

Freshly Commerce Terms and Conditions

Last updated March 15, 2024

ATTENTION! These terms and conditions (the “**Agreement**”) govern the license granted to you by Freshly Commerce Inc. (“**Freshly**”) to use the App. If you are entering into this agreement on behalf of a company or other legal entity, you represent that you have the authority to bind such entity. You agree that by accessing the App, you have read, understood, and agreed to be bound by all the terms of this Agreement. If you do not have such authority, or if you do not agree to all the terms and conditions in this agreement, you may not use the App. IF YOU DO NOT AGREE WITH ALL OF THESE LEGAL TERMS, THEN YOU ARE EXPRESSLY PROHIBITED FROM USING THE APP AND YOU MUST DISCONTINUE USE IMMEDIATELY.

YOU ARE RESPONSIBLE FOR YOUR COMPLIANCE WITH ALL APPLICABLE LAWS (AS DEFINED HEREIN) WITHIN YOUR PARTICULAR JURISDICTION OR INDUSTRY RELATED TO YOUR USE OF THE APP. IF YOUR ANTICIPATED OR ACTUAL USE OF THE APP WOULD VIOLATE ANY APPLICABLE LAW, YOU MAY NOT USE THE APP.

1. DEFINITIONS

“**Affiliate**” means an entity controlling, controlled by or under common control of a Party to this Agreement, for so long as such ownership and control exists.

“**Aggregated Statistics**” means data and information, related to your use of the App, that is used by Freshly in an aggregate and anonymized manner, including to compile statistical and performance information related to the provision and operation of the App.

“**App**” means the software plug-in provided by Freshly for your Shopify store account intended to provide innovative inventory management solutions, as more particularly described <https://apps.shopify.com/partners/freshly>, including but not limited to, the Freshly Inventory, Simple Bundles, and Simple Discounts apps.

“**Applicable Law**” means any statute, ordinance, regulation, rule, code, constitution, treaty, common law, governmental order, or other requirement or rule of law of any governmental authority.

“**Authorized User**” means you, your employees, consultants, contractors, and agents authorized to access and use the App under the rights granted to you pursuant to this Agreement.

“**Customer Data**” means, other than Aggregated Statistics, information, data, and other content, in any form or medium, that is submitted, posted, or otherwise transmitted by or on behalf of you or an Authorized User through the App.

“Documentation” means any manuals, instructions or other documents or materials posted on <https://help.simplebundles.io>, <https://help.getfreshly.io/> or as otherwise made available to you by Freshly in any form or medium and which describe the functionality, components, features or requirements of the App, including any aspect of the installation, configuration, integration, operation, use, support or maintenance thereof.

“Party” means you or Freshly, collectively hereinafter the **“Parties”**

“Freshly IP” means the App, the Documentation, and all registered and unregistered rights granted, applied for, or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection, know-how or other intellectual property provided to you or any Authorized User in connection with the foregoing. For the avoidance of doubt, Freshly IP includes Aggregated Statistics and any information, data, or other content derived from Freshly's monitoring of your access to or use of the App, but does not include Customer Data.

“Third-Party Products” means any product or service that does not belong to either Party and is not subject to Freshly IP, including, but not limited to, the Shopify ecommerce platform.

2. ACCESS AND USE

A. ACCESS GRANT. Subject to the terms and conditions of this Agreement, Freshly hereby grants to you, a non-exclusive, limited, revocable right for your Authorized Users to access and use the App and the Documentation during your Subscription Term (defined in Section 8) solely for your own internal business purposes (the **“Subscription”**).

B. USE RESTRICTIONS. You shall not use the App and Documentation for any purposes beyond the scope of the access granted in this Agreement. You shall not at any time, directly or indirectly, and shall not permit any Affiliate or Authorized User to: (i) copy, modify, or create derivative works of the App or Documentation, in whole or in part; (ii) rent, lease, lend, sell, license, sublicense, assign, distribute, publish, transfer, or otherwise make available the App or Documentation; (iii) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to any software component of the App, in whole or in part; (iv) remove any proprietary notices from the App or Documentation; (v) make the App or Documentation available to any person who is not an Authorized User; (vi) access or use the App or Documentation (A) in order to build a competitive solution or to assist a third-party to build a competitive solution, or (B) to load test the App in order to test scalability or exceed the usage limits; (viii) use the App or Documentation in any manner or for any purpose that

infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person, or that violates any Applicable Law; (ix) incorporate the App or Documentation or any portion thereof into any other materials, products, or services; (x) transmit through the App unlawful, immoral, libelous, tortious, infringing, defamatory, false, threatening, vulgar, or obscene material or harmful to minors, or send spam or any other form of duplicative and unsolicited messages through the App; (xi) transmit to or through the App material containing software viruses or other harmful or deleterious computer code, routines, files, scripts, agents, or programs that may damage, intercept or expropriate any data or system; (xii) interfere with or disrupt the integrity or performance of the App or the data contained therein; (xiii) attempt to gain unauthorized access or attempt to exceed an existing authorization to access the App; or (xiv) except for rights provided to Authorized Users as permitted in this Agreement, allow any third-party to use any user identification(s), and/or password(s), issued to you for access to the App.

C. APP SUBSCRIPTIONS AND FEATURES. The features available on the App are dependent on the subscription tier you selected at the time of purchase. Descriptions of the subscription tiers and features can be accessed on <https://apps.shopify.com/partners/freshly>. The App and its features may change in its form and functionality without prior notice to you. You may change your subscription tier at any time, in which case you shall either be charged or your Shopify account will be credited for the difference in price between the subscription tiers prorated to the end of your current billing cycle.

D. RESERVATION OF RIGHTS. Freshly reserves all rights not expressly granted to you in this Agreement. Except for the limited rights and licences expressly granted under this Agreement, nothing in this Agreement grants, by implication, waiver, estoppel, or otherwise, to you or any third-party any intellectual property rights or other right, title, or interest in or to the Freshly IP.

E. SUSPENSION. Notwithstanding anything to the contrary in this Agreement, Freshly may temporarily suspend your and any Authorized User's access to any portion or all of the App if: (i) Freshly reasonably determines that (a) there is a threat or attack on any of the Freshly IP, (b) your or any Authorized User's use of the Freshly IP disrupts or poses a security risk to the Freshly IP or to any other customer or vendor of Freshly, (c) you, or any Authorized User, are using the Freshly IP for fraudulent or illegal activities, (d) subject to Applicable Law, you have ceased to continue its business in the ordinary course, made an assignment for the benefit of creditors or similar disposition of its assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution, or similar proceeding, or (e) Freshly's provision of the App to you or any

Authorized User is prohibited by Applicable Law; (ii) any vendor of Freshly has suspended or terminated Freshly's access to or use of any third-party services or products required to enable you to access the App (any such suspension described in subclause (i) or (ii) "**Service Suspension**"). Freshly shall use commercially reasonable efforts to provide you with written notice of any Service Suspension and to provide you with updates regarding resumption of access to the App following any Service Suspension. Freshly shall use commercially reasonable efforts to resume provision of access to the App as soon as reasonably possible after the event giving rise to the Service Suspension is cured. Freshly will have no liability for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that you or any Authorized User may incur as a result of a Service Suspension.

F. AGGREGATED STATISTICS. Notwithstanding anything to the contrary in this Agreement, Freshly may monitor your use of the App and collect and compile Aggregated Statistics in accordance with Freshly's Privacy Policy. As between Freshly and you, all right, title, and interest in Aggregated Statistics, and all intellectual property rights therein, belong to and are retained solely by Freshly. You acknowledge that Freshly may compile Aggregated Statistics based on Customer Data input into the App. You agree that Freshly may utilize Aggregated Statistics for its business purposes and in the manner permitted under Applicable Law provided that such Aggregated Statistics shall not identify you or your Confidential Information.

3. YOUR RESPONSIBILITIES

A. GENERAL. You are responsible and liable for all uses of the App and Documentation resulting from access provided to you, directly or indirectly, whether such access or use is permitted by or in violation of this Agreement. Without limiting the generality of the foregoing, you are responsible for all acts and omissions of your Affiliates and each of your Authorized Users, and any act or omission by an Authorized User that would constitute a breach of this Agreement will be deemed a breach of this Agreement by you. You shall use all reasonable efforts to make all Authorized Users aware of this Agreement's provisions as applicable to such Authorized User's use of the App.

4. REPRESENTATIONS AND WARRANTIES

A. MUTUAL REPRESENTATIONS AND WARRANTIES. Each Party represents and warrants to the other Party that: (a) it is a corporation validly existing in the jurisdiction of its incorporation; (b) it has all required corporate power and capacity to enter into this Agreement; (c) the execution of this Agreement by its representative

whose signature is set forth at the end hereof has been duly authorized by all necessary corporate action; and (d) when executed and delivered by each of the Parties, this Agreement will constitute a legal, valid, and binding obligation of such Party, enforceable against such Party in accordance with its terms.

B. YOUR ADDITIONAL REPRESENTATIONS, WARRANTIES, AND COVENANTS.

You represent, warrant, and covenant to Freshly that you own or otherwise have, and will have, the necessary rights and consents in and relating to Customer Data so that, as received by Freshly and processed in accordance with this Agreement, Customer Data does not and will not (i) infringe, misappropriate, or otherwise violate any intellectual property rights or any privacy or other rights of any third-party, or (ii) violate any Applicable Law.

5. APP MAINTENANCE AND SUPPORT

Support and maintenance shall be provided by Freshly to you in connection with your use of the App (the “**Maintenance Program**”).

A. GENERALLY. The Maintenance Program includes limited 24-hour technical support for standard issues related to the App and includes error corrections and bug fixes such as modifications, additions or work-arounds that, when made or added to the App, bring the App into material conformity with the Documentation, and that are made generally available to Freshly’s customers at no additional cost. All technical support requests under the Maintenance Program shall be responded to at the Freshly’s earliest convenience.

B. EXCLUSIONS. The Maintenance Program does not include: (i) any specialized App installation or integration services, (ii) installation or support of third-party software, or (iii) functionality enhancements or new features to the App, unless otherwise agreed to by the Freshly in writing, in its sole discretion. The provision of the foregoing by Freshly upon your may result in an increase in the Subscription Fees or one-time fees, as determined by Freshly in its sole discretion. In no event shall the provision of the foregoing by Freshly create any ongoing or continuing obligation on Freshly.

C. CONTACTS. You shall designate points of contact that are authorized to login to the App portal(s) and authorized to contact the Freshly Support Team (collectively “**Points of Contact**”). The number of authorized Points of Contact will be set forth in each Order Form, and the name, email address, and mobile phone number for each authorized Point of Contact must be provided by you to Freshly. Only the authorized Points of Contact may contact the Freshly Support Team.

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D. END OF LIFE. In light of technological changes, operational efficiencies and business objectives, Freshly may discontinue supply of the App, or discontinue supply of its Maintenance Program for the App, generally to its customers (“**End-of-Life**”). If Freshly designates the App and/or the Maintenance Program as End-of-Life, Freshly will use commercially reasonable efforts to give you not less than three (3) months prior written notice. Upon the date that the App and/or the Maintenance Program becomes as End-of-Life Freshly shall have no further obligation to make the App available to you, its Affiliates and each of their Authorized Users and shall have no further obligation to provide the Maintenance Program in respect of the App and this Agreement shall automatically terminate.

6. FEES AND PAYMENT

A. SERVICE FEE AND PAYMENT TERMS. You agree to pay all applicable fees related to your Subscription to the App (the “**Fees**”). All Fees are payable in advance, and will be billed at the start of your Subscription by Shopify on behalf of Freshly, using the payment information provided on your Shopify ecommerce account. Your Subscription will automatically renew until you elect to cancel your Subscription. You may review your payment history on your Shopify ecommerce account. All Subscription purchases are final and non-refundable.

B. TAXES. You are responsible for any sales, use, value added, excise, property, withholding or similar tax and any related tariffs, and similar charges, except taxes based on Freshly’s net income. If you are required to pay any taxes, you shall pay such taxes with no reduction or offset in the amounts payable to Freshly hereunder. If an applicable tax authority requires Freshly to pay any taxes that should have been payable by you, Freshly will advise you in writing, and you will promptly reimburse Freshly for the amounts paid.

C. FEE INCREASES. Freshly may, on an annual basis, increase the Fees by providing you with notice by posting the increase on the App or by emailing you.

7. INTELLECTUAL PROPERTY OWNERSHIP; FEEDBACK

A. FRESHLY IP. You acknowledge that, as between you and Freshly, Freshly owns all right, title, and interest, including all intellectual property rights, in and to the Freshly IP and, with respect to Third-Party Products, the applicable third-party provider owns all right, title, and interest, including all intellectual property rights, in and to the Third-Party Products.

B. CUSTOMER DATA. Freshly acknowledges that, as between Freshly and you, you own all right, title, and interest, including all intellectual property rights, in and to Customer Data. You hereby grants to Freshly a non-exclusive, royalty-free, worldwide licence to reproduce, distribute, and otherwise use and display Customer Data and perform all acts with respect to Customer Data as may be necessary for Freshly to provide the App to you, and a non-exclusive, perpetual, irrevocable, fully paid-up, royalty-free, transferable, sublicensable, worldwide licence to utilize Customer Data incorporated within the Aggregated Statistics, ensuring that there is no ability to ascertain your identity by use of Aggregated Statistics.

C. FEEDBACK. If you or any of your employees or contractors sends or transmits any communications or materials to Freshly by mail, email, telephone, or otherwise, suggesting or recommending changes to the Freshly IP, including without limitation, new features or functionality relating thereto, or any comments, questions, suggestions, or the like ("**Feedback**"), Freshly is free to use such Feedback irrespective of any other obligation or limitation between the Parties governing such Feedback. You hereby assign and agree to assign to Freshly on your behalf, and on behalf of your employees, contractors and/or agents, all right, title, and interest in, and Freshly is free to use, without any attribution or compensation to any party, any ideas, know-how, concepts, techniques, or other intellectual property rights contained in the Feedback, for any purpose whatsoever, although Freshly is not required to use any Feedback. You agree to obtain unconditional and irrevocable waivers, without any attribution or compensation, of all moral rights from your employees, contractor's and/or agents in respect of the Feedback.

8. TERMINATION

A. TERMINATION OR CANCELLATION OF SERVICES.

(i) Freshly reserves the right to disable or terminate your access to the App for any reason, including but not limited to: (A) your failure to pay any Fees when due hereunder; (B) your breach any of your obligations under Section 2(B) (Use Restrictions), or (C) the termination your Shopify ecommerce account for any reason.

(ii) You may cancel your Subscription at any time. Once you have cancelled your subscription and received confirmation of cancellation, no other changes may be made to your account or Subscription. The cancellation of your Subscription will go into effect at the end of your current billing cycle, and you will no longer have access to the App. For example, if your billing cycle starts on the first day of each month and you cancel on the 6th day of the month, you will be charged for the entirety of that month and shall not have access to the App after your cancellation on the 6th.

9. LIMITATION OF LIABILITY & INDEMNIFICATION

A. INDEMNIFICATION. You shall indemnify, defend and hold harmless Freshly, its Affiliates and their respective employees, officers, directors and representatives from and against any and all losses, damages, liabilities, costs (including reasonable legal fees) ("**Losses**") resulting from any third-party claim, suit, action, or proceeding ("**Third-Party Claim**") that Customer Data, or any use of Customer Data in accordance with this Agreement, infringes or misappropriates such third-party's intellectual property rights and any Third-Party Claims based on your or any Authorized User's (i) negligence or willful misconduct; (ii) use of the App (including any Third-Party Claim by one of your customers); (iii) use of the App in combination with data, software, hardware, equipment or technology not provided by Freshly or authorized by Freshly in writing; or (iv) modifications to the App not made by Freshly, provided that you may not settle any Third-Party Claim against Freshly unless Freshly consents to such settlement, and further provided that Freshly will have the right, at its option, to defend itself against any such Third-Party Claim or to participate in the defence thereof by counsel of its own choice.

B. LIMITATIONS OF LIABILITY. IN NO EVENT WILL FRESHLY BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY: (a) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, AGGRAVATED, OR PUNITIVE DAMAGES; (b) INCREASED COSTS, DIMINUTION IN VALUE OR LOST BUSINESS, PRODUCTION, REVENUES, OR PROFITS; (c) LOSS OF GOODWILL OR REPUTATION; (d) USE, INABILITY TO USE, LOSS, INTERRUPTION, DELAY OR RECOVERY OF ANY DATA, OR BREACH OF DATA OR SYSTEM SECURITY; OR (e) COST OF REPLACEMENT GOODS OR SERVICES, IN EACH CASE REGARDLESS OF WHETHER A PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE.

IN NO EVENT WILL FRESHLY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE EXCEED \$100.

10. CONFIDENTIAL INFORMATION

A. DEFINED. As used herein, "**Confidential Information**" means all information, including Personal Information as defined below and documents, acquired, directly or indirectly from any source in writing, orally or through observation, and includes all work

, documents, health care data, assets, operations, activities, prospects or trade secrets, analyses, compilations, notes, studies, expansion and development plans, software, writings, photographs, video, audio recordings, equipment, techniques, processes and the like prepared by or received from a party, its subsidiaries, representatives or agents and all other information related to the Agreement or acquired in connection with the Agreement.

Additionally, as used herein, “**Personal Information**” means all information pertaining to an identifiable individual other than the name, business telephone number and business address of such individual as an employee of an organization

B. OBLIGATION OF CONFIDENTIALITY. Except as otherwise permitted by this Agreement, any Confidential Information as defined below which a party (the “**Receiving Party**”) has or which may come into its possession in the course of this Agreement, will be kept confidential and will not, without the prior express consent of the party disclosing the information (the “**Disclosing Party**”), be disclosed by the Receiving Party in any manner and will not be used by the Receiving Party for any purpose other than to perform its obligations under this Agreement. The Receiving Party may only disclose or permit access to the Confidential Information to the Receiving Party’s advisors who have a need to know the Confidential Information, who must be advised of the confidential nature of the Confidential Information and who agree to be bound by the terms of this section. If the Receiving Party becomes legally compelled or required by any governmental authority having appropriate jurisdiction to disclose any of the Confidential Information, the Receiving Party shall, if permitted under law, promptly provide the Disclosing Party notice so that the Disclosing Party may seek a protective order or other appropriate remedy.

C. RETURN OF CONFIDENTIAL INFORMATION. Upon termination or expiration of this Agreement, the Receiving Party shall promptly and in any event within 7 days after such request from the Disclosing Party, return or destroy all copies of Confidential Information and other material if it contains Confidential Information. The Receiving Party may, however, retain: (a) one copy of the Confidential Information in secure storage, for use in the event of litigation or a dispute relating to the Agreement; and (b) any copies of computer records and/or files containing the Confidential Information which have been created pursuant to automated process such as archiving and/or backup procedures or policies, provided that each and any such copies are properly deleted as required by the Receiving Party’s normal course record retention policies. Any Confidential Information that is not returned or destroyed by the Receiving Party remains subject to confidentiality obligations under this Agreement for the greater of the

life of the applicable patent or 5 years from the date of expiration or termination of the Agreement.

11. DISCLAIMER AND WARRANTY

A. THE APP IS PROVIDED ON AN "AS-IS" AND "AS AVAILABLE" BASIS. AS FAR AS LEGALLY PERMISSIBLE, FRESHLY DISCLAIMS ALL REPRESENTATIONS, WARRANTIES AND CONDITIONS RELATING TO THE APP OR RELATED MAINTENANCE, WHETHER EXPRESSED, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OR IMPLIED CONDITIONS OF SATISFACTORY QUALITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, COMPATIBILITY OR NON- INFRINGEMENT. FRESHLY MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND THAT THE APP WILL MEET YOUR REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM, OR OTHER SERVICES, OR BE SECURE, ACCURATE, RELIABLE, TIMELY, COMPLETE, FREE OF HARMFUL CODE, OR ERROR FREE.

B. THIRD-PARTY PRODUCTS. The App may from time to time connect with Third-Party Products. For purposes of this Agreement, such Third-Party Products may be subject to their own terms and conditions and unless specifically agreed-upon to the contrary by Freshly in writing, you shall be solely liable for its violation of such terms and conditions.

12. MISCELLANEOUS PROVISIONS

A. AMENDMENT. No amendment, discharge, modification, restatement or supplement of this Agreement or any Section of this Agreement is binding unless it is in writing and executed by the Party to be bound.

B. NO WAIVER. Freshly's waiver of any term, condition, or provision of this Agreement must be in writing. Any such waiver will not be construed as a waiver of any other term, condition, or provision except as provided in writing, nor as a waiver of any subsequent breach of the same term, condition, or provision.

C. SEVERABILITY & SURVIVAL. If any provision in this Agreement is held invalid or unenforceable by a body of competent jurisdiction, such provision will be construed, limited or, if necessary, severed to the extent necessary to eliminate such invalidity or unenforceability. The Parties agree to negotiate in good faith a valid, enforceable substitute provision that most nearly effects the Parties' original intent in entering into this Agreement or to provide an equitable adjustment in the event that no such

provision can be added. The other provisions of this Agreement will remain in full force and effect. Expiration or termination of this Agreement shall not relieve either Party of its obligations regarding intellectual property, warranties, confidentiality, indemnification, and limitation of liability or any other right or obligation that by its nature, or by Applicable Law, is intended to survive termination of this Agreement.

D. FORCE MAJEURE. In no event will Freshly be liable or responsible to you 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, when and to the extent such failure or delay is caused by any circumstances beyond Freshly's reasonable control (a "**Force Majeure Event**"), including acts of God, flood, fire, earthquake or other natural disaster, epidemic or pandemic (whether or not declared), local disease outbreak, explosion, war, terrorism, national or regional emergency, strikes, labor stoppages or slowdowns or other industrial disturbances, passage of Law or any action taken by a governmental or public authority, or other restriction or prohibition or any complete or partial government shutdown, failure of the internet, or national or regional shortage of adequate power or telecommunications or transportation.

E. GOVERNING LAW. This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) will be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada therein.

F. DISPUTE RESOLUTION.

(i) All disputes, disagreements, controversies, questions or claims arising out of or relating to this Agreement, including with respect to its formation, execution, validity, application, interpretation, performance, breach, termination or enforcement, ("**Disputes**"), will be determined by a sole arbitrator (the "**Arbitrator**") under the *Arbitration Act, 1991* (Ontario) (the "**Arbitration Act**") in English in the city of Waterloo, Ontario, Canada pursuant to the law of the Province of Ontario. The Arbitrator will have the right to determine all questions of law and jurisdiction, including questions as to whether a Dispute is arbitrable. The Arbitrator may award declaratory or injunctive relief only in favour of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party's individual claim. Subject to the exception set out in respect of the parties who may be a named party to a claim, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, YOU AND FRESHLY AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN AN INDIVIDUAL CAPACITY AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED GROUP LITIGATION OR PRIVATE ATTORNEY GENERAL PROCEEDING. The Parties desire that any arbitration be conducted in strict confidence without disclosure to any person or entity,

of the existence or any aspect of a Dispute except as is necessary for the resolution of the Dispute. All matters relating to, evidence presented to, submissions made in the course of, documents produced and information provided in accordance with an arbitration under this Section or any order of the Arbitrator, or created in the course of or for the purposes of the arbitration, as well as any arbitral award, will be kept confidential and will not be disclosed to any person or entity without the prior written consent of all the Parties, except as required by a Party making an application under Section 46 or Section 50 of the Arbitration Act or enforcing the arbitral award, or as required by Applicable Law or by an order of an Arbitrator made under a motion or application on notice to all Parties.

(ii) Unless all affected parties agree otherwise, the Arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of a representative or group proceeding. If a court decides that Applicable Law precludes enforcement of any of this subsection's limitations as to a particular claim for relief, then that claim (and only that claim) must be severed from the Arbitration and may be brought in court.

(iii) Equitable Relief. Each Party acknowledges and agrees that a breach or threatened breach by such Party of any of its obligations would cause the other Party irreparable harm for which monetary damages would not be an adequate remedy 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.

G. ASSIGNMENT & SUBCONTRACTING. You may not assign, delegate, or otherwise transfer your Subscription or any of your rights or obligations under this Agreement, without Freshly's prior written consent. Freshly may transfer or assign this Agreement, in whole or in part, and may delegate or subcontract its obligations under this Agreement.

H. ENTIRE AGREEMENT. This Agreement comprises the entire understanding between the Parties with respect to its subject matters and supersedes any previous communications, representations, or agreements, whether oral or written.

I. RELATIONSHIP OF PARTIES. This Agreement shall not be construed to and does not create a relationship of agency, partnership, employment or joint venture.

J. INTERPRETATION. Every use of the words "including" or "includes" in this Agreement is to be construed as meaning "including, without limitation" or "includes, without limitation", respectively.