



**APPENDIX 1**  
**TO**  
**MASTER SOFTWARE AS A SERVICE AGREEMENT**  
**GENERAL TERMS AND CONDITIONS (“GTC”)**

These GTC are incorporated and part of the Master Software as a Service Agreement between **Frontline Performance Group, LLC** (“FPG”) and **Marriott International Administrative Services, Inc.**, a Delaware corporation dated September 1, 2022 (“Master Agreement”), and shall be incorporated by reference, along with the Master Agreement, into any Work Order (“WO”) or Scope of Work (“SOW”) issued pursuant to the Master Agreement. All references to the “Work Order (WO) or Scope of Work (SOW)” in this Appendix 1 include these Terms and Conditions and together and govern the provision of Services made available by FPG to the Customer.

IF YOU REGISTER FOR A TRIAL OF OUR SERVICES, THE TERMS OF THE GTC WILL ALSO GOVERN THAT TRIAL. BY EXECUTING THE ORF, THE PARTIES AGREE TO BE BOUND BY THESE GENERAL TERMS AND CONDITIONS WHICH ARE INCORPORATED AND MADE A PART OF THE ORF.

**1. Definitions**

- 1.1. The below terms supplement or append the definitions set forth in the Master Agreement, or in the WO or SOW. Such terms when capitalized shall have the meaning indicated below unless the context otherwise requires:

“Affiliate” means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. “Control,” for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

“Affiliate FPG Company” means any of the following companies acting as the Provider under an ORF, namely Frontline Performance Group, LLC, Frontline Performance Group UK, LTD, Frontline Performance Group SARL, Frontline Performance Group Sociedad Limitada, Frontline Performance Group Japan, GK, Frontline Performance Group Canada, LTD, 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.

“Business Day” means a day which is not a weekend or public holiday in the Customers location.

“Customer Affiliate” means any entity (a) under the majority ownership or control of, under common majority ownership or control with, or which own or control, a Party; and (b) partnerships and joint ventures in which a Party or an entity under (a) above is a partner or a principal.

“Customer Data” means 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 the Services, including partial copies thereof, including Personal Data and Hotel Associate Data where applicable, if any.

“Customer Order Form” or “ORF” means a request for Service submitted by Customer or Customer Affiliate in the form 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 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 “Work Order”, “Scope of Work”, or “Scope of Services”.

“Documentation” means information provided on paper, or online. Examples are user guides, white papers, on-line help, quick-reference guides.

“FPG Software” (also referred to as IN-Gauge<sup>SM</sup>) means the infrastructure, technology, computers, communications network, equipment, storage capacity, back-up services, and other hardware, software, and reporting analytics delivered that FPG owns, leases or uses to provide the Services and refers to all or any of the following:

- IN-Gauge<sup>SM</sup> 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-Gauge<sup>SM</sup> modular application to include core functionality, features and UI
- IN-Gauge<sup>SM</sup> machine learning products to learn application
- IN-Gauge<sup>SM</sup> Knowledgebase
- IN-Gauge<sup>SM</sup> administration panel provided as part of IN-Gauge<sup>SM</sup>

“FPG Technology” shall have the meaning assigned to it in Clause 5.4;

“Guest” means an individual or entity seeking hotel accommodations at the Customer’s facilities (each, a “Hotel”);

“Hotel Associate Data” means Personal Data as it related to the employees at the Hotel who have access to FPG Services.

“Hotel Guest Data” means Personal Data related to any Guest.

“Intellectual Property Rights” means 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, whether such rights arise under the law of Singapore or any other country;

“Licensed Marks” means such trade or service mark and logo associated with FPG Services.

“Losses” means all losses, fines, penalties, liabilities, damages and claims, and all related costs and expenses (including reasonable legal fees, disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties).

“Marriott Marks” means Marriott trademarks, trade names, web site domain names, service marks and logos, whether or not registered.

“Metadata” shall have the meaning assigned in Clause 9.10.

“ORF” means either a Work Order or a Scope of Work, or such other form of an ordering document specifying the Services to be provided that is entered into between the Provider and Customer.

“Personal Data” shall mean any information that identifies or relates to an identifiable individual, including an individual’s name, address, telephone number, e-mail address, 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) and includes such information that is generated, collected, stored or obtained as part of this Agreement or such information that Vendor may have access to while performing its obligations and responsibilities under this Agreement.

“Shared Services” means services provided by Provider from Provider’s premises, including but not limited to, administration, monitoring, auditing, support services.

“Subscriptions” means Service delivery model where services can be purchased as subscriptions, paid for on a monthly or annual basis.

“Taxes” as defined in Clause 4.

“Third Party Claim(s)” means all claims or threatened claims, civil, criminal, administrative, or investigative action or proceeding, demand, charge, action, cause of action or other proceeding asserted against a Party brought by a third party.

“Usage Data” shall have the meaning assigned in Clause 9.9

## 2. **Term, Termination and Suspension**



- 2.1. Term. The term of each Service or Subscription shall be as specified in the applicable ORF. Except as may otherwise be specified in an ORF, Subscriptions will automatically renew for additional periods equal to the expiring Subscription term or one (1) year (whichever is shorter), unless either party gives the other notice of non-renewal at least thirty (30) days before the end of the relevant Subscription term.
- 2.2. Termination. Neither Party may unilaterally terminate an ORF prior to the expiry of the term specified in the ORF, unless expressly permitted pursuant to the terms of the ORF; provided however, that either Party shall be entitled to terminate the ORF forthwith:
  - 2.2.1. If the other Party (the “Defaulting Party”) is in breach of any of the terms of the ORF 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
  - 2.2.2. 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.
  - 2.2.3. With ninety (90) days’ notice, If the Customer/Hotel is no longer owned, managed, franchised, licensed by or otherwise affiliated with Marriott (“Deflag”).
- 2.3. In the event the Provider terminates the ORF pursuant to Clause 2.2.1:
  - 2.3.1. The Provider will be entitled to recover payment for all Services rendered calculated on a pro-rated basis up to Termination date, considering the number of remote consulting hours or on-site/virtual days consumed OR the number of months Services have been rendered, whichever is higher; as well as cost for implementation and set-up if termination occurs within the first six months of such implementation and
  - 2.3.2. The Customer shall not be entitled to a refund of any upfront fees paid if any, up to the date of Termination.
  - 2.3.3. 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:

    - (A) 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
    - (B) 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.
  - 2.3.4. 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.
- 2.4. **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 the section entitled “Access to Customer Data”) and all Confidential Information. Termination for any reason shall not relieve Customer of the obligation to pay any fees accrued or due and payable to Provider prior to the effective date of termination. Additionally, Provider shall refund to Customer any prepaid amounts applicable to Services not performed as of the effective date of termination. Termination of the ORF shall not affect any rights that any Party may have (whether at law or in equity), with respect to any breach of the ORF occurring prior to or following such date of termination and termination for any reason other than for uncured material breach by Provider, such as Termination for convenience, shall not relieve Customer of the obligation to pay any Subscription amounts due under all agreements or orders. Upon termination for cause by Provider, all future Subscription Fees due shall be accelerated and become due and payable immediately. Upon for cause by Customer, Provider shall refund Customer any unused prepaid fees for the affected Services that were to be provided after the effective date of termination.
- 2.5. **Access to Customer Data and Deletion of Customer Data.** Upon request by Customer or upon Termination, Provider shall return or delete all relevant Customer Data that is maintained by Provider, but that is no longer



necessary to provide the Services, and delete all existing copies of such Customer Data, unless otherwise required by applicable law. Upon request by Customer, Provider can 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's assistance, Customer may acquire professional services at Provider's then-current billing rates pursuant to a separately executed Statement of Work and Professional Services Agreement. Both Parties agree this Section 2.6 may need to be modified from time to time to remain compliant with applicable laws.

- 2.6. **Suspension for Renovation.** Provider recognizes that Customer business may require a period of closure for renovations. If this occurs during the Term, Customer has the right to notify Provider in writing sixty (60) days prior to planned closure for renovations and is required to inform Provider of anticipated re-opening dates (known as "The Renovation Period"). At Providers discretion, the Services may be suspended for the Renovation Period and automatically resume at the end of the Renovation Period at the same Fees; provided however, that no Fee will be due to Provider during the Renovation Period.
- 2.7. **Seasonal Suspension.** Provider recognizes that the Customer may have a seasonal operation where it operates only for specific periods every year ("Seasonal Operations"). If the Customer gives notice upfront prior to signing the ORF that the Hotel has Seasonal Operations, then the ORF will be issued recognizing the Seasonal Operations and specifying the closing and re-opening dates each year. For such Seasonal Operations, the monthly Services and corresponding monthly payments will be suspended from the first day of the month the Hotel closes and will resume on the first day of the month the Hotel re-opens for business ("Seasonal Suspension Period"). For the avoidance of doubt, the Services will be suspended for the Seasonal Suspension Period and automatically resume immediately after the Seasonal Suspension Period, at the same pricing."
- 2.8. **Surviving Provisions.** Notwithstanding anything to the contrary in this Section 3, The 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 Agreement.

### 3. Fees & Payment for Services Purchased or Subscriptions

- 3.1. Provider will invoice Customer electronically for all Fees and reimbursable items payable to the Provider according to the terms set out in the ORF. The Customer will pay the invoiced amount in full within thirty (30) days of the email date that the invoice was sent or, the date invoice was posted if Customer requests an additional physical copy of invoice, without deduction or setoff.
- 3.2. 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 be paid by bank transfer to the designated bank account, specified in the invoice.
- 3.3. If a Customer has any dispute with an invoice, and such dispute cannot be resolved within fifteen 15 days, Customer shall pay the amounts due, less the disputed amount, and shall advise Provider in detail of the reason for the dispute. If the disputed amount is later determined to have been payable, Customer will pay Provider interest on such amount from the thirtieth (30<sup>th</sup>) day after the disputed invoice was originally received by Customer at the late payment rate of the lesser of (a) 1.0% per month or (b) the highest interest rate permitted by applicable law for outstanding debt ("Late Payment Rate"). If Customer paid an amount that was not due under the Services Agreement, Provider shall refund such amount within thirty (30) days after receipt of notice thereof from Customer. If such refund is not completed within thirty (30) days of receipt of such notice, such amount shall bear interest at the Late Payment Rate. If any portion of such amount is in dispute, Provider shall refund the amounts not in dispute and shall notify Customer in reasonable detail of the reason for the dispute. If the disputed amount is later determined to have been refundable, Provider will pay Customer interest on such amount from the thirtieth (30<sup>th</sup>) day after the disputed refund notice was originally received by Provider at the Late Payment Rate.

### 4. Taxes



- 4.1. Other than set forth in the ORF, each Party shall bear its own Taxes (if any) and legal and other costs and expenses, payable in connection with the ORF and the Services contemplated thereunder.
- 4.2. 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 (collectively, "Taxes").
- 4.3. Customer is responsible for paying all Taxes associated with purchases hereunder. If FPG has the legal obligation to pay or collect Taxes on behalf of the Hotel, FPG will add such taxes to Customer Invoice. Such tax would be paid by the Customer unless a valid tax exemption certificate authorized by the appropriate taxing authority is issued to FPG.

FPG is solely responsible for taxes assessable based on our income, property and employees.

## 5. **Software License and Subscription Usage Rights**

- 5.1. Subject to both a valid Master Agreement and 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.
- 5.2. Customer has the right to and use of content subject to the terms of the Agreement and Documentation, only during the term of the Agreement, and only with respect to any locations being Serviced pursuant to the Agreement.
- 5.3. Customer Data remains the exclusive property of Customer or its licensors. Provider acquires no right, title or interest therein, except that Provider may use the Customer Data for the sole, exclusive and limited purpose of performing the Services in compliance with the terms and conditions of the Services Agreement.
- 5.4. FPG Software - IN-Gauge Performance Management 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").
- 5.5. 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.
- 5.6. Customer may use FPG IP Rights or FPG Technology solely on behalf of Customer for Customer's business purposes. Customer shall not:
  - (a) copy, alter, modify, reverse engineer, 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 the FPG Software or any FPG Technology;
  - (d) create any link to the FPG Software or FPG Technology or frame or mirror any content contained in or accessible from the FPG Software or 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 the FPG Technology or FPG Software unusable;
- (h) use any of the 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.

5.7. Unless otherwise specified in this Master Agreement or ORF, any work product generated as a result of the Services contemplated hereunder remain the property of Provider.

## 6. **Provider's Obligations**

6.1. The Provider shall:

- 6.1.1. maintain any consents, permits, licenses, approvals, accreditations and other documents necessary to provide the Services;
- 6.1.2. have the necessary resources, facilities, tools and equipment to perform the Services;
- 6.1.3. ensure that its performance of the Services do not infringe any third party intellectual property, proprietary or other rights;
- 6.1.4. maintain commercially reasonable administrative, physical, organizational and technical safeguards for protection of the security, confidentiality and integrity of Customers Data;
- 6.1.5. shall comply with all applicable 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 written consent of the Customer.
- 6.1.6. Provider will be responsible for the performance of personnel (including Provider employees and contractors) who are required to deliver the Services and be responsible for their compliance with FPG's obligations under the applicable Services Agreement, except as otherwise specified herein.
- 6.1.7. Maintain commercially reasonable insurance policies to cover the Services being provided per the Services Agreement.

6.2. The Provider warrants that all Services shall be performed:

- 6.2.1. in accordance in all respects with the specifications set out herein and in the Services Agreement;
- 6.2.2. by experienced and properly trained personnel exercising all reasonable skill and care necessary to perform the Services;
- 6.2.3. in a proper and professional manner which meets or exceeds prevailing industry standards and practices;
- 6.2.4. 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 of performance).

6.3. The Provider

- 6.3.1. may delegate the performance of portions of the Services to its authorized subcontractors and service providers, provided the Provider shall be responsible for the performance and liable for the actions or omissions of its subcontractors or service providers and shall indemnify Customer for the actions and omissions of such subcontractors or services providers.
- 6.3.2. is responsible at all times for the performance of its' personnel (including employees and contractors) and their compliance with Providers obligations under this Agreement, except as otherwise specified herein
- 6.3.3. shall ensure that all subcontractors and service providers have committed themselves to protect Customer's Confidential Information in a manner that is consistent with the terms of the Services Agreement or under an appropriate statutory obligation of confidentiality.



- 6.3.4. is committed to secure handling of all data submitted into the FPG Software, including any Personal Data, and is audited quarterly.
- 6.3.5. maintains its data in secure AWS currently located in data centers supported by AWS throughout the globe.
- 6.3.6. will not use Customer Data for any other use than outlined in the Services.

**7. Customer's Obligations**

- 7.1. Customer shall:
  - 7.1.1. be solely responsible for errors in the Services resulting from inaccurate or incomplete data supplied by the Customer or at the Customer's direction;
  - 7.1.2. be responsible for the accuracy, quality and legality of data provided to Provider and the means by which Customer acquired such data;
  - 7.1.3. provide all commercially reasonable logistic, administrative, physical, organizational and technical requirements necessary for the Provider to render the services under any Services Agreement;
  - 7.1.4. be responsible for their Users compliance with the Agreements and Documentation;
  - 7.1.5. be responsible for maintaining the minimum operating environment required to deliver the Services as outlined in Schedule B.
  - 7.1.6. be responsible for informing Provider of any change or upgrade to those Customer systems required for Provider Services.
  - 7.1.7. 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;
  - 7.1.8. comply with the Master Agreement, Documentation and ORF.
  - 7.1.9. use commercially reasonable efforts to prevent unauthorized access to or use of Services and notify Provider promptly of any such unauthorized access or use.
  - 7.1.10. be responsible for determining appropriate level of access and administering access management.

**8. Intellectual Property Rights**

- 8.1. 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.
- 8.2. The Parties shall each use the Materials belonging to the other solely in relation to the use or provision of the Services and for maximizing Customer's Front Desk Upselling performance.
- 8.3. The Recipient Party shall not reproduce, distribute, publish, sell, adapt, translate, commercialize or otherwise deal with the Materials in any manner inconsistent with the intellectual property rights of the owner of such Materials
- 8.4. For the purposes of this Clause, "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).

**9. Confidentiality and Personal Data**

- 9.1. The term "Confidential Information" shall mean all non-public information or 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, (ii) existing or contemplated products, services, processes, techniques, methodologies or means of doing business, (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.



- 9.2. "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.
- 9.3. 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 Clause.
- 9.4. The obligations of either Party under this Clause shall not apply to information or materials that the Receiving Party can demonstrate:
- 9.4.1. was in its possession at the time of disclosure and without restriction as to confidentiality;
  - 9.4.2. 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;
  - 9.4.3. has been received from a third party without restriction on disclosure and without breach of agreement or other wrongful act by the Receiving Party;
  - 9.4.4. is independently developed by the receiving party without reference to the Confidential Information of the Disclosing Party;
  - 9.4.5. 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-clause is limited to the extent of the legal requirement.
- 9.5. All Confidential Information disclosed hereunder shall 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.
- 9.6. The Receiving Party shall deliver to the Disclosing Party all documents and materials containing any Confidential Information on the earlier of:
- 9.6.1. a demand by the Disclosing Party; or
  - 9.6.2. the termination of the Services Agreement howsoever caused if demanded by the Disclosing Party.
- 9.7. The Disclosing Party shall be entitled to injunctive relief to prevent any threatened or actual breach of the obligations in this Clause. Such injunctive relief shall be in addition to any other remedies available to the Disclosing Party at law or in equity.
- 9.8. **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 Data under the applicable provisions of the Master Agreement and Confidential Information subject to the confidentiality provisions of this Services Agreement. 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 access thereto. Provider shall provide Customer with access to Personal Data at any time as Customer may request. 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.
- 9.9. **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.

- 9.10. **Metadata.** The Parties recognize that Providers software, processing and analysis produces metadata including custom output and reports. Such output and reports including Benchmarking, geographical comparisons ("Metadata and Analytics"), 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.

## 10. REPRESENTATIONS, WARRANTIES, EXCLUSIVE REMEDIES AND DISCLAIMERS

### 10.1. Representations.

Each party represents that it has validly entered into the ORF and has the legal power to do so.

### 10.2. Warranties.

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) the Master Agreement, ORF and the Documentation accurately describe the applicable administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Customer Data, (b) if it modifies the overall security, procedures, policies or controls of the Services during a contract period or subscription term, it will promptly notify Customer, (c) the Services will perform materially in accordance with the applicable Documentation, (d) it will not materially decrease the functionality of the Services during a contract period or subscription term, and (e) the Services will not introduce malicious code into Customer systems (f) any change in a third party hosting provider or hosting facility is subject to continued compliance with Customer's security requirements and shall be subject to security audits by Customer as set forth in the Services Agreement. Notwithstanding the foregoing in Section 10.2(f), Customer understands and acknowledges that the transmissions of data through the Internet are not inherently secure, and that security measures are not foolproof.

### 10.3. 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.

## 11. Indemnification

- 11.1. Indemnification by FPG. FPG will indemnify, defend and hold harmless Customer and Customer Affiliates and their respective officers, directors, employees, agents, successors and assigns, from any Losses related to, arising from, or in connection with any Third Party Claims (a) the infringement by Provider of a third party's Intellectual Property Rights; (b) Provider's negligence, willful misconduct or breach by Provider of any representation, warranty, or other obligation under the ORF; (c) any violation by Provider of applicable laws, rules, regulations, ordinances, orders, and directions of federal, state, provincial, county, and municipal governments, all as they may be amended from time to time provided Customer (a) promptly give written notice of the Third-Party Claim, (b) give FPG sole control of the defense and settlement of the Third-Party Claim (except that FPG may not settle any Claim Against Customer unless it unconditionally releases Customer of all liability), and (c) give FPG all reasonable assistance, at FPG's expense.

- 11.2. If FPG receives information about an infringement or misappropriation claim related to a Service, FPG may in their sole discretion and at no cost to Customer (i) modify the Service so that it no longer infringes or misappropriates,



without breaching FPG's warranties under Section 11 (Warranties), (ii) obtain a license for continued use of that Service in accordance with the Services Agreement, or (iii) terminate Customer's subscriptions for that Service upon 30 days' written notice and refund any prepaid fees covering the remainder of the term of the terminated subscriptions. The above defense and indemnification obligations do not apply to the extent a Third -Party Claim arises solely from a Non-FPG application or non-FPG Software.

- 11.3. 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 infringes or misappropriates such third party's 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 Provider (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's expense. Mutual Indemnities. Each Party agrees to indemnify, defend and hold harmless the other party and its respective officers, directors, employees, agents, successors, and assigns, from any Losses related to, arising from, or in connection with any Third Party Claims alleging: (a) personal injury, wrongful death, or property damage proximately caused by the negligence or willful misconduct of the indemnitor, its employees, agents or subcontractors; (b) an act or omission of the indemnitor in its capacity as employer of a person; and (c) any breach by the indemnitor of its obligation with respect to Personal Data or Confidential Information under the Services Agreement.

## 12. Limitation of Liability

- 12.1. The 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 control of Provider or its service Providers such as but not limited to, Customer's equipment capabilities including the PMS system, telecommunication failure or internet service Provider limitations (including but not limited to disruption or outage of communication, power or utilities).
- 12.2. 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.
- 12.3. Save for breaches in respect of Intellectual Property Rights and Confidential Information, the Provider's aggregate liability for any damages incurred in connection with the ORF, whether in contract or tort (including negligence but excluding gross negligence or willful misconduct), or strict liability shall not exceed the amount of US\$1,000,000.
- 12.4. Notwithstanding the foregoing, the limitations of liability in the ORF shall not apply to limit: (a) a Party's defense and indemnification obligations; (b) either party's liability to the other party for Losses incurred by such other party arising from fraud, gross negligence or willful misconduct of the liable party; or (c) Provider's liability to Customer for Losses incurred by Customer arising from: (i) ) Provider's breach of any applicable laws, rules or regulations. For the avoidance of doubt, all damages, costs, expenses, penalties, awards, settlements or fines (including reasonable legal costs), of all types, arising out of or related to a security breach shall be considered direct damages.
- 12.5. 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 pricing and terms of the ORF would be substantially different. The foregoing disclaimer will not apply to the extent prohibited by law.

## 13. General Provisions

### 13.1. 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.

13.2. Relationship of the Parties

13.2.1. The relationship between the Provider and the 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.

13.2.2. 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.

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

13.3. Construction & Legal Advice

In the event of any dispute over the terms in the ORF, the terms 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.

13.4. Force Majeure

Neither Party shall be liable for delays or failure in performance caused by acts of God, war, strike, labour dispute, work stoppage, fire, act of government or any other cause, whether similar or dissimilar beyond the control of that Party. If either Party is affected by any force majeure, it shall promptly notify the other party of its nature and extent, and shall use all reasonable efforts to overcome the force majeure.

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

13.5.1. Provider understands and complies with the applicable Foreign Corrupt Practices Act ("FCPA") and complies with any applicable laws and regulations related to anti-corruption, anti-bribery, anti-money laundering and sanctions, that are applicable to this Agreement or the actions of the Provider in connection with this Agreement.

13.5.2. Neither Party has received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from either Party's employees or agents in connection with this Agreement. Reasonable entertainment provided in the ordinary course of business do 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](mailto:Admin@FrontlinePG.com)

13.6. Amendments

The terms of the ORF may be amended, varied or supplemented or supplemented only by an instrument in writing signed by the respective Parties' authorized representatives.

13.7. Severability

If any provision or part of the ORF 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 Services Agreement, 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.

13.8. Export Controls



Each party shall comply with the export laws and regulations of the applicable jurisdictions in providing and using the Service. Without limiting the generality of the foregoing, Customer shall not make the Service 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 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.

13.9. Headings; “Includes” and “Including”

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

13.10. Partial Invalidity

If any provision of the ORF 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 ORF 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 ORF.

13.11. Waiver

No failure or delay by a Party in exercising any right, power or remedy under the ORF 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.

13.12. Rights and Remedies

The remedies conferred by the provisions herein and in 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.

13.13. 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 (a) the Provider to assign its rights, benefits and obligations under the Agreements to an Affiliate FPG Company; or (b) Customer to assign rights, benefits and obligations under the Agreements to a Customer Affiliate. In either case, the assigning party will provide advance written notice of such assignment for assignment to be effective and all rights of the affected agreements to be upheld.

13.14. Successors and Assigns

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

13.15. 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 this Agreement. The Parties acknowledge that Customer Affiliates shall be considered third party beneficiaries to the ORF to the extent such Customer Affiliates make direct use of the Services pursuant to the rights granted under the ORF and have similar binding terms of confidentiality, liability and indemnification.



13.16. Counterparts

The Services Agreement 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 in the Services Agreement but all the counterparts shall together constitute one and the same instrument.

13.17. Prevailing Language of Agreement & Notices

13.17.1. The ORF is in English and if the Services Agreement is 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.

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

13.18. Entire Agreement and Order of Precedence.

This GTC, together with the applicable Agreements or ORF represents the entire agreement between the Parties regarding use of Services relating to the subject matter of the Agreements 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 Agreement 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) Appendix 1 (General Terms and Conditions), (2) the Master Agreement, and (3) applicable ORFs.

14. **Contracting Parties, Notices, Governing Law and Jurisdiction**

14.1. General.

The table below defines who the Customer is contracting with under this Agreement, who each party should direct notices to under this Agreement, what law will apply in any lawsuit arising out of or in connection with this Agreement, and which courts have jurisdiction over any such lawsuit, will depend on where the Customer is domiciled.

14.2. 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 below

<b>If You are domiciled in:</b>	<b>You are contracting with:</b>	<b>Notices should be addressed to:</b>	<b>The governing law is:</b>	<b>The courts having exclusive jurisdiction:</b>
The United States of America, Mexico or a Country in Central America, South America or the Caribbean	Frontline Performance Group, LLC	941 W Morse Blvd, Suite 100, PMB 498, 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



**Appendix 1 - General Terms and Conditions**

France	Frontline Performance Group SARL	3-5 rue Saint-Georges 75009 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, Turkey, Sri Lanka, Maldives	TSA Training Services FZ-LLC	The Administrator P.O. Box 75329, Dubai, United Arab Emirates	England & Wales	England & Wales
India	FPG Technologies India Private Limited	3rd Floor, 305 and 306, A Wing, ICC Trade Tower, Senapati Bapat Road, Pune, Maharashtra, 411016	Singapore	Singapore
A Country in Asia or the Pacific region, other than Japan or China	TSA Training Services Pte. Ltd., a Singapore private limited company	5 Shenton Way, #12-01 UIC Building, Singapore 068808	Singapore	Singapore
Japan	Frontline Performance Group Japan, GK	Nihonbashi 3 Chome Square 11F, 3-9-1 Nihonbashi, Chuo-ku, Tokyo	Singapore	Singapore
China, Hong Kong, Macau or Mongolia	TSA Consultancy Services Pte. Ltd., a Singapore private limited company	5 Shenton Way, #12-01 UIC Building, Singapore 068808	Singapore	Singapore
Australia	Frontline Performance Group Australia, Pty Limited	C/- TMF Corporate Services (Aust) Pty Limited Level 4, 99 William Street, Melbourne VIC 3000	Singapore	Singapore

**14.3. Manner of Giving Notice.**

Except as otherwise specified herein or in an 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 (7<sup>th</sup>) business day after regular mailing, (iii) the second (2<sup>nd</sup>) business 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 herein or the Order Form.

4858-8803-7161, v. 9

4862KTBH:4858-8803-7161, v. 9