permitted successors and assigns. Fresh Relevance may engage subcontractors or other third parties to perform certain duties under the Agreement, in accordance with the terms of this Agreement, provided that Fresh Relevance remains responsible for all of its obligations under the Agreement.

- 18.2. **Equitable Relief.** Each party acknowledges and agrees that a breach or threatened breach by such party of any of its obligations under Clause 8 or Clause 12 in the case of Reseller, Reseller's obligations under Clause 2.3, Clause 3.3, Clause 4 or Clause 5.1 would cause the other party irreparable harm for which monetary damages would not be an adequate and agrees that, in the event of such breach or threatened breach, the other party will be entitled to equitable relief, including a restraining order, an injunction, specific performance and any other relief that may be available from any court, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity or otherwise.
- 18.3. **Entire Agreement.** These Agreement together with any documents expressly referred to in this Agreement contains the entire agreement between Fresh Relevance and the Reseller and supersede and replace any prior written or oral agreements, representations or understandings between the Parties relating to the subject matter of this Agreement. In the event of a conflict between the terms and conditions of the Agreement and any Order Form the terms and conditions of the Agreement shall prevail except to the extent the conflict pertains to product or service description (e.g., type, quantity, usage volume) or pricing information, in which case the terms of the Order Form, as applicable, shall prevail. 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 terms of the Agreement.
- 18.4. **Further Assurances.** Upon a party's reasonable request, the other party shall, at the requesting party's sole cost and expense, execute and deliver all such documents and instruments, and take all such further actions, necessary to give full effect to this Agreement.
- 18.5. **Governing Law and Jurisdiction.** This Agreement is governed by and construed in accordance with the internal laws of the Commonwealth of Massachusetts without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any jurisdiction other than those of the Commonwealth of Massachusetts. Any legal suit, action or proceeding arising out of or related to this shall be instituted in the federal courts of the United States or the courts of the Commonwealth of Massachusetts in each case located in Boston, Massachusetts, and each party irrevocably submits to the jurisdiction of such courts in any such suit, action or proceeding. Service of process, summons, notice or other document by mail to such party's address set forth herein shall be effective service of process for any suit, action or other proceeding brought in any such court.
- 18.6. **Public Announcements.** Neither party shall issue or release any announcement, statement, press release or other publicity or marketing materials relating to this Agreement or, in the case of Reseller, except as expressly permitted under Clause 3.3, otherwise use the other party's trademarks, service marks, trade names, logos, domain names or other indicia of source, affiliation or sponsorship, in each case, without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed, provided, however, the Fresh Relevance may, without requiring Reseller's consent, include Reseller's name and/or other indicia in its lists of Fresh Relevance's current or former authorized resellers in promotional and marketing materials.
- 18.7. **Relationship of the Parties.** The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.
- 18.8. **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.
- 18.9. **Third Parties.** No term of the Agreement by a person who is not a party to the Agreement.

## Resell er Agreement (US)

18.10. **Variation.** Unless explicitly permitted under the terms of this Agreement, no amendment to or variation of this Agreement is effective unless it is in writing and signed by each party.

18.11. **Waiver.** The waiver by either party of any breach of any provision of the Agreement does not waive any other breach. The failure of any party to insist on strict performance of any covenant or obligation in accordance with the Agreement will not be a waiver of such party's right to demand strict compliance in the future, nor will the same be construed as a novation of the Agreement.

18.12. **Counterparts.** This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

SIGNATURE PAGE TO FOLLOW

# Reseller Agreement (US)

**ON BEHALF OF FRESH RELEVANCE, INC**

**ON BEHALF OF [.....]:**

By: .....

By: .....

Print Name: .....

Print Name: .....

Title: .....

Title: .....

## COMMERCIAL SCHEDULE

### EXHIBIT 1

Unless agreed otherwise in writing, the fee that Reseller pays to Fresh Relevance for each contract is set by the Fresh Relevance Reseller Price List.

The Fresh Relevance Reseller Price List is subject to change from time to time in Fresh Relevance's sole discretion. These changes will affect each contract when the contract is next amended, or when it next renews.

The current form of the Fresh Relevance Reseller Price List is available from Fresh Relevance sales.

**Reseller Discount:**

Your discount of X% is applied to the amounts below.

**Reseller Territory:**

Reseller is allowed to resell Fresh Relevance in the territory below:

## END USER LICENSE AGREEMENT (EULA)

### EXHIBIT 2

Fresh Relevance maintains a EULA, which is subject to change from time to time in Fresh Relevance's sole discretion.

You agree that:

1. Your log-in details are personal to you and you will keep them confidential and not share them.
2. If you suspect unauthorized use of your login details, you will immediately change your password and notify your support contact.
3. You will inform data subjects, such as shoppers, about how their data will be used: this information will be on or linked from any each data collection form, and on your privacy or terms and conditions page.
4. You will only use their personal data in the ways that you told them when it was collected. Otherwise you will keep personal data confidential.
5. If you suspect a personal data breach, you will immediately notify your support contact.
6. You will cooperate with your support contact if they are investigating any complaint, data breach, or other problem.

You agree that you will not

1. reverse engineer, disassemble, decompile, decode or otherwise attempt to derive or gain access to the source code of the Fresh Relevance platform or services;
2. use the Fresh Relevance platform or services in connection with any fraudulent or harmful purpose or activity, in a manner that causes or is likely to cause offense, in a manner that infringes the intellectual property rights of any third party or that violates any applicable law.
3. use the Fresh Relevance platform or services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or malicious code.
4. bypass, breach or disable any security device, copy control or digital rights management tool, or other protection used by the Fresh Relevance Solution or permit, induce or assist anyone else to do so
5. interfere with or disrupt the integrity or performance of the Fresh Relevance platform or services
6. access or use the Fresh Relevance Properties for purposes of developing, producing, marketing, distributing, licensing or selling any product or service that may compete with the Fresh Relevance Solution.

### EXHIBIT 3

#### Service Levels: Second Line Technical Support

#### Technical Support

Fresh Relevance provides a manned telephone line and email support for Second Line Technical Support (as defined in the Agreement) issues relating to the Fresh Relevance Platform during the hours of 8am to 6pm Eastern time Monday to Friday, excluding U.S. federal holidays (“**Regular Support Hours**”).

#### **Technical Support Response Times**

Fresh Relevance will send an automated email with a dedicated ticket number immediately and a support agent will respond within eight business hours. Phone calls will be prioritized. During busy periods phone calls may be diverted to voicemail. Any messages will be responded to within eight business hours during Regular Support Hours. The Technical support team can be contacted [support@freshrelevance.com](mailto:support@freshrelevance.com) and on 1-617-207-0156 (US).

#### **Fresh Relevance Platform Uptime**

Fresh Relevance will use commercially reasonable efforts to make the Fresh Relevance Platform available on a 24/7/365 basis with a minimum availability of 95% excluding system maintenance (in 30-day months, this is 684 hours uptime, 36 hours downtime) but strive for 99% or higher (in 30-day months, this is 712.8 hours of uptime, 7.2 hours downtime).

#### **Fresh Relevance Platform Monitoring**

The Fresh Relevance Platform is designed to be highly resilient, but it monitored on a 24/7/365 basis, using both internal and external systems from multiple locations around the world, to pick up and respond to any issues quickly and accurately.

#### **Fresh Relevance Platform Backups**

All parts of the **Fresh Relevance Platform** which store Customer data are designed to be highly available. Fresh Relevance also takes regular backups of the System which are held encrypted, offsite and stored in multiple locations around the world. Access is restricted to authorized staff only and controlled by the Technical Operations Manager.

#### **Fresh Relevance Platform Throughput of Emails**

The **Fresh Relevance Platform** is designed to deliver emails in real time but utilizes external email service providers (typically the Customer's own email service provider (ESP)) to deliver personalized emails to recipients. Fresh Relevance has no control over throughput, performance and uptime of external systems and therefore cannot be held responsible for any delays that may result from the ESP or other external systems.

#### **Planned Downtime/Unplanned Downtime**

Fresh Relevance shall give at least 8 hours electronic notice of planned downtime to the extent practicable.

If Fresh Relevance experiences prolonged unplanned downtime, the Fresh Relevance support team will endeavor to contact all affected Customers to advise of the impact to the Customer.