



## Master Services Agreement

This Master Services Agreement (the “Agreement”), dated \_\_\_\_\_ (the “Agreement Effective Date”), between ConnectedFresh Company, a Delaware corporation (“ConnectedFresh”), having a principal place of business at 251 Little Falls Dr, Wilmington, DE 19808, and \_\_\_\_\_, a [entity] \_\_\_\_\_ (“Customer”), having a principal place of business at [address] \_\_\_\_\_.

### 1. Services and Obligations.

- 1.1. ConnectedFresh shall provide the following service (“Service”): (a) deliver to Customer’s premises set forth on Exhibit A attached hereto (“Premises”) a preconfigured wireless sensor and a gateway device (“Equipment”), (b) remotely train Customer in the use of the Equipment, and (c) provide Customer access to the encrypted data delivered by the Equipment to ConnectedFresh’s cloud (“Data”). Service and billing commence when the Equipment is activated (the “Effective Date”).
- 1.2. Customer agrees throughout the Term (as defined below) to: (a) properly mount and maintain the Equipment; (b) pay the Fees (as defined below) to ConnectedFresh for the Services in accordance with this Agreement, (c) maintain an Internet connection for the Equipment to connect via an ethernet cable or reliable private WiFi network, with no restrictions, with secure credentials shared and kept up-to-date with ConnectedFresh, to allow ConnectedFresh to provide the Service; and (d) immediately report to ConnectedFresh all faulty or damaged Equipment and arrange its replacement or repair in accordance with this Agreement so that ConnectedFresh can provide the Services.
- 1.3. ConnectedFresh may access Customer’s account and Data from time to time, as ConnectedFresh deems necessary, for purposes of support, routine maintenance and upgrades, administration and invoicing related to the Services and Customer’s use of the Equipment. Customer acknowledges that such activities may result in limited downtime with respect to the use of the Service.

### 2. Equipment.

- 2.1. Prior to payment of the Fees (defined below), title to the Equipment remains with ConnectedFresh, and risk of loss in the Equipment passes from ConnectedFresh to Customer upon delivery of the Equipment to the Premises. Upon payment of the Fees by Customer to ConnectedFresh, title in the Equipment passes to Customer.
- 2.2. If any item of Equipment becomes defective, ConnectedFresh’s sole responsibility shall be to remotely diagnose the issue to the best of its abilities. ConnectedFresh may, at its full and complete discretion, offer a hardware replacement program to Customer. The obligation to

- replace or repair under this Section 2 excludes the following, without limitation: (a) damage to the Equipment caused by Customer; (b) damage to the Equipment caused by a person who is not authorized by ConnectedFresh to carry out service or maintenance work; (c) damage to the Equipment caused by power surges, power outages, faulty fuses, lightning, flood, fire, or a Force Majeure event (as defined below); and (d) loss or theft of the Equipment following such Equipment's delivery to Customer.
- 2.3. ConnectedFresh may provide Customer with mounting hardware to assist with installing Equipment. ConnectedFresh assumes no liability resulting from handling or using such mounting hardware for any reason whatsoever, including injury to persons or damage to property including Equipment. This mounting hardware is not designed, manufactured by, manufactured for, or otherwise associated in any way with ConnectedFresh. ConnectedFresh assumes no responsibility for its usefulness and is not obligated to replace, repair, or supply additional mounting hardware to Customer.
  - 2.4. Customer acknowledges that the software with respect to the Services and presentation of Data constitutes valuable trade secrets of ConnectedFresh. Customer agrees that Customer shall not, and shall not permit any third party, to (i) sublicense, export, sell, lease, loan, or otherwise transfer the Equipment to any third party during the Term; (ii) remove or alter any copyright notices or other notices (whether legal, proprietary, or otherwise) included in the Equipment, or modify any logos of ConnectedFresh; (iii) use the Equipment, attempt to directly or indirectly connect to the Equipment's underlying software except as expressly permitted; (iv) use the Equipment to transmit malicious code, infringing, libelous, or otherwise unlawful or tortious material or to store or transmit material in violation of third-party privacy rights; (v) access the Equipment in order to build a competitive product or service; (vi) attempt to infringe ConnectedFresh's intellectual property rights; or (xi) use the Equipment or Data for any illegal purposes.

### **3. Fees.**

- 3.1. Customer shall pay the one-time fee for the gateway (the "Gateway Fee") and the one-time fee for any devices (the "Device Fee") set forth on Exhibit A to ConnectedFresh promptly following the Agreement Effective Date.
- 3.2. Customer shall pay to ConnectedFresh for the Services as follows without any offset or reduction: (a) a nonrefundable monthly sensor subscription set forth on Exhibit A from the Effective Date (the "Sensor Subscription" and together with the Gateway Fee, Device Fee, or other fees listed in Exhibit A; sometimes referred to as the "Fees"), (b) all costs associated with transmitting and communicating Data via the Equipment over Customer's Internet connection, (c) any other Fees payable pursuant to Section 3.4 of this Agreement; and (d) all sales and use tax or other similar taxes for Customer's use of the Services.
- 3.3. Customer shall pay the Fees monthly in advance in accordance with the due date and in the manner shown on the invoice delivered by ConnectedFresh to Customer.
- 3.4. Customer may incur the following additional fees: (a) any fee expressly provided for under this Agreement for any Service that is not included in the Sensor Subscription; (b) fees, if any, for technical assistance provided by remote access (the fees will be charged based on duration of any assistance and the time of day or night and the amount or rate of such fees will be notified to Customer in advance of the fee being incurred); (c) restarting the Service after disconnection and/or decommissioning the Equipment if this Agreement terminates for any reason or if it expires; (d) re-programming the Equipment if Customer changes its

Internet connection, (e) any additional services purchased by Customer during the Term; and (f) all costs associated with communicating Data to ConnectedFresh's cloud.

- 3.5. The primary scope of this Agreement is to provide the Service set forth in Section 1.1 of this Agreement. Work outside the scope of this Agreement shall include (i) if an enhancement is requested by the Customer, or (ii) if Equipment breaks as a result of Customer actions, and Customer requests support, or (iii) if Customer needs assistance as a result of Customer's actions (e.g. if Customer changed their environment, including changes to any credential or firewall restrictions, changes to operating systems or software of devices interacting with ConnectedFresh data, physical location of Equipment, or changes to the material, location or setup of Customer property that impact data transmission or signals). Support for any work outside the primary scope of this Agreement shall be billed at the hourly rate set forth in Exhibit A for Technical Service and Support, provided however, that Customer's consent shall be required prior to incurring any hourly support costs.
- 3.6. If Customer believes there is a mistake in the calculation of any Fee, it shall notify ConnectedFresh in writing within ten (10) business days after receiving notification of the Fee. If such written notice is not received by ConnectedFresh, the invoice will be deemed to be final and payable in full. ConnectedFresh will promptly investigate the matter and report back to Customer. Customer must pay the Fee including any disputed part by the due date for payment regardless of any mistake. If there is a mistake, ConnectedFresh will provide credit to the next applicable invoice(s).
- 3.7. The Fees are fixed for the Initial Term subject to clause 3.8. After the Initial Term, the Sensor Subscription and all other fees are subject to change at ConnectedFresh's discretion by providing Customer with 30 days written notice of any change to the Fees.
- 3.8. If at any point during the Term, a governmental authority or Customer's Internet connection or any other party imposes additional taxes or increases existing taxes, charges and/or fees then Customer will be responsible for paying those increased costs as part of the Fees.

#### **4. Term and Termination.**

- 4.1. The term of this Agreement shall commence on the Effective Date and shall continue on a month to month, quarterly, annual or other basis as specified on Exhibit A (the "Initial Term"), unless terminated earlier in accordance with the terms of this Agreement. At the expiration of the Initial Term (and any renewal thereof), this Agreement shall be automatically renewed for successive monthly periods (each a "Renewal Term"), unless either party terminates this Agreement at the expiration of the Initial Term (or any Renewal Term) by providing the other party with at least thirty (30) days prior written notice of its intent to terminate. The Initial Term and all Renewal Terms shall be referred to herein collectively as the "Term".
- 4.2. Without limiting any rights granted to Customer under statute, Customer may terminate this Agreement at the conclusion of the Initial Term and each successive 30 days thereafter by providing ConnectedFresh with at least 30 days' notice. Notice is required in writing.
- 4.3. At any time throughout the Term, ConnectedFresh can terminate this Agreement immediately by notice to Customer if Customer:
  - 4.3.1. does not pay any amount owing within five (5) days of the date on which the amount becomes payable;
  - 4.3.2. does not maintain an Internet connection or other requirement in order to facilitate the

transmission of Data from and to the Equipment to ConnectedFresh's cloud;

- 4.3.3. breaches any term of this Agreement and fails to remedy that breach within ten (10) days of receiving written notice from ConnectedFresh to do so; has become insolvent or has been dissolved or liquidated, filed or has filed against it, a petition, case or other proceeding under any bankruptcy laws, and such petition, case or proceeding if filed against it is not dismissed within 30 days of the filing; (ii) makes a general assignment for the benefit of creditors; or (iii) has a receiver, custodian, trustee or other person or entity exercising similar functions appointed for all or substantially all of its assets; or damages, misuses or has made a material alteration to the Equipment such that ConnectedFresh cannot provide the Service and fails to cure such default within five (5) days of receiving written notice from ConnectedFresh to do so.
- 4.3.4. Upon termination of the Agreement under Section 4.3, ConnectedFresh shall have the right to (a) immediately terminate the Services and disconnect the Equipment and transmission of Data to ConnectedFresh's cloud, (b) assert all of its rights and remedies under this Agreement, and (c) assert all of its rights and remedies under law or in equity.
- 4.4. If (i) Customer terminates this Agreement during the Term; or (ii) ConnectedFresh terminates this Agreement under clause 4.3, Customer must pay to ConnectedFresh the balance of Fees that would otherwise have been payable under this Agreement to the conclusion of the Term calculated at the current Fees charged to Customer.
- 4.5. During the Term, ConnectedFresh will use reasonable commercial efforts to store Data for up to three (3) years. Upon expiration or termination of this Agreement for any reason, and provided that Customer is not in breach of any terms or conditions of this Agreement including with respect to the payment of all Fees due from Customer to ConnectedFresh, Data shall be stored for thirty (30) days prior to being deleted and at Customer's written request within such 30-day period, such Data in ConnectedFresh's possession shall be exported in a commercially reasonable form to Customer.

## **5. Liability of ConnectedFresh.**

- 5.1. In no event shall ConnectedFresh be liable or responsible, for purposes of illustration and not limitation, the following: (a) Customer's misuse of the Equipment, including misplacement of the sensors, (b) malfunction of Equipment or the Equipment's failure to perform as intended for any reason whatsoever, including, without limitation, inaccurate readings, or the Equipment missing a ping connection, or for delayed or no delivery of alerts due to connectivity issues. Customer acknowledges that ConnectedFresh does not manufacture the hardware or any part of the hardware relating to the Equipment and Services. Customer may purchase Equipment and deliver it to ConnectedFresh for configuration for an additional fee. ConnectedFresh cannot guarantee that any particular type or brand of hardware is available at any time and may substitute other hardware at an adjusted price.
- 5.2. Customer acknowledges that the use of radio frequencies is controlled by the Federal Communications Commission and that changes in rules, regulations, and policies may necessitate discontinuing or altering use of such radio frequencies. Customer further acknowledges that radio frequency transmissions may be impaired or interrupted by physical objects, including metal and other signal blocking materials, atmospheric conditions, including electrical storms, power failures, or other conditions and events beyond the control of ConnectedFresh.

## **6. Customer Acknowledgements:**

- 6.1. Under terms of this Agreement, Customer expressly acknowledges and agrees that:
  - 6.1.1. the provision of the Equipment and Services is a risk management aid with respect to loss of products due to environmental factors. It is Customer's sole responsibility to act upon an alert based on agreed upon distribution lists. Customer can modify distribution lists and escalation paths, within limits, by contacting ConnectedFresh support;
  - 6.1.2. the Agreement is not intended as a policy of insurance nor a substitute for an insurance policy. Nothing in this Agreement shall constitute ConnectedFresh as an insurer;
  - 6.1.3. ConnectedFresh may vary these terms and conditions (including the Fees) from time to time after providing thirty (30) days written notice to Customer of any such change;
  - 6.1.4. ConnectedFresh may engage subcontractors to provide the Services;
  - 6.1.5. it is Customer's sole responsibility to disable and disconnect the Equipment upon expiration or termination of the Agreement. If the Equipment is not disabled and disconnected on expiration or termination of this Agreement, any use of the Equipment will be the sole liability of Customer; and
  - 6.1.6. ConnectedFresh shall be free to disclose its relationship with Customer to third parties that desire to use ConnectedFresh's Equipment and Services. ConnectedFresh shall have the right to use Customer's company logo in marketing, sales, promotional, and public relations materials and other communications in all forms of media including Internet, social media, web casts, websites, telecasts, and print media ("Media") to identify Customer as a customer of ConnectedFresh. Further, ConnectedFresh may develop and publish in such Media a case study highlighting the benefits provided by the Equipment and Services, which case study shall be subject to Customer's approval not to be unreasonably withheld, conditioned or delayed.

## **7. Indemnification**

- 7.1. Customer agrees to indemnify, defend and hold ConnectedFresh and its affiliates, subsidiaries, employees, officers, managers, directors, owners, members, manufacturers, agents, and representatives harmless from and against any and all liabilities, claims and costs, including reasonable attorneys' fees, incurred by ConnectedFresh in connection with any demand, claims, action, suit, or loss arising as a result of any use of the Equipment by Customer or any breach by Company of this Agreement. Customer shall not enter into any settlement agreement which assigns liability to or admits liability by ConnectedFresh without ConnectedFresh's written consent.

## **8. Privacy Rights**

- 8.1. Customer acknowledges and agrees that ConnectedFresh may collect personal information about Customer including from Customer's Equipment and that ConnectedFresh may use such personal information, without limitation:
  - 8.1.1. to assess any application by Customer for the Services and Customer's credit worthiness;
  - 8.1.2. to collect Fees that are overdue under this Agreement;

- 8.1.3. to provide the Services to Customer (including administration and the investigation or resolution of disputes relating to any Services provided to Customer);
  - 8.1.4. to provide information to Customer about other goods and services which ConnectedFresh or may offer to Customer;
  - 8.1.5. to other service providers such as subcontractors engaged by ConnectedFresh to assist ConnectedFresh in providing the Services to Customer; and
  - 8.1.6. as otherwise required by law.
- 8.2. ConnectedFresh owns and has the right to use anonymized Data collected or transmitted by the Equipment.
  - 8.3. Customer acknowledges that ConnectedFresh may receive and store contact information of Customer's employees that receive alerts or otherwise work with or have access to the Equipment and Services, including phone numbers of personal devices.

## 9. Miscellaneous

- 9.1. Waiver. The waiver by ConnectedFresh of a breach of or a default under any provision of this Agreement shall not be effective unless in writing and shall not be construed as a waiver of any subsequent breach of or default under the same or any other provision of this Agreement, nor shall any delay or omission on the part of ConnectedFresh to exercise or avail itself of any right or remedy that it has or may have hereunder operate as a waiver of any right or remedy.
- 9.2. Force Majeure. Except with respect to payment obligations hereunder, neither Party shall be deemed to be in default of or to have breached any provision of this Agreement to the extent that performance of its obligations or attempts to cure any breach are delayed or prevented as a result of any act of God, act of civil or military authorities, civil disturbance, war (declared or undeclared), strike or other labor dispute, fire, natural disaster, transportation contingency, pandemic, epidemic or other catastrophe, power or utility outage, interruption or unavailability of network carrier, failure of internet gateway or other internet intermediary or third party service provider, or any other occurrence that is beyond reasonably unforeseeable control. Should the force majeure event continue for a period of more than thirty (30) days, either Party shall have the right to terminate the affected Service(s) solely at the affected Premises.
- 9.3. Insurance. During the Term, Customer shall obtain and maintain industry standard insurance coverage against loss of its food and/or beverage products.
- 9.4. Entire Agreement and Amendment. This Agreement is the entire agreement of the parties with respect to the subject matter hereof and supersedes and merges all prior or contemporaneous representations, discussions, proposals, negotiations, conditions, communications and agreements, whether written or oral, between the parties relating to the subject matter hereof and all past courses of dealing or industry custom. No modification of or amendment to this Agreement shall be effective unless in writing and signed by each of the parties.
- 9.5. Severability. Should any provision of this Agreement be held to be void, invalid or inoperative, the remaining provisions of this Agreement shall not be affected and shall continue in effect, and the invalid provision shall be deemed modified to the least degree necessary to remedy such invalidity.

- 9.6. Notices. Notices and other communications shall be given in writing by electronic mail to the applicable address set forth in Exhibit B.
- 9.7. Assignment. Neither Party may assign, sell, transfer, delegate or otherwise dispose of, whether voluntarily or involuntarily, by operation of law or otherwise, this Agreement or any of its rights or obligations under this Agreement without the prior written consent of ConnectedFresh. Subject to the foregoing, this Agreement shall be binding upon and shall ensure to the benefit of the parties and their respective successors and permitted assigns.
- 9.8. Governing Law. This Agreement is to be construed in accordance with and governed by the laws of the State of New York, excluding its conflict of laws rules.
- 9.9. Dispute Resolution. Any dispute, claim or controversy arising out of or in connection with this Agreement (“Dispute”), except as for controversies or claims for which a provisional remedy or equitable relief is sought, shall be finally decided by arbitration in accordance with the Judicial Arbitration Mediation Service (“JAMS”) Comprehensive Arbitration Rules and Procedures (“Rules”) before one neutral arbitrator, appointed by agreement of the parties or, if no agreement can be reached, pursuant to the Rules. The arbitration shall be conducted in New York City. Any arbitration under this Agreement shall be confidential. No Party may make (or instruct the arbitrators to make) any public announcement with respect to the proceedings or decision of the arbitrators without the prior written consent of the other party. Any award rendered by the arbitrators shall be final, and judgment may be entered upon it in any court having jurisdiction. The existence of any Dispute, and any related resolution, mediation settlement or arbitration decision, shall be kept in confidence by the parties, except as required in connection with the enforcement of an arbitration decision or as otherwise required by applicable law. The arbitrators shall have the authority to grant any equitable or legal remedies, including entering preliminary or permanent injunctive relief; provided, however, that the arbitrators shall not have the authority to award (and the parties waive the right to seek an award of) punitive damages. The prevailing party in any such proceeding shall be entitled to an award of all reasonable costs and fees incurred in bringing such an action, including reasonable attorneys’ fees.
- 9.10. Counterparts. This Agreement may be executed (including by electronic signatures signatures) in counterparts, with the same effect as if the parties had signed the same document. Each counterpart so executed shall be deemed to be an original, and all such counterparts shall be construed together and shall constitute one Agreement.
- 9.11. Survival. Any provision of this Agreement which, by its nature, would survive termination or expiration of this Agreement will survive any such termination or expiration of this Agreement.
- 9.12. Review and Interpretation. Customer has read and understands each of the terms and conditions of this Agreement and has had an opportunity to consult with counsel before entering into this Agreement. In the event an ambiguity exists in any provision of this Agreement, such ambiguity is not to be construed by reference to any doctrine or statute calling for ambiguities to be construed against the drafter of the document.

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