

## General Terms and Conditions of hetras GmbH for the hetras Hotel Management Software

1 April 2013

### § 1. Scope

These General Terms and Conditions govern the contractual relationship between hetras GmbH, Company Reg. No. 312906g, Schillerstr. 10, 5700 Zell am See, Austria (hereinafter referred to as "hetras") and the client with respect to using the hetras hotel management software (hereinafter also referred to as "Service").

hetras provides this Service exclusively on the basis of the provisions contained in the order form and in the master agreement (if entered into), as well as on the basis of these General Terms and Conditions ("GT&C"). The following hierarchy of applicability is determined to exclude any contradiction or inconsistency between the individual provisions: (i) order form; (ii) master agreement (if entered into); (iii) GT&C. Any other provisions shall apply only if the client has demonstrated that these were expressly agreed with hetras in writing.

### § 2. Object of Agreement

- (1) The agreement between hetras and the client is established by the corresponding order submitted by the client and by its acceptance on the part of hetras at the prices specified in the order form or at the standard prices stated in the price list (in the case of first-time use of the Service by activation of an account). hetras confirms its acceptance of the order by submitting a written order confirmation.
- (2) hetras provides the hetras hotel management software as a web-based service – a cloud-based management software for any type of hotel and hotel chain. The product combines a multi-property management system (PMS) with comprehensive distribution management features.
- (3) The product is provided on an SaaS (software-as-a-service) basis: the client pays an all-inclusive, flat fee per month and room in accordance with § 6 of these GT&C below (with the exception of third-party fees that hetras passes through to the client). In addition, interfaces are used to integrate complementary services offered by independent providers that hetras may use at any time. Clients use the entire Service on the Internet by means of commercially available web browsers and via secure SSL access. The configuration of the client's IT system does not form part of the agreement entered into between hetras and the client.
- (4) The scope of the contractually agreed services to be provided by hetras is based on the product description, the functional specification on the website <hetras.com>, the order form and – if entered into – the master agreement, as well as on these GT&C. hetras may improve or amend the services at any time.

### § 3. Duties and Obligations of hetras

- (1) hetras undertakes to enable the client to use the Service in accordance with § 2 of these GT&C during the term of the agreement, subject to the availability defined in § 4. hetras represents and warrants that the generally accepted principles of order data processing will be complied with in the course of providing the Service, and that it will continuously monitor compliance.
- (2) The client shall have full access to, and control of, the data and other personal information stored in the account. hetras processes the data and stores it on its hardware (hosting). hetras provides the client with access to this data via a secure web interface. hetras provides a system feature that the client can use at any time to export this data. All user-specific data of the client that is stored in its account will be deleted after termination of the agreement.

- (3) If hetras develops updates of the provided software during the term of the agreement, such updates may replace the previously used version of the software. The client may not claim or demand the use of updates. All clients will always be provided with the latest version of the Service.
- (4) Only those features that are expressly mentioned in the list of features shall become part of the Service committed to by hetras. Any delivered templates or configurations do not form part of this agreement. The client may modify and reproduce the software only to the extent covered by the intended use of the Service as defined in the applicable specification in accordance with § 2 (4). Such required reproduction shall include the loading of the software into the RAM of the computer but not the installation (even if only temporary) or storage of the software on storage media, such as hard disks or similar, that are part of the hardware used by the client. No other rights of use or any other rights to the software are granted unless sections 40d, 40e UrhG (Urheberrechtsgesetz; Austrian Copyright Act) stipulate mandatory provisions to a different effect. Any other rights to the programs and documentations, including copies and subsequent modifications, shall remain with hetras. This provision also applies to those parts of the software that hetras customizes to specific client needs or programs according to client requirements either against payment of a fee or free of charge.

#### § 4. Availability and Use

- (1) The Service is generally available for the client 24 hours per day. Access to the Service may be interrupted or restricted in the event of force majeure and during required maintenance, or in the course of eliminating faults.
- (2) hetras will inform the client in due course of any interruptions or major restrictions to the extent to which these are required to maintain the Service, to perform work required to ensure operation, to improve the Service, or to prevent disruptions. Any pre-announced interruptions as set forth in this section do not constitute a Service breakdown or failure and do not reduce the availability periods referred to in § 4 (1). Unless otherwise agreed with the client, hetras shall not be liable if hetras is unable to comply with its contractual duties and obligations due to circumstances beyond the reasonable control of hetras. In particular, hetras does not guarantee the availability of third-party lines and installations.
- (3) hetras grants the non-exclusive, non-transferable right to the client to use the Service for the contractually agreed period. All other rights remain with hetras. The right to use a software developed, licensed or delivered by hetras (including specific modifications and extensions, if any) solely pertains to use by the client for its own internal purposes. The client may make the software available to third parties only if hetras has expressly consented thereto in writing. Any use of the Service by wholly owned subsidiaries of the client is permissible only after a related written consent by hetras. hetras may withhold such consent only for good cause ("wichtiger Grund").

#### § 5. Duties and Obligations of the Client

- (1) The client and its employees are granted the non-exclusive right to access the Service via the Internet. This right is limited to the term of this agreement. No other rights are granted to the client.
- (2) The client is aware of the hardware and software requirements to be met for using the Service. It is the client's own responsibility to provide the infrastructure required for the Service, including but not limited to an Internet connection to a web-enabled computer that represents the applicable standard and state of the art.
- (3) The client shall be solely responsible for each and every use of the Service, and undertakes to comply with any applicable domestic and foreign legislation at any time, including but not limited to any and all laws and regulations pertaining to criminal law, data protection and privacy, telecommunications and copyright/intellectual property law.
- (4) The client is under the obligation to check and verify the contractual conformity of the services and ancillary services provided by hetras within a period of four calendar weeks after such services have been provided. Any complaints or objections must be submitted to hetras in writing. The service shall be deemed to have been provided in compliance with the agreement if the client fails to submit a formally correct notification of any error or deficiency in a timely fashion.

- (5) hetras may amend or modify the structure or format of the data at any time.
- (6) The Service provided by hetras shall be available to the client, its employees and contractors, and its guests. It is expressly prohibited for the client to make the Service available to third parties. The client shall be responsible vis-à-vis hetras for any third-party use of the Service account or access thereto.
- (7) The client gives permission to hetras to use its name and logo for reference purposes, in particular for websites, client lists, press releases, and referrals. The client will communicate to hetras any existing requirements or specifications with respect to using its name and logo.

## § 6. Pricing, Settlement and Payment Terms

- (1) It is possible at any time to increase the number of rooms bookable via the Service for which the client has ordered the Service. Any price increase is accounted for on a pro-rated basis for the remaining contractual period, and settled beginning with the first invoice following the increase or by means of an interim settlement.
- (2) Any costs and fees already paid shall not be refunded if the number of the rooms bookable via the Service is reduced.
- (3) Payment terms: Unless otherwise agreed in writing, hetras will invoice the client for the contractually owed fee on an annual basis and with a two-week payment term. All prices are net of VAT or any other statutory taxes and levies. Payments to third parties made by hetras are passed through to the client with an added processing fee as specified in the order form. If the client is in default and/or fails to update its payment information despite a prior request to do so, hetras may suspend the account and/or terminate access to the Service.
- (4) Any costs of training, consultancy, workshops, configuration, data migration, development of customized software, on-site service and support, e-mail, invoice or other text templates, and confirmation letters and/or the configuration of the user interface ("Professional Services") shall be invoiced by hetras upon completion or on a monthly basis, applying a payment term of two weeks.
- (5) If the client orders the Global Distribution Service (GDS) through hetras, hetras will invoice the corresponding costs and fees plus a processing fee as specified in the order form on a monthly basis, applying a payment term of two weeks.

## § 7. Technical Support

- (1) The client and its authorized employees may contact the technical support of hetras 24 hours a day, 365 days a year. The client will be provided with a telephone number, e-mail address and access to an on-line support ticketing system in order to log support requests. Depending on the severity and scope of the support request, hetras will respond within the specified timeframe, as follows:
  - four hours in the case of issues with severe financial implications or with a severe impact on guest services;
  - one working day in the case of any other, less severe issues;
  - three working days in the case of any questions or requests with respect to using the Service, formatting, reporting tools, changes to the configuration or any other questions that are usually explained in training courses or workshops, as well as questions answered in the on-line or off-line documentation.
- (2) "To respond" as provided for in § 7 (1) means that hetras either solves the problem on its own, submits suggestions to the client on how the client and its employees can solve the problem, asks more specific questions or collects additional issue-related information. hetras does not guarantee that the support request is responded to within the specified timeframe and to the full satisfaction of the client. In some cases, third parties may have caused the problem where hetras is not in a position to exert any influence or control. Notwithstanding the above, hetras will use its best efforts to respond to all support requests within a reasonable timeframe.
- (3) The customer agrees and acknowledges that the technical support gets access to the client data in accordance with § 10 for the purpose of responding to the support request.

- (4) In the event of any misuse or abuse of the technical support by the client by submitting an exceedingly large number of frivolous support requests to hetras, hetras reserves the right to no longer respond to any further support requests submitted by the client or its employees. In such a case, hetras will propose to the client or its employees to attend additional training courses or workshops.
- (5) More specifically, hetras may recommend, for the purpose of responding to the support request, that Professional Services be provided, which may incur costs in accordance with § 6 (4). In these cases, the client is bound to sign a separate order form prior to any final response to the support request.

## § 8. Liability

- (1) hetras represents and warrants that the Service corresponds to the state of the art at all times. As far as reasonably possible, any faults or disruptions are eliminated as quickly as possible after notification by the client. Temporary interruptions of the Service within the timeframe specified in § 7 (1) do not give rise to any right of the client to withdraw from the agreement or claim damages. The liability of hetras is limited to willful intent or gross negligence. Any liability for minor negligence, consequential damage or financial loss, lost savings, interest losses or damage arising from third-party claims against the client shall be excluded. The liability of hetras with respect to the misuse or abuse of client data shall be limited to the direct average damage typically to be expected for this type of agreement.
- (2) The client is aware of the fact that any access to the Service and the transfer or transmission of information submitted by the client by e-mail via the Service are dependent on certain technical requirements, part of which are beyond the reasonable control of hetras. hetras shall not be liable for any situation where the Service is inaccessible for reasons beyond the control and responsibility of hetras or where e-mail correspondence does not reach its recipient (or does not reach its recipient in the form expected by the client). Nor does hetras accept any liability for the compatibility of the Service with the client's data, programs, configurations etc. More specifically, hetras shall not bear any costs, fees, expenses etc. incurred by the integration or failed integration of the Service. Likewise, any liability shall be excluded for any damage arising from third parties being able to access the Service or its content without being authorized to do so.
- (3) The client indemnifies and holds hetras harmless against any loss, damage or costs, including the cost of any litigation, that arise from any breach of privacy laws and regulations by the client. This also applies to any expenses incurred by defending against any attacks by third parties, including relevant regulatory authorities. The client undertakes to indemnify and hold hetras harmless against any damage, loss and expenses (including but not limited to legal consultancy fees and ancillary expenses incurred by the lawyers retained by hetras) that hetras is bound to pay jointly or individually in the course of court proceedings or as a result of any impending or asserted claim that arises from the client's non-compliance with any representations and warranties given in or under this agreement.
- (4) hetras shall not be liable for any damage arising from third parties getting access to client data in an illegal or unlawful way, or manipulating, destroying or stealing this data. The client shall be liable for any and all cases of damage or obligations arising from the use of the user ID and password of the client for the purpose of accessing its account or other services, as long as such use can be attributed to the client.
- (5) hetras shall not be liable for the information transmitted through its Service, neither with respect to its completeness, accuracy or currency nor with regard to this information being free from third-party rights, or whether its sender acts illegally or unlawfully by transmitting this information.
- (6) If hetras fails to provide a service, or provides a service incorrectly, because the client submitted the required information incompletely, too late or with deficiencies, hetras shall be entitled to payment of the full fee unless hetras has culpably failed to otherwise utilize the resources that were freed up by non-performance or a merely partial contractual performance at the point in time when the service was to be provided originally under the agreement.

- (7) The client shall be liable for any and all consequences and disadvantages arising for hetras or any third parties from any use of the Service that is illegal or unlawful, breaches the agreement entered into, or constitutes misuse or abuse. The client shall fully indemnify and hold hetras harmless against any related claims. hetras may also immediately block the Service if, according to the reasonable judgment of hetras, the client misuses or abuses the Service, including but not limited to any violation of applicable laws and regulations. In such a case, the Service will be blocked without compensation.

## § 9. Term and Termination of Agreement

- (1) The agreement between the client and hetras is entered into for an indefinite period of time, subject to the minimum contractual term of twelve months, during which the parties waive their right to terminate the agreement. Either party may terminate the agreement at the end of each month without having to specify any cause or reason for such termination, giving one month's notice and complying with the agreed minimum contractual term. hetras may at any time terminate the agreement for good cause ("wichtiger Grund") with immediate effect, including but not limited to any breach of contractual duty by the client.
- (2) All accounts of the client and its employees will be blocked upon termination of the agreement. The client must download any of its data stored on the hetras servers in a timely fashion before the date of termination. hetras will delete this data and related user IDs/access codes.
- (3) Notwithstanding the type and/or reason for the termination, § 10, § 3 (3) and this § 9 shall remain in force beyond the term of the agreement if the agreement between the client and hetras is terminated.

## § 10. Data Protection and Privacy

The Service provides the options of collecting either personal or anonymized data. The client is expressly made aware of the fact that the collection, processing and use of personal data require a valid consent by the user or prospect. If there is evidence that no such consent was given, hetras reserves the right to provide certain features only to a limited extent, or not at all. hetras shall not be liable for any claims asserted on the grounds of a lacking consent by the user or prospect.

## § 11. Force Majeure

Neither party shall be liable for any default in performing its obligations under this agreement if such default is due to any act of God, strike, war or war-like situation, riot, civil commotion, act of government, embargo, fire, flood, accident or any other event beyond its reasonable control. Should any of the parties be unable to fulfill its contractual duties, it shall be under the obligation to immediately inform the respective other party thereof. If this inability to fulfill its contractual duties continues for a period of more than sixty (60) days, the respective other party may terminate the agreement in writing, giving ten days' notice.

## § 12. Final Provisions

Any assignment or transfer of contractual rights and duties to third parties by the client shall require the express written consent of hetras; hetras must justify any withholding of such consent. hetras may at any time amend these GT&C and the Service specification published on the hetras website. The client will be notified of any amendments to the General Terms and Conditions via the website and/or by e-mail. If the client disagrees with the amendments or modifications, it may terminate the agreement within 30 days after notification of the amendment. In all other cases, the amendments or changes apply from the time of their announcement. Should any provision of these GT&C be or become invalid or unenforceable, the remaining provisions of these General Terms and Conditions shall remain unaffected. The parties agree to amend their agreement in such a way that the purpose intended by the invalid or unenforceable provision is fulfilled as far as reasonably possible. This agreement shall be governed by the laws of Austria, excluding its conflict of law provisions and the UN Convention on Contracts for the International Sale of Goods (CISG). Venue for any disputes arising from this agreement shall be the registered office of hetras.