



## On-Site and Professional Services Terms and Conditions

### 1. Definitions

- (A) **"Consultant"** means the consultant provided by Vendor responsible for delivering certain Services.
- (B) **"On-Site Service"** means Services provided by a Consultant at the location occupied by Customer.
- (C) **"Remote Service"** means Services provided by Consultant via remote infrastructure such as phone calls, video conference, webinars, chats.
- (D) **"Services"** means those specific services as outlined in the Work Order, and including some or all of training, coaching, consulting services for the purpose of: (i) maximizing Customer performance across revenue management, operations and finance, (ii) working with Customer to develop implementation plans, ROI analysis, identifying opportunity, and establishing relevant revenue, profit, guest loyalty, and guest satisfaction goals and metrics, (iii) increasing the performance of Customer employees, providing training, coaching and support for Customer business goals, and (iv) trainers fulfilling Services.
- (E) **"Work Order"** means the documents for placing orders hereunder which reference these Terms and Conditions, including addenda thereto, that are entered into between Customer and Vendor or any of Vendor's Affiliates from time to time, including addenda and supplements thereto.

### 2. Services Provision

- (A) **Provision of Services.** Vendor shall make the Services available to Customer pursuant to this Agreement and the relevant Work Order during the Term set forth in the Work Order. Services may be delivered On-site at Customer's physical location or Remote Service via messaging, phone call, video call, or video conference.
- (B) **Representations and Warranties of Vendor.** Vendor warrants that all Services shall be performed: (i) in accordance with the specifications set out in the Work Order; (ii) by experienced and properly trained personnel exercising all reasonable skill and care necessary to perform the Services; (iii) in a proper and professional manner in accordance with generally accepted industry standards and practices; (iv) 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). Vendor is responsible at all times for the performance of Vendor personnel (including employees and contractors) and their compliance with Vendors obligations under this Agreement, except as otherwise specified herein under the Work Order.
- (C) **Access to Customer Technology.** Where Vendor is granted access to any technology owned by the Customer ("Customer Technology"), in connection with the Services, Vendor shall (i) comply with any policies or instructions of Customer regarding such Customer Technology, (ii) use such Customer Technology only in connection with the Services, (iii) not permit any other individual or entity to access such Customer Technology, and (iv) upon Customer's request, cease access to and use of such Customer Technology and return all Customer Technology to Customer. Vendor's Consultants who are on site at locations operated by or utilized on behalf of Customer, will observe any working rules or schedules of Customer of which they are notified.

### 3. Customer Obligations

- (A) **Support for Services.** Customer shall provide all commercially reasonable logistic, administrative, physical, organizational and technical requirements necessary for the Vendor to render the services under any Work Order and shall provide the facilities, equipment, supplies, and other support supplies and services that are reasonably necessary for the proper provision of the Services.
- (B) **Indemnity.** Customer agrees to defend, indemnify, and hold harmless Vendor and its Affiliates and their respective directors, officers, agents, and employees harmless from and against any and all liabilities, costs, and expenses, including reasonable attorneys' fees, associated with third party claims against Vendor to the extent based on an allegation arising out of or relating to: (i) a breach of Section 3(A) (Customer Responsibilities), or (ii) acts or omissions of Customer or Customer's agents or contractors in connection with or arising out of the On-Site Services.



#### **4. Disclaimer of Warranties**

CUSTOMER ASSUMES TOTAL RESPONSIBILITY FOR CUSTOMER'S USE OF THE SERVICES PROVIDED BY VENDOR AND THE INTERNET. THE SERVICES PROVIDED BY VENDOR UNDER THIS AGREEMENT ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, ALL OF WHICH ARE HEREBY DISCLAIMED INCLUDING BUT NOT LIMITED TO WARRANTIES OF TITLE, NONINFRINGEMENT, OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. NO ADVICE OR INFORMATION GIVEN BY VENDOR, ITS AFFILIATES, OR ITS CONTRACTORS OR THEIR RESPECTIVE EMPLOYEES SHALL CREATE A WARRANTY.

#### **5. Limitation of Liability**

- (A) IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, OR LOST OR IMPUTED PROFITS OR ROYALTIES, LOST DATA, OR COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES ARISING FROM OR RELATED TO THE SERVICES PROVIDED UNDER THIS AGREEMENT WHETHER FOR, AMONG OTHER THINGS, BREACH OF WARRANTY OR ANY OBLIGATION ARISING THEREFROM, AND WHETHER LIABILITY IS ASSERTED IN, AMONG OTHER THINGS, CONTRACT OR TORT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE AND STRICT PRODUCT LIABILITY), IN EACH CASE REGARDLESS OF WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF ANY SUCH LOSS OR DAMAGE.
- (B) VENDOR'S LIABILITY HEREUNDER SHALL IN NO EVENT EXCEED AN AMOUNT EQUAL TO THE GREATER OF (i) THE AMOUNTS PAID BY CUSTOMER TO VENDOR FOR SERVICES FOR THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE CLAIM FOR DAMAGES UNDER THIS AGREEMENT OR \$500.00. CUSTOMER HEREBY WAIVES ANY CLAIM THAT THESE EXCLUSIONS DEPRIVE IT OF AN ADEQUATE REMEDY OR CAUSE ANY REMEDY UNDER THIS AGREEMENT TO FAIL OF ITS ESSENTIAL PURPOSE. The provisions of this Section allocate the risks between Vendor and Customer and Vendor's pricing reflects the allocation of risk and limitation of liability specified herein.
- (C) No action or claim, regardless of form, arising out of this Agreement may be brought by Customer more than two (2) years after Customer knew or should have known of the event which gave rise to the cause of action, unless such restriction is not enforceable under applicable law.
- (D) THE CUSTOMER AND VENDOR AGREE THAT THE LIMITATIONS OF LIABILITY SET FORTH IN THIS SECTION 55 ARE A FUNDAMENTAL BASIS OF THE BARGAIN, THAT VENDOR HAS SET ITS FEES IN RELIANCE ON THE ENFORCEABILITY OF THESE PROVISIONS, AND THAT THEY SHALL APPLY NOTWITHSTANDING THAT ANY REMEDY SHALL FAIL ITS ESSENTIAL PURPOSE.

#### **6. Additional Terms and Conditions**

The additional terms and conditions set forth in Vendor's standard Terms and Conditions, and those included in each Work Order shall be incorporated into this Agreement.

This Agreement, including its terms and conditions and its Work Order(s) and exhibits, is a complete and exclusive statement of the agreement between the parties relating to the subject matter of this Agreement, and which supersedes all prior or concurrent proposals and understandings, whether oral or written, and all other communications between the parties regarding such subject matter hereof.