

THIS AGREEMENT GOVERNS YOUR PURCHASE AND USE OF OUR SERVICES.

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

BY ACCEPTING THIS AGREEMENT, EITHER BY CLICKING A BOX INDICATING YOUR ACCEPTANCE OR BY EXECUTING A STATEMENT OF WORK, SERVICES AGREEMENT OR ORDER FORM THAT REFERENCES THIS AGREEMENT, YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY 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 THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SERVICES.

You may not access the Services if you are a direct competitor of TSA. 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 Agreement was last updated on 01 February 2018.

1. Definitions

- 1.1. Under this General Terms and Conditions, unless the context otherwise requires, the following terms shall have the respective meanings indicated:

Add-Ons	means the add-on Services that are described in the Services Agreement.
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.
Business Day	means a day which is not a weekend or public holiday in the Customer's location.
Commencement Date	means the date as set out in the Order Form where TSA shall commence provision of any of the purchased Services and the date that applicable billing for the purchased Services starts.
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 Guest Data, if any.
Fees	The price to be paid for each of the Services.
Guest	means an individual or entity seeking hotel accommodations at the Customer's facilities;
Guest Data	means any and all information submitted by or authorized for submission by a Guest and provided to the Provider by the Customer in furtherance of the Services;
Documentation	means documentation provided by the Provider in relation to the Services including user guides, white papers, on-line help, quick-reference guides.
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 the TSA Professional Services, TSA Software and the TSA Analytics Platform;

On-Site Service	A Business or Talent Consultant works with the Customer on-site at the Customer Hotel premises to deliver specified services.
Order Form	means an ordering document specifying the Services to be provided hereunder that is entered into between the Parties, including any addenda and supplements thereto.
Packages	means any combination of the Services that are offered for a fixed fee or fixed period of time. New Packages maybe introduced throughout the term of the MSA.
Personal Data	means 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 MSA or such information that Vendor may have access to while performing its obligations and responsibilities under this Agreement.
Professional Services	means training, coaching, consulting and other services provided by a: - TSA Business Consultants who focus on maximizing Hotel performance across revenue management, operations and finance and work with Customer to develop implementation plans, ROI analysis to identify opportunity and establish relevant revenue, profit, guest loyalty and guest satisfaction goals and metrics. - TSA Talent Consultants who focus on the performance of the people working with your property, developing the right training and education, coaching and learning to support the delivery of the business goals. Professional Services may be delivered on-site at the Customer's hotel or remotely via remote infrastructure such as phone call, webinars.
Services	means the services to be provided by the Provider as set out in the Order Form.
Services Agreement	means the agreement entered into between the Customer and the Provider for the Services and commercial terms specified therein;
Subscriber	means the Customer who has purchased a Subscription.
Subscriptions	means the model where services can be purchased as subscriptions, paid for on a monthly or annual basis.
TSA Group Company	means any of the following companies, namely 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.
TSA Systems, Software and TSA Analytics Platform	means the infrastructure, technology, communications network, equipment, storage capacity, back-up services, data integration & management, and other hardware, software, and services and the reporting and analytics delivered as a monthly Subscription, that TSA owns, leases or uses to provide the Services and includes any of the following: • TSA Methodology known as TSA PMS extract Process; • TSA Front Desk Upsell (FDU) Tracking and Reporting process and mechanism; • TSA Performance Management Tools PMT; • myTSA Connect and all associated modules and dashboards; and • myTSA Knowledge portal and all associated e-learning modules and performance tests; • Analytics and Insights provided as part of MyTSA Connect
TSA Technology	shall have the meaning assigned to it in Clause 6.4

Usage Data	as defined in Clause 10.9
Metadata	as defined in Clause 10.10

2. Trial or Promotion Period

If we provide a trial, evaluation or promotion period, the specified services we will be made available free of charge until the earlier of (a) the end of the trial period for which you registered to use the applicable services (s) or (b) the start date of any Purchased Service and or Subscriptions ordered by you or (c) termination by Provider in our sole discretion. Additional Trial terms and conditions may appear on the trial registration web page or your Services Agreement. Any such terms and conditions are incorporated into this Agreement by reference and are legally binding.

Any data entered into the services and any customization made to the services by the Provider during the trial will be permanently lost unless you purchase a subscription to the same services. During the trial, the services are provided “as-is” without any warranty.

3. Term, Termination and Suspension

- 3.1. Term of Agreement; Term of Access to the Service. The term of this Agreement commences on the Effective Date of the Services Agreement or Purchase Order Form and continues until the stated term in all Agreements or Order Forms has expired or has otherwise been terminated, unless otherwise extended pursuant to the written agreement of the parties.
- 3.2. The term of each Service, Add-on or Subscription shall be as specified in the applicable Service Agreement, Work Order or Purchase Order Form. Except as otherwise specified in an Order Form, subscriptions will automatically renew for additional periods equal to the expiring subscription term or one year (whichever is shorter), unless either party gives the other notice of non-renewal at least 30 days before the end of the relevant subscription term. The per-unit pricing during any automatic renewal term will be the same as that during the immediately prior term unless We have given You written notice of a pricing increase at least 60 days before the end of that prior term, in which case the pricing increase will be effective upon renewal and thereafter. Any such pricing increase will not exceed 7% of the pricing for the applicable Purchased Service or Content in the immediately prior subscription term, unless the pricing in the prior term was designated in the relevant Order Form as promotional or one-time.
- 3.3. Termination. Either Party may terminate a Services Agreement by giving the other Party written notice of its intention to terminate the relevant Services Agreement at least ninety (90) days prior to the expiry of the term specified in the Services Agreement provided that either Party shall be entitled to terminate the Services Agreement forthwith:
 - 3.3.1. If the other Party (the “Defaulting Party”) is in breach of any of the terms of the Services 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
 - 3.3.2. 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 Agreement is terminated, all Statement of Work or Order Forms are simultaneously terminated.
 - 3.3.3. any representation or warranty made in the Services Agreement or any information furnished by the Defaulting Party in connection with the Services Agreement is incorrect or misleading.
- 3.4. In the event the Provider terminates the Services Agreement pursuant to Clause 3.3.1:
 - 3.4.1. The Provider will be entitled to recover payment for all Services rendered calculated on a pro-rated basis, considering the number of on-site 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
 - 3.4.2. The Customer shall not be entitled to a refund of any upfront fees paid.
- 3.5. 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 and 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 all agreements or orders. Upon termination for cause by Provider, all future amounts due shall be accelerated and become due and payable immediately. Upon termination 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.

- 3.6. 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 Agreement, 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'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.
- 3.7. Suspension: 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 fee.
- 3.8. 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.

4. Fees & Payment for Services Purchased or Subscriptions

- 4.1. 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 Order Form. The Customer will pay the invoiced amount in full within fourteen (14) Business Days of date of invoice, without deduction or setoff.
- 4.2. 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.
- 4.3. 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.
- 4.4. If any invoiced amount is not received by the due date, then without limiting our rights or remedies, those charges may 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.

5. Taxes

- 5.1. The Customer shall pay all taxes relating to the provision of the Services by Provider pursuant to the Services Agreement.

6. Software License Rights

- 6.1. Subject to a valid Services Agreement being in full force and effect, the Provider grants Customer a non-exclusive, non-transferable, non-assignable license to access and use the TSA Software and TSA Analytics Platform. The Provider reserves all rights to the Software and services including the right to update, modify, alter, amend or remove any functions or feature from the TSA Software at any time at its sole discretion.
- 6.2. Customer has the right to and use of content subject to the terms of applicable Order Forms, Service Agreements and documentation.
- 6.3. Customer grants Provider, our Affiliates and applicable contractors a worldwide, limited-term license to host, copy and transmit and display your 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 Agreement or to any of customers' data.

- 6.4. TSA Software contains audio visual information, processes, algorithms, user interfaces, know-how, trade secrets, techniques, Licensed Marks and other technical material or information (collectively "TSA Technology") that is proprietary to or licensed by Provider (collectively "TSA IP Rights").
- 6.5. Other than as expressly set forth herein, no other license or rights in or to the TSA Technology or TSA IP Rights are granted to the Customer. Nothing herein or in the Services Agreement shall constitute an assignment or transfer of the TSA IP Rights or TSA Technology to the Customer.
- 6.6. Customer shall not:
- (a) copy, alter, modify, reverse engineer, disassemble or decompile the TSA Technology or Software;
 - (b) timeshare, license or allow any person or entity other than its employees or authorized personnel to access or use the TSA Software;
 - (c) create any link to the TSA Software or frame or mirror any content contained in or accessible from the TSA Technology or Software;
 - (d) tamper with the security of any user account;
 - (e) access any Services to build a competitive product or compete with Provider;
 - (f) render any part of the TSA Technology or Software unusable; or
 - (g) use any of the TSA Technology or Software for purposes not specified in the Services Agreement.
- 6.7. Unless otherwise specified in the Service Agreement, any work product generated as a result of the Services contemplated hereunder remain the property of Provider.

7. Provider's Obligations

- 7.1. The Provider shall:
- 7.1.1. maintain any consents, permits, licenses, approvals, accreditations and other documents necessary to provide the Services;
 - 7.1.2. have the necessary resources, facilities, tools and equipment to perform the Services;
 - 7.1.3. ensure that its performance of the Services do not infringe any third party intellectual property, proprietary or other rights;
 - 7.1.4. maintain commercially reasonable administrative, physical, organizational and technical safeguards for protection of the security, confidentiality and integrity of Customers Data;
 - 7.1.5. 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.
 - 7.1.6. Provider will be responsible for the performance of personnel (including Our employees and contractors) who are required to deliver the Services and be responsible for their compliance with TSA's obligations under this Agreement, except as otherwise specified herein.
- 7.2. The Provider warrants that all Services shall be performed:
- 7.2.1. in accordance in all respects with the specifications set out in the Services Agreement;
 - 7.2.2. by experienced and properly trained personnel exercising all reasonable skill and care necessary to perform the Services;
 - 7.2.3. in a proper and professional manner in accordance with generally accepted industry standards and practices;
 - 7.2.4. 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).
- 7.3. The Provider
- 7.3.1. 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.

- 7.3.2. 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

8. Customer's Obligations

8.1. Customer shall:

- 8.1.1. be solely responsible for errors in the Services resulting from inaccurate or incomplete data supplied by the Customer or at the Customer's direction;
- 8.1.2. be responsible for the accuracy, quality and legality of data provided to Provider and the means by which Customer acquired such data;
- 8.1.3. provide all commercially reasonable logistic, administrative, physical, organizational and technical requirements necessary for the Provider to render the services under any Services Agreement;
- 8.1.4. be responsible for their Users compliance with this Agreement, Documentation and Order Forms or Services Agreement
- 8.1.5. 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;
- 8.1.6. may permit the Provider to use the Customer's name and logo in a press release, marketing presentation or make a public announcement regarding the Parties' collaboration pursuant to the Services Agreement on its website. The Provider shall provide the 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.

9. Intellectual Property Rights

- 9.1. 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.
- 9.2. 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.
- 9.3. 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
- 9.4. 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).

10. Confidentiality and Personal Data

- 10.1. Under this General Terms and Conditions, 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, (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.
- 10.2. "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.
- 10.3. 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.

- 10.4. The obligations of either Party under this Clause shall not apply to information or materials that the Receiving Party can demonstrate:

- 10.4.1. was in its possession at the time of disclosure and without restriction as to confidentiality;
- 10.4.2. 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;
- 10.4.3. has been received from a third party without restriction on disclosure and without breach of agreement or other wrongful act by the Receiving Party;
- 10.4.4. is independently developed by the receiving party without reference to the Confidential Information of the Disclosing Party;
- 10.4.5. 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.

- 10.5. 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.

- 10.6. The Receiving Party shall deliver to the Disclosing Party all documents and materials containing any Confidential Information on the earlier of:

- 10.6.1. a demand by the Disclosing Party; or
- 10.6.2. the termination of the Services Agreement howsoever caused if demanded by the Disclosing Party.

- 10.7. 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.

- 10.8. **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 Agreement and Confidential Information subject to the confidentiality provisions of this 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. 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.

- 10.9. **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.

- 10.10. **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.

11. REPRESENTATIONS, WARRANTIES, EXCLUSIVE REMEDIES AND DISCLAIMERS

- 11.1. Representations.

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

- 11.2. 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.

TSA warrants that (a) this Agreement, the Service Agreement, Order Forms and the Documentation accurately describe the applicable administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Customer Data, (b) We will not materially decrease the overall security of the Purchased Services during a contract period or subscription term, (c) the Purchased Services will perform materially in accordance with the applicable Documentation, (d) We will not materially decrease the functionality of the Purchased Services during a contract period or subscription term, and (e) the Purchased Services and Content will not introduce Malicious Code into Your systems. For any breach of an above warranty, Customers exclusive remedies are those described in (Term, Termination and Suspension).

11.3. 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.

12. Mutual Indemnification

- 12.1. **Indemnification by TSA.** We will defend Customer against any claim, demand, suit or proceeding made or brought against you by a third party alleging that the use of a Purchased Service in accordance with this Agreement infringes or misappropriates such third party's intellectual property rights (a “**Claim Against Customer**”), and will indemnify Customer from any damages, attorney fees and costs finally awarded against you as a result of, or for amounts paid by you under a court-approved settlement of, a Claim Against you, provided you (a) promptly give written notice of the Claim Against you, (b) give TSA sole control of the defense and settlement of the Claim Against you (except that TSA may not settle any Claim Against you unless it unconditionally releases you of all liability), and (c) give TSA all reasonable assistance, at TSA's expense. If TSA receives information about an infringement or misappropriation claim related to a Service, We may in Our discretion and at no cost to You (i) modify the Service so that it no longer infringes or misappropriates, without breaching Our warranties under Section 11 (Warranties), (ii) obtain a license for continued use of that Service in accordance with this 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 Claim Against Customer arises from Content, a Non-TSA application or Customers breach of this Agreement or use of Service.
- 12.2. **Indemnification by Customer.** Customer will defend Provider against any claim, demand, suit or proceeding made or brought against TSA by a third party alleging that Customer Data, or Customers use of any Service or Content in breach of this Agreement, infringes or misappropriates such third party's intellectual property rights or violates applicable law (a “**Claim Against TSA**”), and will indemnify TSA from any damages, attorney fees and costs finally awarded against TSA as a result of, or for any amounts paid by TSA under a court-approved settlement of, a Claim Against TSA, provided We (a) promptly give Customer written notice of the Claim Against TSA, (b) give Customer sole control of the defense and settlement of the Claim Against TSA (except that Customer may not settle any Claim Against TSA unless it unconditionally releases TSA of all liability), and (c) give Customer all reasonable assistance, at Customer's expense.
- 12.3. **Exclusive Remedy.** This Section 12 states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any type of claim described in this Section 12.

13. Limitation of Liability

- 13.1. Save as expressly stated in herein and in the Services Agreement, the 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.
- 13.2. 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 and exclusive 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).
- 13.3. Save for breaches in respect of intellectual property rights and confidentiality, in no event shall either party be liable to the other party for indirect, special, incidental, consequential or exemplary damages arising out of or in connection with any Services Agreement 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.
- 13.4. The Provider's aggregate liability for any damages incurred in connection with any Services Agreement, whether in contract or tort (including negligence but excluding gross negligence or willful misconduct), or strict liability shall not exceed the amount paid by the Customer to the Provider under the Services Agreement giving rise to the liability in the twelve (12) months preceding the first incident of which the liability arose. The Foregoing disclaimer will not apply to the extent prohibited by law
- 13.5. 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 Services would be substantially different.

14. Insurance

- 14.1. During the term of the Services Agreement, the Provider will keep the following insurance policies in force:
 - 14.1.1. Commercial General Liability - \$1,000,000 combined limit per occurrence, bodily injury, personal injury and property damage, including blanket contractual liability;
 - 14.1.2. Professional Indemnity Liability - \$1,000,000 per occurrence.
- The Provider has coverage relative to the delivery of the Services offered. The Customer acknowledges that in the absence of such limitations, the pricing and terms of the Services would be substantially different. If Customer requires Provider to add to these insurance policies, it may affect the service fees payable.

15. General Provisions

15.1. Privileged Licenses, Licenses and Permits.

If any governmental license or permit is required for the proper and lawful conduct of TSA'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 TSA, 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. TSA will at all times comply with the requirements of each such license or permit.

15.2. Relationship of the Parties

- 15.2.1. 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.
- 15.2.2. 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.
- 15.2.3. 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.

15.3. Construction & Legal Advice

In the event of any dispute over the terms herein or in the Services Agreement, the terms herein and in the Services Agreement 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.

15.4. 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.

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

15.5.1. 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 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.

15.5.2. Neither Party has received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from any of Our 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 Our Legal Department at legalcompliance@tsa-solutions.com.

15.6. 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 or supplemented only by an instrument in writing signed by the respective Parties' authorized representatives.

15.7. Severability

If any provision or part of a provision herein or in the Services Agreement 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 herein and 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.

15.8. 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 on any U.S. government list of prohibited or restricted parties; or (iii) is engaged in activities directly or indirectly related to the proliferation of weapons of mass destruction.

15.9. Headings; "Includes" and "Including"

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

15.10. Partial Invalidity

If any provision of this Agreement 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 this Agreement 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 this Agreement.

15.11. Waiver

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

15.12. Rights and Remedies

The remedies conferred by the provisions herein and in the Services Agreement 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.

15.13. Assignment

Neither Party may assign its right, benefits or obligations under the Services Agreement 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 Services Agreement to an Affiliate TSA Company.

15.14. 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.

15.15. Third-Party Beneficiaries.

TSA'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.

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

15.17. Prevailing Language of Agreement & Notices

15.17.1. The Services Agreement 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.

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

15.18. Entire Agreement and Order of Precedence.

This Agreement represents the entire agreement between the Parties regarding use of Services and Content relating to the subject matter of the Services Agreement. 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 Order Forms) is void. In the event of any conflict or inconsistency among the following documents, the order of precedence shall be: (1) the applicable Purchase Order Form or Service Agreement, (2) this Agreement, and (3) the Documentation.

16. Contracting Parties, Notices, Governing Law and Jurisdiction

16.1. General.

The table below defines who the Customer is contracting with under this Agreement, the party to direct notices to, 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.

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, Canada, Mexico or a Country in Central America, South America or the Caribbean	TSA Solutions Corporation	Center 240- MN, Minneapolis, Minnesota Center, 7760 France Ave S, 11 th floor, Bloomington, MN 55435	California and Controlling United States federal law	San Francisco, California, U.S.A.
A Country in Europe	TSA Performance Services Limited	The Administrator 1 Napier Road, Pennant House, 1-2 Napier Court, Napier Road, Reading Berkshire RG1 8BW	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
Japan	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	Japan	Tokyo, Japan
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
China and Hong Kong	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
Macau	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

16.2. 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.

16.3. Manner of Giving Notice.

Except as otherwise specified in the Service Agreement or Order Form, 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 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 Service Agreement or Order Form.