



GENERAL TERMS & CONDITIONS

JAN 2022



General Terms & Conditions

FPG GENERAL TERMS AND CONDITIONS ("GTC")

THIS GTC GOVERNS YOUR PURCHASE AND USE OF FPG GROUP COMPANY SERVICES.

IF YOU REGISTER FOR A TRIAL OF OUR SERVICES, THIS GTC WILL ALSO GOVERN THAT TRIAL.

BY ACCEPTING THIS GTC, EITHER BY CLICKING A BOX INDICATING YOUR ACCEPTANCE OR BY EXECUTING AN AGREEMENT (AS DEFINED BELOW) THAT REFERENCES THIS GTC, YOU AGREE TO THE TERMS OF THIS GTC. IF YOU ARE ENTERING INTO THIS GTC ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERMS "YOU" OR "YOUR" SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THE TERMS AND CONDITIONS CONTAINED HEREIN, YOU MUST NOT ACCEPT THIS GTC AND MAY NOT USE THE SERVICES.

You may not access the Services if you are a direct competitor of FPG or any FPG Group Company. In addition, You may not access the Services for purposes of monitoring their availability, performance or functionality, or for any other benchmarking or competitive purposes.

This GTC was last updated on 01 January 2022 and supersedes all prior versions.

1. Definitions

- 1.1. Under this GTC, unless the context otherwise requires, the following terms shall have the respective meanings indicated:

Add-Ons	The add-on Services that are described in any ORF or Services Agreement.
Affiliate	Any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. " <u>Control</u> ," for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.
Agreements	This GTC, any Services Agreements or any ORFs.
Business Day	A Day which is neither Saturday, Sunday or a public holiday where Customer is located.
Commencement Date	The earliest of: (i) the date specified in an Agreement where Provider shall commence provision of Services, (ii) the date Customer has accepted or deemed to have accepted Services in accordance with the Acceptance of Services outlined in Section 3.5, or (iii) the date Customer begins utilizing Services. Applicable Fees for Services or Packages commence to accrue on the Commencement Date.
Consultant or FPG Consultant	The consultant provided by FPG responsible for delivering certain Services.
Customer Data	Any and all information owned or provided by Customer, in any form, format or media (including paper, electronic and other records), that Provider has access to, obtains, uses, maintains or otherwise handles in connection with the performance of Services, including Guest Data and Personal Data, if any.
Customer Order Form (" <u>ORF</u> ")	Request for Service submitted by Customer or Customer Affiliate in the form of ORF or Agreement designated by Provider (including any addenda and supplements thereto) and accepted by Provider in accordance with this GTC, detailing Services (in all events to the exclusion of any Customer proposed



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	terms and conditions of purchase or purchase order(s) or other Customer proposed terms of business). Note the ORF may also be referenced as a “ <u>Work Order</u> ”, “ <u>Scope of Work</u> ”, or “ <u>Scope of Services</u> ”.
Day	An eight (8) hour day typically starting at 9:00am and finishing at 5:00pm with one (1) hour for lunch.
Deliverables	All Documents, Content, products and materials developed by the Provider or its agents, subcontractors, Consultants and employees in relation to the Services and the Programs, in any form, including data, reports, presentations and specifications (including drafts) if any.
Documentation	Documents or information provided in relation to the Services including user guides, white papers, on-line help, quick-reference guides, any drawing, map, plan, diagram, design, picture or other image or record embodying information in any form.
Electronic Signature “ <u>ES</u> ”	Signature or endorsement consisting of one or more letters, characters, numbers or other symbols in digital form incorporated in, attached to or associated with a human in a readable electronic version of this GTC, or any applicable Agreement.
Fees	The amount to be paid to Provider for each of the Services, Subscriptions or Packages, as outlined in any applicable Agreement.
FPG Group Company	Any of the following companies, namely Frontline Performance Group, LLC, Frontline Performance Group UK, LTD, Frontline Performance Group SL, TSA Training Services Pte. Ltd, TSA Consultancy Services Pte. Ltd., TSA Technology Solutions Pte. Ltd., TSA Training Services FZ-LLC., TSA Performance Services Limited, and TSA Solutions Corporation, or any of their Affiliates.
FPG Software (also referred to as IN-Gauge SM)	Infrastructure, technology, communications network, equipment, storage capacity, data integration, software, and reporting analytics delivered as Subscription, which FPG owns, leases or uses to provide Subscription Services (also referred to as “<u>Hosted Services</u>”) including any of the following: • IN-GaugeSM Performance Management Software • Data extraction Process to support PMS, POS, Datawarehouse, Data Lake or any customer third party application • FPG Front Desk Upsell tracking and reporting processes and mechanism; • IN-GaugeSM modular application to include core functionality, features and UI • IN-GaugeSM machine learning products to learn application • IN-GaugeSM Knowledgebase • IN-GaugeSM administration panel provided as part of IN-GaugeSM
FPG Technology	FPG Software – IN-Gauge Performance Management Software containing audio visual information, processes, algorithms, user interfaces, user guides, trade secrets, techniques, Licensed Marks, Technical material, documentation or information proprietary to or licensed to Provider.
Force Majeure Event	Any cause beyond a Party’s reasonable control that forces the other Party to cease operations, including, without limitation, any act of war, act of nature, pandemic, earthquake, hurricanes, tornados, flood, fire or other similar casualty, embargo, riot, terrorism, insurrections, sabotage, strike or labor difficulty, governmental act, law or regulation, epidemic, quarantine, inability to procure materials or transportation facilities, failure of power, court order, failure of the internet, failure of a supplier or other cause, whether similar or dissimilar to the foregoing, not resulting from the actions or inactions of such Party.



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Guest	An individual or entity seeking accommodations or services at the Customer's facilities;
Guest Data	Any and all information submitted by or authorized for submission by a Guest and supplied to the Provider by Customer in furtherance of the Services;
Intellectual Property Rights	Any and all registered and unregistered rights granted, applied for or otherwise related to any patent, copyright, trademark, trade secret, database protection or other intellectual property rights laws and all renewals and extensions thereof, arising under the law of the United States of America or of any other country;
Licensed Marks	As to Provider, trade or service marks or logos associated with any FPG Group Company, and their Affiliates, FPG Professional Services, FPG Software - IN-Gauge, and FPG Packages; As to Customer, trade or service marks or logos associated with Customer.
Notification	A written correspondence (including email correspondence) from Provider to Customer informing of any Service updates or Product/Service/Package enhancements such as a) Subscription or Package auto-renewal date and terms b) any changes to Customers Subscribed Services c) feature updates, enhancements or release updates d) scheduled maintenance or availability.
On-Site Service:	Professional Services provided by a trainer or Consultant at the location occupied by Customer or Customers End Users (as applicable).
Packages	Any combination of Services offered for a fixed fee, within a specified period along with specified Package terms. Packages to be structured for Customer based on Customer needs.
Party(ies)	The Customer and the Provider, individually or collectively.
Personal Data, Personal Information, Personally-identifiable information	Any information as defined under Privacy Law or government Data Protection Regulations, generally classified as identifying or relating to an identifiable individual, including name, address, telephone number, e-mail, credit card information, social security number, or other similar specific factual information, regardless of the media on which such information is stored (e.g., on paper or electronically or audio media) and may include such information that is generated, collected, stored or obtained as part of this GTC or such information that Provider may have access to under any Agreement.
Privacy Law	Any applicable law, regulation or binding policy of any Governmental Authority that relates to the security and protection of any personally identifiable information, data privacy, trans-border data flow or data protection.
Program	The content, methodology, materials and metrics that focus on a specific business unit or operational division of the Customer's property such as Rooms and Front Desk, Reservations, Food & Beverage, Spa, or general Programs that may apply to all Customer Staff such as Morale Management, Essential Selling Skills, Cultural Transformation, Service Recovery.
Project Manager	Designated representative from each Party responsible to manage Services and ensure obligations relative to the Agreement.
Professional Services	Training, coaching, consulting services provided by: - Consultants for the purpose of: - o maximizing Customer performance across revenue management, operations and finance. Working with Customer to develop



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	implementation plans, ROI analysis, identifying opportunity, and establishing relevant revenue, profit, Guest loyalty, and Guest satisfaction goals and metrics. ○ increasing the performance of Customer employees, providing training, coaching and support for Customer business goals. - Trainers fulfilling Services defined in Customer Agreement. Professional Services may be delivered On-site at Customer Location or Remote via messaging, phone call, video call, or video conference.
Provider or FPG	Frontline Performance Group, LLC, a Florida limited liability company, and having its office at 1075 West Morse Boulevard, Winter Park, Florida 32789
Remote Service	Services provided by Trainer or Consultant via remote infrastructure such as phone calls, video conference, webinars, chats.
Services	Support rendered by Provider as outlined in the Agreement with Customer.
Shared Services	Includes but not limited to, administration, monitoring, auditing, and support services, maintained by Provider.
Subscriber	Customer who has purchased a Subscription from Provider.
Subscription	Provider Services purchased for a recurring or perpetual term.
Tax or Taxes	Sales Tax, Value Added Tax, Goods & Services Tax or other applicable tax, as imposed by the government regulation of the Country where Services are performed. Tax Law: The Law as amended or supplemented from time to time and any replacement thereto, of the Country where Services are performed. Valid Tax Invoice: An Invoice that meets the requirements of the applicable Tax Law.
Trainer or FPG Trainer	Resource provided by FPG to facilitate instruction.
"Usage Data"	As defined in Section 12.9
"Metadata"	As defined in Section 12.10

2. GENERAL

2.1. Terms and Interpretation Unless otherwise defined in this GTC, capitalized terms will have the meaning set forth in the Definitions described in Section 1, in the Services Agreement (if any), in the ORF or any Documentation provided. Terms, acronyms and phrases known in the information technology industry shall be interpreted in accordance with their generally known meanings. Unless the context otherwise requires, words importing the singular include the plural and vice-versa; references to and use of the word "include" and its variations thereof shall mean "include without limitation" and "including without limitation".

2.2. Section, schedule and paragraph headings shall not affect the interpretation of this GTC.

2.3. A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors and permitted assigns.

2.4. The GTC is part of any Services Agreement or ORF and shall have effect as if set out in full in the body of any Services Agreement or ORF.

3. SERVICES



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- 3.1. This GTC sets forth the terms and conditions under which Customer and FPG agrees to (i) grant such Customer a Subscription to access and use certain Hosted Services and/or purchased Professional Services offered by the Provider;
- 3.2. The Services being made available to the Customer are described in an Agreement and briefly would involve;
- (a) Subscription to access and use certain Hosted Services, or perform services, functions and responsibilities related to the hosting of the software, system and services,
 - (b) Activation, implementation, configuration and enablement services,
 - (c) Professional Services and other Add-Ons such as Onsite Consulting, Onsite Training, all of which may be offered as a Package.
 - (d) Support Services
- (collectively referred to as “Services”).
- 3.3. Applicable Services will be performed in accordance with the Service Levels set forth in Schedule A.
- 3.4. The specific Services to be provided by the Provider to the Customer will be detailed in each Agreement which will be effective when signed by the authorized parties and will be governed by the terms and conditions of this GTC. In the event of any conflict between the terms and conditions set forth in this GTC and the terms and conditions set out in the Agreement, the terms and conditions set out in the Agreement shall take precedence.
- 3.5. Customer Participation and Acceptance. Services may be procured by Customer, pursuant to the terms herein. In the event Customer elects to subscribe to the Services, such Customer shall execute a Customer ORF on its own behalf. FPG and Customer agree that:
- 3.5.1. The determination to participate hereunder by Customer is voluntary and made at the discretion of Customer and its authorized signatory.
 - 3.5.2. Applicable Fees for Provider Services, including activation, Subscription or Add-ons will be outlined in the Agreement with Customer.
 - 3.5.3. Customer ORF Acceptance. Customer may submit signed ORF(s) requesting delivery of Services which Provider may accept by (i) sending a Welcome Letter acknowledging receipt and acceptance of the ORF; (ii) countersigning the ORF in accordance with the terms of this GTC; or (iii) by provisioning Services and sending Service Notification to Customer, whichever is earlier. Both Customer and Provider shall be contractually bound in respect of a particular ORF at (but not before) the occurrence of either event specified above. For the avoidance of doubt, Customer shall not be obligated to submit, nor shall Provider be obligated to accept, any ORF.
 - 3.5.4. Electronic Signature (“ES”) Acceptance. The parties expressly acknowledge and agree: (i) a human readable electronic version of this GTC or ORF containing the Parties’ Electronic Signatures, or containing a mix of physical signatures and Electronic Signatures of the Parties, shall constitute an original version of this GTC or ORF, as applicable; (ii) a Party’s use of keypad, mouse or other device to select an item, button, icon or similar act/action, to otherwise insert their Electronic Signature into this GTC or ORF, constitutes that Party’s signature as if it had been manually signed the same; (iii) FPG designated ES Platform provider shall be accepted as a valid authentication technology; (iv) no certification authority or third-party verification is necessary to validate each Party’s Electronic Signature; and (v) the lack of such certification or verification will not in any way affect the validity of that Party’s signature or the enforceability of this GTC or ORF, as applicable.
 - 3.5.5. Customer may purchase Services pursuant to this GTC, provided that an authorized representative of Customer executes the applicable ORF. The terms of this GTC shall apply to any ORF as if the Customer executed this GTC. Customer shall be the Customer of record for all the Services provided hereunder and, together with any ordering Customer Affiliate, shall be jointly and severally liable for all obligations set forth in this GTC, notwithstanding the ORF may be signed by Customer’s Affiliate or that the invoices for a Service may be sent to Customer’s Affiliate at the address designated in the applicable ORF. If an Affiliate



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of Customer enters into a ORF pursuant to this GTC, then references to “Customer” herein shall be deemed references to both the ordering Customer Affiliate and Customer.

- 3.5.6. Credit Approval and Deposits. Provider reserves the right to conduct a credit check of Customer at any time, at Customer’s expense. Customer hereby authorizes Provider to obtain, and upon request shall assist Supplier in obtaining, information about Customer’s financial condition from third parties, including without limitation banks, credit reporting agencies and other businesses that provide like information. Upon Providers request, Customer will make a deposit or provide other security for the payment of Service Fees or any other charges, as specified by Provider, (i) as a condition to Providers acceptance of any ORF, or (ii) in the event Customer fails to comply with the payment terms set forth in the ORF twice in any twelve month period, as a condition to Provider continuation of Services. The deposit or any other security will be held by Provider as a security for payment of the Service Fees. When the provision of Services to Customer is properly terminated in accordance with this GTC, the amount of the deposit will be credited to Customer’s account and any remaining credit balance will be refunded thirty (30) days of receipt of termination notification. Customer acknowledges that failure to comply with any request made by Provider under this Section 3 shall be a material breach of this GTC.
- 3.5.7. Upon execution of the ORF, the Customer which signs the ORF (“Subscriber”) shall be responsible for its use of the Services and for its compliance with its obligations thereunder.
- 3.5.8. Executed ORF is not subject to negotiation of pricing or terms; with the exception that parties agree to cooperate reasonably with one another to adjust the ORF to the extent necessary to comply with the requirements of applicable laws in a particular location.
- 3.5.9. Provider shall invoice Customer directly for Services provided pursuant to the applicable ORF. Fees shall be invoiced to Subscriber pursuant to the terms of the ORF.

4. TRIAL OR PROMOTION PERIOD

- 4.1. If the Provider provides a trial, evaluation or promotion period of FPG Software or any other specified Service (the “Trial”), the specified Services will be made available free of charge until the earlier of (a) the end of the Trial for which the Customer is registered to use the applicable Service(s) or (b) the start date of the paid purchased Services and or Subscriptions purchased by the Customer or (c) termination by the Provider in its sole discretion. The Provider may impose additional terms and conditions with respect to the Trial which may appear on the trial registration web page or the ORF. Any such terms and conditions are deemed incorporated into this GTC by reference and are legally binding.
- 4.2. Any data entered into the Services and any customization made to the Services by the Provider during the Trial will be permanently lost unless the Parties execute an Agreement for Services in consideration of payment to Provider, or Customer purchases a Subscription to the same Services.
- 4.3. During the Trial, Services are provided on an “as-is” basis without any warranty.
- 4.4. At the end of any Trial, Customer shall have the option to (1) complete the trial and cease using the Services without further obligation or (2) continue the Services by entering a ORF with Provider.
- 4.5. In the event a ORF is not executed, immediately prior to the end of any trial period, Provider shall deactivate Services and has no further obligation to provide Services to Customer.

5. **Term, Termination and Suspension**

- 5.1. Term of Agreement; Term of Access to the Service. The term of this GTC commences on the Commencement Date and continues until the stated term in all Agreements has expired or has otherwise been terminated, unless otherwise extended pursuant to the written agreement of the parties.
- 5.2. The term of each Service, Add-on or Subscription shall be as specified in the applicable Agreement. Except as otherwise specified in an Agreement, Subscriptions will automatically renew for additional periods equal to the expiring term or one year (whichever is shorter) unless either party provides notice of non-renewal thirty (30) days before the end of the relevant Subscription term. The per-unit pricing



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during any automatic renewal term will be the same as that during the immediately prior term unless written notice of pricing increase is provided sixty (60) days before the end of the prior term, in which case pricing increase is effective upon renewal. Any such pricing increase will not exceed 7% of the pricing for applicable Services or Add-Ons in the immediate prior Subscription term, unless pricing is defined as promotional, introductory, seasonal, or one-time.

- 5.3. In the event Customer purchases a Package, Services included in Package are provided for a fixed price, fixed scope of delivery, fixed period of delivery, with payment required upfront and ineligible for cancellation, except as provided in Section 5.4.
- 5.4. Termination. Neither Party may unilaterally terminate an ORF or Services Agreement prior to the expiry of the term specified in the ORF or Services Agreement, unless expressly permitted pursuant to the terms of the ORF or Services Agreement; provided that either Party shall be entitled to terminate the ORF or Services Agreement forthwith:
- 5.4.1. If the other Party (the “Defaulting Party”) is in breach of any of the terms of the Agreement where such term is incapable of remedy or if such breach is capable of remedy, the Defaulting Party shall fail to remedy such breach within thirty (30) days’ written notice of such breach; or
- 5.4.2. Immediately, in the event the other Party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors. In the event this GTC is terminated, all Agreements are simultaneously terminated; or
- 5.4.3. Immediately, in the event Customer sells all or a substantial portion of its capital stock and/or assets and the purchaser thereof fails or refuses to assume Customer’s obligations under the Agreements; or
- 5.4.4. Immediately, in the event any representation or warranty made in the Agreements or any information furnished by the Defaulting Party in connection with the Agreements is incorrect or misleading.
- 5.5. In the event the Provider terminates the Agreement pursuant to Section 5.4.1, Section 5.4.2, Section 5.4.3 or Section 5.4.4:
- 5.5.1. The Provider will be entitled to recover payment for all Services rendered calculated on a pro-rated basis, considering the number of remote consulting hours or on-site days consumed OR the number of months Services have been rendered, whichever is higher; as well as cost for implementation set-up and activation if termination occurs within the first six (6) months of the Agreement; and
- 5.5.2. The Provider will be entitled to, as liquidated damages, a termination fee (as calculated below, the “Termination Fee”). The Termination Fee shall be calculated as follows:
- The greater of:*
- (i) [An amount equal to sixty percent (60%) of the aggregate fees payable for each full or partial month remaining in the Term of the Services Agreement or any ORF between Customer and Provider]; and
- (ii) [The Termination Fee, if any has been stipulated under the terms of the Services Agreement or any ORF between Customer and Provider, as calculated in accordance with the terms of the Services Agreement or any ORF between Customer and Provider]

THE PARTIES HERETO ACKNOWLEDGE AND AGREE THAT THE ACTUAL DAMAGES TO FPG IN THE EVENT OF CUSTOMER’S TERMINATION (ACTUAL OR CONSTRUCTIVE) OR BREACH OF THIS GTC OR ANY AGREEMENT WOULD BE IMPOSSIBLE OR IMPRACTICAL TO DETERMINE AND THAT THIS PROVISION FOR LIQUIDATED DAMAGES IS REASONABLE UNDER THE CIRCUMSTANCES EXISTING AND KNOWN TO THE PARTIES AS OF THE DATE OF THIS GTC.

- 5.5.3. The Customer shall not be entitled to a refund.



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- 5.6. Effect of Termination. Upon any termination, Customer shall, as of the date of such termination, immediately cease accessing and otherwise utilizing the applicable Service (except as permitted under Section 5.7 entitled "Access to Customer Data") and all Confidential Information. Moreover, upon any such termination, Provider will have no further obligation to maintain or provide Customer with access to any Customer Data and may thereafter, unless legally prohibited, delete all Customer Data. Termination for any reason shall not relieve Customer of the obligation to pay Fees accrued or due and payable to Provider prior to the effective date of termination. Termination for any reason other than for uncured material breach by Provider shall not relieve Customer of the obligation to pay all future amounts due under the Agreements. Upon termination for cause by Provider, all future amounts due shall be accelerated and become due and payable immediately.
- 5.7. Access to Customer Data and Deletion of Customer Data. Upon request by Customer made within thirty (30) days after any expiration or termination of this GTC, Provider will make Customer Data available to Customer through the Service on a limited basis solely for purposes of Customer retrieving Customer Data for a period of up to thirty (30) days after such request is received. After such thirty (30) day period, Provider will have no obligation to maintain or provide any Customer Data and may thereafter, unless legally prohibited, delete all Customer Data. If Customer requests Provider assistance, Customer may acquire Professional Services at Provider billing rates pursuant to a separately executed Agreement.
- 5.8. Suspension: Provider recognizes that Customer business may require a period of closure for renovations or seasonal operations. If this occurs during the Term, Customer shall be required to notify Provider in writing sixty (60) days prior to planned closure for renovations or seasonal operations and is required to inform Provider of anticipated re-opening dates (known as the "Renovation or Seasonal Closing Period"). At Providers discretion, the Services may be suspended for the Renovation or Seasonal Closing Period and automatically resume at the end of the Renovation or Seasonal Closing Period at the same fee. Any such suspension of the Services for the Renovation or Seasonal Closing Period may include Provider suspending any obligation to maintain or provide Customer with access to any Customer Data.
- 5.9. Surviving Provisions. Notwithstanding anything to the contrary in this Section, Sections titled "Fees and Payment for Services Purchased or Subscriptions," "Software License Rights," "Intellectual Property," "Confidentiality," "Disclaimers," "Mutual Indemnification," "Warranty," "Limitation of Liability," "Term & Termination", "Fees & Payment for Services," "Access to Data and Deletion of Customer Data," "Contracting Parties, Notices, Governing Law and Jurisdiction," and "General Provisions" will survive any termination or expiration if this GTC.
- 6. Fees & Payment for Services Purchased or Subscriptions**
- 6.1. Provider will invoice Customer electronically for all fees, charges and reimbursable items payable to the Provider according to the terms being set out in the Services Agreement or ORF. The Customer will pay the invoiced amount promptly upon receipt of invoice, without deduction or setoff. Any such invoice not paid in full by Customer within thirty (30) business days of date of invoice shall be deemed to be delinquent.
- 6.2. All payments are to be made in full and free from all deductions, costs, local taxes (including withholding taxes), charges and agreed staff incentive, if any. All payments shall be made in the specified currency on the Invoice and paid according to Agreement terms. Provider shall be permitted to assess a surcharge of an additional Two and Nine-Tenths percent (2.9%) of the invoice amount for any payment made by credit card, to defray Provider's credit card convenience fees.
- 6.3. If a customer has any dispute with an invoice, dispute must be received in writing within five (5) business days of the date of the Invoice.
- 6.4. If any invoiced amount is not received by the due date, then without limiting our rights or remedies, those charges will accrue late interest at the rate of 1.5% of the outstanding balance per month or the maximum rate permitted by law, whichever is lower. FPG reserves the right to suspend Services for overdue accounts. Any such suspension of the Services for overdue accounts may include Provider suspending any obligation to maintain or provide Customer with access to any Customer Data.



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7. Taxes

- 7.1. Taxes includes any tax, levies, duties or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction whatsoever. The Customer shall pay all taxes relating to the provision of the Services by Provider pursuant to any Services Agreement or ORF. If the Provider has the legal obligation to pay or collect Taxes on behalf of the Customer, FPG will add such taxes to Customer Invoice. Such tax shall be paid by the Customer unless a valid tax exemption certificate authorized by the appropriate taxing authority is provided to FPG.

8. Software License Rights

- 8.1. Subject to a valid Services Agreement or ORF being in full force and effect, the Provider grants Customer a non-exclusive, non-transferable, non-assignable license to access and use the FPG Software. The Provider reserves all rights to the FPG Software and FPG Program materials and methodology, including the right to update, modify, alter, amend or remove any functions or feature from the FPG Software at any time at its sole discretion.
- 8.2. Customer has the right to and use of content subject to the terms of the Agreements and Documentation, only during the term of the Agreements, and only with respect to any locations being Serviced pursuant to the Agreements.
- 8.3. Customer grants Provider, FPG Affiliates and applicable contractors a worldwide, limited-term license to host, copy and transmit and display your Customer Data, as reasonably necessary to provide the services for Customers use. Subject to the limited licenses granted herein, Provider acquires no right, title or interest from the Customer under this GTC or to any of the Customer Data. Customer agrees that it shall have sole responsibility and liability for: (i) acquiring any and all authorization(s) necessary for use of the Customer Data; (ii) the completeness and accuracy of all of the Customer Data and other materials provided to FPG by Customer pursuant to this GTC; and (iii) ensuring that the Customer Data does not infringe or violate any patents, copyrights, trademarks or other intellectual property rights, or misappropriate the trade secret, or violate the privacy rights of any third-party. Subject to the foregoing license, Customer shall retain exclusive ownership of the Customer Data. Customer shall be responsible for notifying FPG in advance of any data protection, privacy or similar laws that apply to the Customer Data applicable in the jurisdiction where Customer does business.
- 8.4. FPG Software contains audio visual information, processes, algorithms, user interfaces, know-how, trade secrets, techniques, Licensed Marks and other technical material or information (collectively "FPG Technology") that is proprietary to or licensed by Provider (collectively "FPG IP Rights").
- 8.5. Other than as expressly set forth herein, no other license or rights in or to the FPG Technology or FPG IP Rights are granted to the Customer or Customer Affiliates. Nothing in the Agreements shall constitute an assignment or transfer of the FPG IP Rights or FPG Technology to the Customer. FPG reserves all rights not expressly granted herein. Except as set forth in this GTC, no express or implied license or right of any kind is granted to Customer regarding the FPG IP Rights or FPG Technology. Customer hereby acknowledges and agrees that FPG and its third-party suppliers and licensors exclusively own all rights, title and interest in the FPG IP Rights or FPG Technology, any customizations or other deliverables developed and/or provided during the Services, and intellectual property rights therein. Customer also acknowledges that the FPG IP Rights or FPG Technology contain confidential and proprietary information and trade secrets belonging to FPG, its third-party suppliers and licensors, and that nothing herein gives Customer any right, title or interest in the FPG IP Rights or FPG Technology except for Customer's limited express rights granted pursuant to this GTC. FPG shall be entitled to the unrestricted use and dissemination of any questions, comments, suggestions, ideas, feedback or any other information about the FPG IP Rights or FPG Technology. All data input into the FPG Technology are the property of FPG and become a part of the FPG IP Rights or FPG Technology which may be accessed and shared in the aggregate indefinitely.
- 8.6. Customer may use FPG IP Rights or FPG Technology solely on behalf of Customer for Customer's business purposes. Customer or Customer Affiliates shall not:



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- (a) copy, alter, modify, patch, reverse engineer, derive the source code, disassemble or decompile the FPG Technology or FPG Software, or create any derivative works therefrom;
- (b) copy, alter, modify, repurpose FPG Program materials and methodology;
- (c) timeshare, license or allow any person or entity other than its employees or authorized personnel to access or use FPG Software or any FPG Technology;
- (d) create any link to FPG Software or any FPG Technology or frame or mirror any content contained in or accessible from FPG Software or any FPG Technology;
- (e) tamper with the security of any user account;
- (f) access any Services to build a competitive product or compete with Provider;
- (g) render any part of FPG Technology or FPG Software unusable;
- (h) use any of FPG Technology or FPG Software for purposes not specified in the Services Agreement;
- (i) disclose or publish the results of any benchmark tests run using the FPG Software or any FPG Technology;
- (j) use the FPG Software or any FPG Technology to engage in spamming, mailbombing, spoofing or any other fraudulent, illegal or unauthorized use;
- (k) knowingly introduce into or transmit through FPG Software or any FPG Technology any virus, worm, trap door, back door; or
- (l) remove, obscure or alter any copyright notice, trademarks or other proprietary rights notices affixed to or contained within FPG Software or any FPG Technology.

8.7. Unless otherwise specified in the Services Agreement, any work product generated as a result of the Services contemplated hereunder remain the property of Provider.

9. **Provider's Obligations**

9.1. Provider shall:

- 9.1.1. maintain any consents, permits, licenses, approvals, accreditations and other documents necessary to provide the Services;
- 9.1.2. have the necessary resources, facilities, tools and equipment to perform the Services;
- 9.1.3. ensure that its performance of the Services do not infringe any third-party intellectual property, proprietary or other rights;
- 9.1.4. maintain commercially reasonable administrative, physical, organizational and technical safeguards for protection of the security, confidentiality and integrity of Customers Data;
- 9.1.5. shall comply with all applicable domestic laws, ordinances, statutes and regulations, regarding the privacy and security of personal identifiable information within the applicable jurisdictions. Provider shall not provide Customer Data or Guest Data to any third-party without the express consent of the Customer.
- 9.1.6. Provider will be responsible for the performance of personnel (including FPG employees and contractors) delivering Services and is responsible for personnel compliance with Provider obligations under this GTC, except as otherwise specified herein.

9.2. Provider warrants that all Services shall be performed:

- 9.2.1. in accordance with the specifications set out in the Services Agreement or ORF;
- 9.2.2. by experienced and properly trained personnel exercising all reasonable skill and care necessary to perform the Services;
- 9.2.3. in a proper and professional manner in accordance with generally accepted industry standards and practices;
- 9.2.4. in compliance with all applicable government laws, statutory provisions, industry regulations, standards and guidelines (including, without limitation, health, safety, hygiene and environmental requirements in the place where Services are provided).

9.3. Provider



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- 9.3.1. may delegate the performance of portions of the Services to its authorized subcontractors and service providers, provided the Provider remains liable to the Customer for the provision of Services.
- 9.3.2. is responsible at all times for the performance of Provider personnel (including employees and contractors) and their compliance with Providers obligations under this GTC, except as otherwise specified herein

10. Customer's Obligations

10.1. Customer shall:

- 10.1.1. be solely responsible for errors in the Services resulting from inaccurate or incomplete data supplied by the Customer or at the Customer's direction;
- 10.1.2. be responsible for the accuracy, quality and legality of data provided to Provider and the means by which Customer acquired such data;
- 10.1.3. provide all commercially reasonable logistic, administrative, physical, organizational and technical requirements necessary for the Provider to render the services under any Services Agreement;
- 10.1.4. be responsible for their Users compliance with the Agreements and Documentation;
- 10.1.5. be responsible for maintaining the minimum operating environment required to deliver the Services as outlined in Schedule B.
- 10.1.6. be responsible for informing Provider of any change or upgrade to those Customer systems required for Provider Services.
- 10.1.7. use commercially reasonable efforts to prevent unauthorized access to or use of Services and Content and notify Provider promptly of any such unauthorized access or use;
- 10.1.8. permit Provider to use Customer name and logo in a press release, marketing presentation or public announcement regarding the collaboration pursuant to Services Agreement. Provider shall provide Customer with a copy of such press release or public announcement. If Customer expressly requests that all marketing collateral requires approval in writing, prior to release, Provider will submit such collateral to named contact and such approval will not be unreasonably withheld;
- 10.1.9. be responsible for determining appropriate level of access and administering access management.

11. Intellectual Property Rights

- 11.1. In the course of delivering the Services, the Parties may disclose or grant access to the other Party (the "Recipient Party") documents, data, records or other information stored in print, electronic format or in any other manner (collectively the "Materials") which contain intellectual property rights belonging to the first Party.
- 11.2. The Parties shall each use the Materials belonging to the other solely in relation to the use or provision of the Services.
- 11.3. The Recipient Party shall not reproduce, distribute, publish, sell, adapt, translate, commercialize or otherwise handle Materials in any manner inconsistent with the intellectual property rights of the owner of such Materials.
- 11.4. For the purposes of this Section, "electronic format" includes, download, or other similar electronic medium (in any machine or human readable format, including without limitation swf, html, xml, rtf or pdf).

12. Confidentiality and Personal Data

- 12.1. Under this GTC, the term "Confidential Information" shall mean all information or proprietary materials (in every form and media) which has been or is hereafter disclosed or made available by either Party (the "Disclosing Party") to the other (the "Receiving Party") including (i) trade secrets and know-how,



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(ii) existing or contemplated products, services, processes, techniques and methodologies, (iii) business plans, sales or marketing methods, (iv) financial information, (v) cost data, (vi) Guest lists, (vii) pricing policies, (x) information about officers, employees, consultants and service providers of either Party, and (xi) other proprietary business information of either Party. "Information" as it relates to people or entities includes contact information such as name, title, position, address, phone numbers, and email addresses.

- 12.2. "Trade Secrets" include methods, techniques or processes that derives independent economic value from not being generally known to, and not being readily accessible by persons who can obtain economic value from its disclosure or use.
- 12.3. The Parties shall each (i) hold the Confidential Information of the other in strict confidence and take reasonable care to avoid the disclosure or release thereof to any other person or entity, and (ii) not use the Confidential Information of the other Party for any purpose whatsoever except as expressly contemplated under the Services Agreement. Each Party shall disclose the Confidential Information of the other only to those of its employees, consultants and service providers having a need to know such Confidential Information, provided that such persons and entities have signed a non-disclosure agreement containing provisions no less restrictive than those contained in this Section.
- 12.4. The obligations of either Party under this Section shall not apply to information or materials that the Receiving Party can demonstrate:
- 12.4.1. was in its possession at the time of disclosure and without restriction as to confidentiality;
 - 12.4.2. at the time of disclosure is generally available to the public or after disclosure becomes generally available to the public through no breach of Agreement or other wrongful act by the Receiving Party;
 - 12.4.3. has been received from a third-party without restriction on disclosure and without breach of Agreement or other wrongful act by the Receiving Party;
 - 12.4.4. is independently developed by the Receiving Party without reference to the Confidential Information of the Disclosing Party;
 - 12.4.5. is required to be disclosed by law or order of a court of competent jurisdiction or regulatory authority, provided that the Receiving Party shall furnish prompt written notice of such required disclosure and reasonably cooperate with the Disclosing Party, at Disclosing Party's cost and expense, in any effort made by the Disclosing Party to seek a protective order or other appropriate protection of its Confidential Information and any disclosure under this sub-section is limited to the extent of the legal requirement.
- 12.5. All Confidential Information disclosed hereunder shall (i) remain the property of the disclosing Party. No license under any patent or other intellectual property right is granted or conveyed hereby or by any disclosure of Confidential Information made hereunder.
- 12.6. The Receiving Party shall deliver to the Disclosing Party all documents and materials containing any Confidential Information on the earlier of:
- 12.6.1. a demand by the Disclosing Party; or
 - 12.6.2. the termination of the Services Agreement howsoever caused if demanded by the Disclosing Party.
- 12.7. The Disclosing Party shall be entitled to injunctive relief to prevent any threatened or actual breach of the obligations in this Section. Such injunctive relief shall be in addition to any other remedies available to the Disclosing Party at law or in equity.
- 12.8. **Personal Data.** Provider will comply with all applicable privacy and other laws and regulations relating to protection, collection, use, and distribution of Personal Data. As between Customer and Provider, Personal Data is the exclusive property of Customer and will be deemed Customer Materials under the applicable provisions of this GTC and Confidential Information subject to the confidentiality provisions of this GTC. In no event may Provider: (a) use Personal Data to market its services or those of a third-party; or (b) sell or transfer Personal Data to third parties; or (c) otherwise provide third parties with



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access thereto. If Provider is required under applicable law to use Personal Data in a manner inconsistent with any of the foregoing, it will prior to doing so inform Customer of the applicable legal requirement(s), unless the law prohibits such information on important grounds of public interest.

- 12.9. **Usage Data.** The Parties recognize that it is possible for data to be collected from End Users that is not Personal Data, including "hits", "clickstream data" and the like. Any such data entered by or collected from End Users ("Usage Data"), is Provider's exclusive property. Provider may use Usage Data in any manner that is aggregated and anonymized such that the data cannot be identified back to Customer, any Property or any End-User or group of End-Users.
- 12.10. **Metadata.** The Parties recognize that Providers platform, processing and analysis produces metadata including custom output and reports. Such output and reports including benchmarking, geographical comparisons ("Metadata"), is Provider's exclusive property. Provider may use Metadata and reports in any manner that is aggregated and anonymized such that the Metadata cannot be identified back to Customer, any Property or any End-User or group of End-Users.

13. REPRESENTATIONS, WARRANTIES, EXCLUSIVE REMEDIES AND DISCLAIMERS

13.1. Representations.

Each Party represents that it has validly entered into the Agreement incorporating this GTC and has the legal power to do so.

13.2. Warranties.

The disclosing Party warrants that it has the right to disclose Confidential Information.

EXCEPT AS STATED HEREIN, THE DISCLOSING PARTY MAKES NO OTHER WARRANTIES, AND CONFIDENTIAL INFORMATION IS PROVIDED ON AN "AS IS" BASIS.

Both parties shall comply with and obtain all authorizations required by export control laws and all related regulations to operate and provide respective services.

FPG warrants that (a) this GTC, Agreements, and Documentation accurately describe the applicable administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Customer Data, (b) it will not materially decrease the overall security of the purchased Services during Agreement or Subscription term, (c) the purchased Services will perform materially in accordance with the applicable Documentation, (d) it will not materially decrease the functionality of the purchased Services during Agreement or Subscription term, and (e) the purchased Services and Content will not introduce Malicious Code into Customer systems. For any breach of an above warranty, Customer exclusive remedies are those described in (Term, Termination and Suspension).

13.3. Disclaimers.

EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. CONTENT AND TRIAL SERVICES ARE PROVIDED "AS IS," EXCLUSIVE OF ANY WARRANTY WHATSOEVER. EACH PARTY DISCLAIMS ALL LIABILITY AND INDEMNIFICATION OBLIGATIONS FOR ANY HARM OR DAMAGES CAUSED BY ANY THIRD-PARTY HOSTING PROVIDERS.

14. Mutual Indemnification

- 14.1. **Indemnification by FPG.** FPG will defend Customer against any claim, demand, suit or proceeding made or brought against Customer by a third-party alleging that the use of a purchased Service in accordance with the Agreements infringes or misappropriates such third-party intellectual property rights (a "Claim Against Customer"), and will indemnify Customer from any damages, attorney fees and costs finally awarded against Customer as a result, or for amounts paid by Customer under a court-approved settlement of, a Claim Against Customer, provided Customer (a) promptly give written notice of the Claim Against, (b) give FPG sole control of the defense and settlement of the Claim Against (except



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that FPG may not settle any Claim Against Customer unless it unconditionally releases you of all liability), and (c) give FPG all reasonable assistance, at FPG expense. If FPG receives information about an infringement or misappropriation claim related to a Service, FPG may at their sole discretion and at no cost to Customer (i) modify the Service so that it no longer infringes or misappropriates, without breaching Provider warranties under Section 13.2 (Warranties), (ii) obtain a license for continued use of that Service in accordance with this GTC, or (iii) terminate Customer Subscription(s) for that Service upon thirty (30) days written notice and refund any prepaid fees covering the remainder of the term of the terminated Subscription(s). The above defense and indemnification obligations do not apply to the extent a Claim Against Customer arises from content, a non-FPG application or Customer breach of Agreement or use of Services.

- 14.2. Indemnification by Customer. Customer will defend Provider against any claim, demand, suit or proceeding made or brought against FPG by a third-party alleging that Customer Data, or Customer use of any Service or content in breach of Agreements, infringes or misappropriates such third-party intellectual property rights or violates applicable law (a “Claim Against FPG”), and will indemnify FPG from any damages, attorney fees and costs finally awarded against FPG as a result of, or for any amounts paid by FPG under a court-approved settlement of, a Claim Against FPG, provided FPG (a) promptly give Customer written notice of the Claim Against FPG, (b) give Customer sole control of the defense and settlement of the Claim Against FPG (except that Customer may not settle any Claim Against FPG unless it unconditionally releases FPG of all liability), and (c) give Customer all reasonable assistance, at Customer expense.
- 14.3. Exclusive Remedy. This Section 14 states indemnifying Party sole liability to, and the indemnified Party's exclusive remedy against, the other Party for any type of claim described in this Section 14.

15. Limitation of Liability

- 15.1. Save as expressly stated in the Agreements, Provider does not make any representation or warranty of any kind, whether such warranty be expressed or implied, including any warranty of merchantability or fitness for a specific purpose or any warranty form course of dealing or usage of trade.
- 15.2. Provider shall not be liable for any losses or damages resulting from the loss, misdirection, corruption or erasure of data, unauthorized dissemination of data, inability to access the internet, or inability to transmit or receive information due to circumstances not within the direct and exclusive control of Provider or its service Providers such as but not limited to, Customer's equipment capabilities including the Property Management System (PMS), telecommunication failure or internet service limitations (including but not limited to disruption or outage of communication, power or utilities).
- 15.3. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENTS INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, LOSS OF OPPORTUNITY TO MAKE PROFITS, LOSS OF REVENUE, OR BUSINESS INTERRUPTION EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION OF LIABILITY APPLIES REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, OR OTHERWISE.
- 15.4. THE PROVIDER'S AGGREGATE LIABILITY FOR ANY DAMAGES INCURRED IN CONNECTION WITH THE AGREEMENTS, WHETHER IN CONTRACT, TORT OR OTHERWISE, SHALL NOT EXCEED THE AMOUNT PAID BY CUSTOMER TO PROVIDER UNDER THE AGREEMENTS GIVING RISE TO THE LIABILITY IN THE TWELVE (12) MONTHS PRECEDING THE FIRST INCIDENT OF WHICH THE LIABILITY AROSE. THIS LIMITATION OF LIABILITY APPLIES REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, OR OTHERWISE.
- 15.5. The Parties agree that the limitations in this Section are essential elements of the Agreement between the Parties and that in the absence of such limitations, the terms of the Agreement would be substantially different.

16. Insurance



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16.1. During the term of any Agreement, Provider will keep the following insurance policies in force:

16.1.1. Commercial General Liability - \$1,000,000 combined limit per occurrence, bodily injury, personal injury and property damage, including blanket contractual liability;

16.1.2. Professional Indemnity Liability - \$1,000,000 per occurrence.

Provider has coverage relative to the delivery of Services offered. Customer acknowledges that in the absence of such limitations, Agreement terms would be substantially different. If Customer requires additional policies or changes to Provider policies as described, Services Fees may be affected.

17. General Provisions

17.1. Privileged Licenses, Licenses and Permits.

If any governmental license or permit is required for the proper and lawful conduct of FPG's services to be carried on in or at the Customers premises, or if a failure to procure such a license or permit might or would in any way affect the operations of the Customer, then FPG, at its cost, will duly procure and thereafter maintain such license or permit and deliver the same for inspection by Customer within a reasonable amount of time. FPG will at all times comply with the requirements of each such license or permit.

17.2. Relationship of the Parties

17.2.1. The relationship between Provider and Customer is that of independent contractors and neither Party is an employee, agent, partner or joint-venture of the other. Customer has no authority, apparent or otherwise, to contract for or on behalf of Provider, or in any other ways legally bind Provider in any fashion. Provider has no authority, apparent or otherwise, to contract for or on behalf of Customer, or in any other ways legally bind Customer in any fashion.

17.2.2. Neither Party shall hold itself out as the agent of the other Party, nor imply, nor fail to correct a misunderstanding, that there is an agency relationship between it and the other Party.

17.2.3. Each Party is solely responsible for its employees, contractors, directors, officers and representative agents and neither party's employees, contractors, directors, officers or representative agents will be entitled to or benefit from the other Party's benefit or entitlement plans.

17.3. Construction & Legal Advice

In the event of any dispute over the terms in the Agreements, the terms in the Agreements will be deemed to have been drafted by all Parties herein and will not be strictly construed as against any Party. The Parties have been made aware of their right and opportunity to consult with independent legal counsel and have either done so, or knowingly waive the right to do so. Further the Parties acknowledge that they have engaged in negotiations to reach agreement on the said terms.

17.4. Force Majeure

Except for Customer payment obligations accruing under Agreement up to the date of a bona fide Force Majeure Event, neither Party shall be liable, nor shall any credit allowance or other remedy be extended, for any performance that is prevented or hindered due to a Force Majeure Event. Either Party shall promptly notify the other party of the nature and extent and shall use all reasonable efforts to overcome the force majeure. If during the Agreement term Provider is unable to provide Services for a period in excess of sixty (60) consecutive days for any reason as set forth in this Section 17.4, then either Party may terminate the affected Services upon written notice to the other Party, and both Parties shall be released from any further future liability in relation to such Services.

17.5. Foreign Corrupt Practices Act FCPA and Anti-Money Laundering

17.5.1. Provider understands and complies with the provisions of the U.S. Foreign Corrupt Practices Act ("FCPA") (15 U.S.C. §§ 78dd-1, et. seq.), as if the Provider were a U.S. "issuer," and laws



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and regulations related to anti-corruption, anti-bribery, anti-money laundering and sanctions, that are applicable to this GTC or the actions of Provider in connection with this GTC.

17.5.2. Neither Party has received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from any employees or agents of either Party in connection with this GTC. Reasonable entertainment provided in the ordinary course of business does not violate the above restriction. If Customer shall learn of any violation of the above restriction, if permitted by applicable law, Customer will use reasonable efforts to promptly notify Provider at Admin@FrontlinePG.com.

17.6. Amendments

Save where a Party or the Parties have expressly reserved the right to amend, vary or supplement the terms of the Services Agreement, the terms of the Services Agreement may be amended, varied or supplemented only by an instrument in writing signed by the respective Parties' authorized representatives.

17.7. Severability

If any provision or part of a provision in the Agreements shall be, or be found by any authority or Court of competent jurisdiction to be, invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions or parts of such provisions in the Agreements, which shall remain in full force and effect. Notwithstanding the foregoing, Parties shall negotiate in good faith in order to agree the terms of a mutually satisfactory provision to be substituted for the provision so found to be illegal, invalid or unenforceable.

17.8. Export Controls

Each party shall comply with the export laws and regulations of the applicable jurisdictions in providing and using Provider Services. Without limiting the generality of the foregoing, Customer shall not make Services available to any person or entity that: (i) is located in a country that is subject to a U.S. government embargo; (ii) is listed in The Office of Foreign Assets Control (OFAC) Specially Designated Nationals and Blocked Persons List (SDN List) or Other OFAC Sanctions List as maintained and provided by The U.S. Department of the Treasury; or (iii) is engaged in activities directly or indirectly related to the proliferation of weapons of mass destruction.

17.9. Headings; "Includes" and "Including"

All captions, titles or section headings of this GTC are for ease of reference only, shall not affect the interpretation or construction of any provisions of this GTC. Wherever the word "including" or "include" shall appear in this GTC, such term shall be construed to mean "including without limitation" or "include without limitation," as the case may be.

17.10. Partial Invalidity

If any provision of the Agreements or the application thereof to any Party or circumstances shall be declared void, illegal or unenforceable by a competent court of law, competent arbitrator or other competent authority, the remainder of the Agreements shall be valid and enforceable to the extent permitted by applicable law. The invalid provision shall be replaced by an appropriate provision, which to the extent permitted by applicable law, comes closest to the parties' intent of what the parties would have agreed on, had they been aware of the invalidity or unenforceability, in order to meet the spirit and purpose of the Agreements.

17.11. Waiver

No failure or delay by a Party in exercising any right, power or remedy under the Agreements shall operate as a waiver thereof, nor shall any single or partial exercise of the same preclude any further exercise thereof or the exercise of any other right, power or remedy. Without limiting the foregoing, no waiver by a Party of any breach by the other Party of any provision hereof shall be deemed to be a waiver of any subsequent breach of that or any other provision hereof.



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17.12. Rights and Remedies

The remedies conferred by the Agreements shall be in addition to any other remedy that is available at law or in equity. The election of any one or more of such remedies by any of the Parties shall not constitute a waiver by such Party of the right to pursue any other available remedy.

17.13. Assignment

Neither Party may assign its right, benefits or obligations under the Agreements to any other Party without the prior written consent of the other Party provided that no consent shall be required for the Provider to assign its rights, benefits and obligations under the Agreements to an Affiliate FPG Company.

17.14. Successors and Assigns

The Agreements shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and permitted assigns.

17.15. Third-Party Beneficiaries.

FPG's content licensors shall have the benefit of the same rights and protections hereunder with respect to the applicable content. There are no other third-party beneficiaries under the Agreements.

17.16. Counterparts

A Services Agreement or ORF may be executed in one or more counterparts, and by the Parties on separate counterparts, but shall not be effective until each Party has executed at least one counterpart and each such counterpart shall constitute an original herein and in the Services Agreement or ORF but all the counterparts shall together constitute one and the same instrument.

17.17. Prevailing Language of Agreement & Notices

17.17.1. The Agreements are in English and if the Agreements are translated into and/or signed in any language other than English, the English language text shall prevail in the event of any discrepancy or inconsistency between the translation and the English language text.

17.17.2. Each notice, instrument, certificate or other communication to be given by a Party to another under the Agreements or in connection with the Agreements shall be in English (being the language herein and in the Agreements) and in the event that such notice, instrument, certificate or other communication or the Agreements are translated into any other language, the English language text shall prevail in any and all events and circumstances.

17.18. Non-Solicitation; Non-Exclusivity; Non-Disclosure

17.18.1. Non-Solicitation of Other Party's Employees and Officers. The Parties mutually agree that, for one (1) year following the termination of the Services Agreement or ORF, neither Party will, without the prior express written consent of the other, directly or indirectly employ, any person who worked directly with the other Party or has been an officer of the other Party at any time during the term of the Services Agreement or ORF.

17.18.2. Non-Exclusivity. Customer acknowledges and understands that Provider provides similar consulting services to other customers or companies and agrees that Provider may continue to do so without restriction.

17.18.3. Non-Disclosure of Compensation Terms. Customer agrees that, during the term of the Services Agreement or ORF, and during the twenty-four (24) month period commencing with the date of termination of the Services Agreement or ORF, Customer will not, without the prior express written consent of Provider, disclose to any other person or entity the value or



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form of any compensation paid to Provider by Customer as consideration for Provider's performance under the Agreements.

17.19. Entire Agreement and Order of Precedence.

This GTC, together with the applicable Services Agreement or ORF, represents the entire agreement between the Parties regarding use of Services and Content relating to the subject matter of the Services Agreement or ORF. It supersedes all prior or contemporaneous oral or written communications, proposals, conditions, representations and warranties and prevails over any conflicting or additional terms of any quote, order, acknowledgment, or other communication between the Parties relating to the same subject matter.

No modification, amendment, or waiver of any provision of this GTC will be effective unless in writing and signed by the Party against whom the modification, amendment or waiver is to be asserted. The parties agree that any term or condition stated in a purchase order or in any other order documentation (excluding ORFs) is void. In the event of any conflict or inconsistency among the following documents, the order of precedence shall be: (1) the applicable ORF or Services Agreement, (2) this GTC, and (3) the Documentation.



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18. Contracting Parties, Notices, Governing Law and Jurisdiction

18.1. General.

The table below defines the Provider entity the Customer is contracting with under this GTC. Based upon where Customer is domiciled, this table specifies the party to direct notices to, what law will apply in any lawsuit arising out of or in connection with this GTC, and which courts have jurisdiction.

If You are domiciled in:	You are contracting with:	Notices should be addressed to:	The governing law is:	The courts having exclusive jurisdiction
The United States of America, Mexico or a Country in Central America, South America or the Caribbean	Frontline Performance Group, LLC	1075 W. Morse Blvd., Winter Park, FL 32789	Florida and Controlling United States federal law	Orlando, Florida U.S.A.
Canada	Frontline Performance Group Canada, Ltd.	777 Dunsmuir Street, Suite 1700 Vancouver BC V7Y 1K4	Florida and Controlling United States federal law	Orlando, Florida U.S.A.
A Country in Europe other than France or Spain	Frontline Performance Group UK, LTD	3rd Floor, 207 Regent Street, London, W1B 3HH	England & Wales	England & Wales
France	Frontline Performance Group SARL	250BIS BD Saint Germain 75007 Paris	England & Wales	England & Wales
Spain	Frontline Performance Group Sociedad Limitada	Paseo de Gracia 34, Barcelona, 08007, Spain	England & Wales	England & Wales
A Country in the Middle East or Africa	TSA Training Services FZ-LLC	The Administrator P.O. Box 75329, Dubai, United Arab Emirates;	England & Wales	England & Wales
A Country in Asia or the Pacific region, other than Japan or China	TSA Training Services Pte Ltd, a Singapore private limited company	The Administrator 100H Pasir Panjang Road #03-01 to 03 OC@Pasir Panjang Singapore 118524	Singapore	Singapore
Japan	Frontline Performance Group Japan, GK	Oak Minami-Azabu Building 2F, 3-19-23 Minami-Azabu, Minato-ku, Tokyo	Singapore	Singapore
China, Hong Kong, Macau or Mongolia	TSA Consultancy Services Pte. Ltd, a Singapore private limited company	The Administrator 100H Pasir Panjang Road #03-01 to 03 OC@Pasir Panjang Singapore 118524	Singapore	Singapore

18.2. Agreement to Governing Law and Jurisdiction

Each Party agrees to the applicable governing law above without regard to choice or conflicts of law rules, and to the exclusive jurisdiction of the applicable courts above.

18.3. Manner of Giving Notice.

Except as otherwise specified in the Services Agreement or ORF, all notices, permissions and approvals hereunder shall be in writing and shall be deemed to have been given upon: (i) personal delivery, (ii) the seventh business day after regular mailing, (iii) the second business



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day after sending by confirmed facsimile, or (iv) by email at the time when the email was confirmed received (provided email shall not be sufficient for notices of termination or an indemnifiable claim). Billing-related notices and any other relevant Service notices to Customer shall be addressed to the contacts designated in the Services Agreement, ORF or subsequent documentation provided by the Customer.



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SCHEDULE A – SUPPORT & SERVICE LEVEL

1. Online Ticket Support

Provider will provide Customer with Online Ticket Support as the primary support channel for all Technology and Services. All tickets submitted will be classified into case types and responded to within regular business hours of Customer location.

2. Correction of Malfunctions.

Provider will correct Malfunctions as provided herein. "Malfunction" shall mean a failure of Services to operate as required by this GTC.

The definitions of the Malfunction classifications are as follows:

- a) Severity Level 1: A problem which renders Services inoperative, causes a significant and ongoing interruption to the end-user's business activities or causes an unrecoverable loss or corruption of data.
- b) Severity Level 2: A problem which causes the Services to be inoperative, disrupted or malfunctioning and which materially interferes with Customer's use of the Services.
- c) Severity Level 3: A problem which causes the Services not to function in accordance with applicable specifications, including the Documentation, but which causes only a minor impact on Customer's use of the Services and for which an acceptable circumvention is available.
- d) Severity Level 4: Any general questions and issues pertaining to the Services and all Malfunctions which are not included in the other Malfunction classifications.

3. Procedure.

- a) Report of Malfunction. With respect to a report of any Malfunction, Customer will submit such malfunction via the Online Ticket system to describe Malfunction in reasonable detail and the circumstances under which Malfunction occurred or is occurring and will, with the assistance of Provider, classify as a Severity Level 1, 2, 3 or 4.
- b) Critical Malfunctions. If a Severity Level 1 or 2 Malfunction (each, a "Critical Malfunction") cannot be corrected to Customer reasonable satisfaction through communication with Provider within **eight (8)** hours after Provider receives the description of Malfunction via the Online Ticket system, Provider will: (1) immediately escalate to Provider customer service management; (2) take and continue to take actions to most expeditiously resolve the Critical Malfunction; (3) provide a written response to Customer of the steps taken and to be taken to resolve the problem, the progress to correction and the estimated time of correction, and provide update every **twenty-four (24)** hours until the Critical Malfunction is resolved; and (4) every **twenty-four (24)** hours, provide increasing levels of technical expertise and Provider management involvement in finding a solution to the Critical Malfunction until it has been resolved.
- c) Provider Level of Effort. Provider will work continuously until any Critical Malfunction for which a correction or workaround has not been achieved until resolved. Unless otherwise specified by Customer, Provider will work continuously during normal work hours in Provider location to resolve any Severity Level 3 Malfunction. Provider and Customer will mutually agree upon a schedule within which to resolve any Severity Level 4 Malfunction.
- d) Action Required from Provider. For a Critical Malfunction, Provider will commence an immediate correction plan, which Provider will then provision access for Customer to test. For a Severity Level 3 or 4 Malfunction, Provider will provide a correction as promptly as reasonably achievable, and at Customer request will seek to establish a mutually agreed schedule for the correction to be provided.



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SCHEDULE A – SUPPORT AND SERVICE LEVEL

Service/Activity	Service Level
Availability of the Services	FPG Software will be available to Customer for normal use 99.5% of the time each month, not including scheduled downtime. Scheduled downtime shall be for regular maintenance and upgrades. Customer will receive notification of scheduled downtime. Provider does not make a service level guarantee.
Restore Time	In the event of unscheduled downtime, Services shall be restored and fully operational within twenty-four (24) hours.



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SCHEDULE B – OPERATING ENVIRONMENT AND DATA MANAGEMENT

Customer is required to provide the minimum operating environment and procedures to ensure uninterrupted access and performance of Services. Customer Operating Environment requirements are listed below – last updated January 1, 2019. Future releases may have additional compatibility requirements of which the Customer will be notified in advance.

- Active internet or data connection to consume data from the cloud.
- Web Browser:
 - Subscribers accessing the IN-GaugeSM platform do so via a standard web browser
 - The web browser needs to be a supported and fully patched version
 - IN-GaugeSM supports Google Chrome, Safari, Mozilla Firefox
- Data Extraction methods supported by IN-GaugeSM
 - IN-GaugeSM pull mechanism through customer Data warehouse or API Endpoint
 - Extracting Data from a Customer warehouse to IN-GaugeSM
 - Extracting Data from a Cloud Application (PMS & RES Data)
 - Multi-property from different app sources via customer Data warehouse or IN-GaugeSM data lake writing to API Gateway
 - Extract Opera Default Reports to support private On-Premise cluster
 - Single Property Deployment via On Premise or Cloud Application
 - Data can be added, imported or loaded to IN-GaugeSM from the interface
 - Data can be consumed from a customer operating application whether legacy On-Premise or in the Cloud
- Guest Data
 - FPG data integration does not require or use any Guest Personal Identifiable Data. FPG solution only considers reservation level data such as a guest arrival and departure dates, room type, room rate booked, room type upsell, upsell supplement pricing, inventory, market segmentation.
 - IN-GaugeSM processes the data submitted by the Customer as-is, to provide subscribed Services
 - IN-GaugeSM integration procedures include detailed guidelines on how to ensure no Guest Data will get transmitted to FPG as part of the data transfer. FPG will actively monitor the transferred data and will work with Customer to ensure no transmission of Personal Guest Data.
 - Unless otherwise required by applicable law, FPG will respond to any Data access and deletion requests within thirty (30) days of receiving such request at AWSAdmin@frontlinepg.com
- Customer Personnel Data
 - IN-GaugeSM will process Personal Data as it relates to Customer personnel and only to the extent necessary to provide the Services set forth below:
 - To provide performance measurements to Customer, FPG needs to collect and maintain the following Customer personnel information:
 - Staff First Name, Last Name and valid email address to grant access FPG Technology (including IN-GaugeSM Connect or IN-GaugeSM Knowledge LMS Platform).
 - Customer personnel PMS identifiers and associated performance data for all Customer personnel performing upsells or check-ins, or otherwise participating in Provider Services.
 - For some specific interactions, FPG collects the following information:
 - Email and contact information for any authorised user raising a support ticket
 - Email and contact information for any recipient of Services reports.
 - For Customer application unique identifier and data transmission, Customer is responsible to ensure explicit consent from all employees participating in Services, where legally applicable.
 - Unless otherwise required by applicable law, Provider will respond to any data access and deletion requests within thirty (30) days of receiving such request by



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submitting a ticket to the IN-GaugeSM Support team via <https://fpg-ingauge.atlassian.net/servicedesk/customer/portals>



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SCHEDULE C

GDPR IT SECURITY AND TECHNICAL AND ORGANIZATIONAL MEASURES - AVAILABLE ON REQUEST

DATA PROTECTION AGREEMENT - AVAILABLE ON REQUEST

Please submit request at <https://fpg-ingauge.atlassian.net/servicedesk/customer/portals>