

# **GUEST TRACTION LIMITED**

## **TERMS & CONDITIONS**

The following document forms an agreement between Guest Traction Limited and a person, persons or company who wish to use the services or products provided by Guest Traction Limited, herein called the Client(s). By using or ordering any of the Guest Traction services you are inherently agreeing to the terms of this agreement.

### **1.1. Guest Traction Limited License.**

Guest Traction Limited is a SaaS (Software as a Service) business registered, owned and operated in New Zealand. Guest Traction Limited hereby grants Clients a nonexclusive, non-transferable, revocable license to use Guest Traction product for a minimum Term of 1 Year as permitted hereunder.

### **1.2. Client Materials.**

Client hereby grants, and Guest Traction Limited accepts, a nonexclusive, non-transferable, non-sublicensable, limited and revocable license to use, copy, and/or publicly display, during the term, any and all trademarks, trade names, business names, logos, descriptions, menus and/or photographs of client's business(s) (collectively, the Client Materials) as may be provided to Guest Traction Limited by Client. Client represents and warrants that it has the right to license the Client Materials. The Client allows Guest Traction Limited to include the Client's company name and logo on Web sites owned by Guest Traction Limited and reference lists for marketing purposes.

At the end of the term, Guest Traction Limited will immediately cease usage of any materials and intellectual property provided to Guest Traction Limited for use under this clause and shall immediately remove reference to our company name and logo on Guest Traction Limited websites and reference lists.

### **1.3. Deployment on the internet.**

Once a request has been made for a Guest Traction Limited product to go live and on completion of the payment of the setup and subscription, the product will be published on behalf of the client.

### **1.4. Billing and Refunds.**

- The name that will appear on your billing statement will be Guest Traction Limited
- Quotations (unless stated), billing and payments will occur in NZ Dollars, and will be paid by the client every month, in advance of service.
- Unless otherwise indicated on an Order Form referencing these Terms, all charges associated with the Client's access to, and use of the Service ("Subscription Charges") are due in full upon commencement of the Client's Subscription Term. If the Client fails to pay the Client Subscription Charges or charges for other services indicated on any Form referencing these Terms within twenty (20) business days of our notice to the Client that payment is due or delinquent, or if the Client do not update payment information upon Guest Traction Limited's request, in addition to Guest Traction Limited's other remedies, Guest Traction Limited may suspend or terminate access to and use of the Service by the Client and Client's Users.
- If the Client choose to increase the number of rooms managed by the Service during the Client's Subscription Term (a "Subscription Upgrade"), any Subscription Charges associated with such Subscription Upgrade will be implemented in any future Subscription Term, the Client's Subscription Charges will reflect any such Subscription Upgrades.
- No refunds or credits for Subscription Charges or other fees or payments will be provided to the Client.
- Unless otherwise stated, Guest Traction Limited charges do not include any taxes, levies, duties or similar governmental assessments, including value-added, GST, sales, use or withholding taxes accessible by any local, state, provincial or foreign jurisdiction (collectively "Taxes"). The Client is responsible for Taxes except those assessable against Guest Traction Limited. We will invoice the Client for such Taxes if Guest Traction Limited believes Guest Traction Limited have a legal obligation to do so.
- Unless otherwise specified in the order form, any professional services such as set-up, training, consulting, workshops, configuration, custom development, on-site support or interface implementation which the Client may order from Guest Traction Limited from time to time will be invoiced upon order and due within twenty business days of receipt of invoice.
- The price of professional services excludes travel, accommodation, food and reasonable out of pocket expenses. These will be invoiced to the Client on a cost basis.
- Payment of ANY "one off" development and installation price and on-going usage fee, excluding banking costs, is due in advance by direct bank transfer to Guest Traction Limited bank account.

### **1.5. Cancellation.**

The Client can terminate usage of the Service at least 30 days in advance by authorising in writing and emailing the support service and account representative informing Guest Traction Limited of the same. No refunds will be given if cancellation has been made after a billing cycle.

### **1.6. Termination.**

Either party may terminate this Agreement for convenience by giving 30 days written notice to the other party of the intention to terminate. Either party may terminate this Agreement immediately by giving the other party written notice of termination in the event that the other party: (a) becomes insolvent; (b) files a petition in bankruptcy; (c) makes an assignment for the benefit of its creditors; or (d) breaches any of its obligations under this Agreement in any material respect, which breach is not cured within ten (10) days after the breaching party receives notice of such breach from the non-breaching party. Without limiting the foregoing, in the event that the Client has failed to pay any amount due hereunder within thirty (30) days following the due date for such payment, subject to prior written notice to the Client, Guest Traction Limited Ltd may terminate this Agreement, or, in its discretion, suspend service to Client until such payment has been received. Upon the expiration or termination of the Agreement for any reason: (a) the license(s) granted by Guest Traction Limited to Client hereunder will immediately terminate; (b) the license(s) granted by the Client to Guest Traction Limited in this Agreement will immediately be terminated (c) the rights and obligations of the parties under sections 1.11 will survive such expiration or termination; (d) any amounts still due to Guest Traction Limited shall remain due.

### **1.7. Warranty Disclaimer.**

Guest Traction Limited operates higher than 99.7% SaaS uptime of their SaaS services, but makes no representation or warranty with respect to Guest Traction product platform, the Guest Traction Limited product network, and Guest Traction Limited expressly disclaims any and all warranties, whether express, implied or statutory, with respect to Guest Traction Limited product, the Guest Traction Limited product network and all services provided hereunder by Guest Traction Limited, including without limitation any implied warranty of merchantability, infringement or fitness for a particular purpose, or any implied warranty arising from course of performance, course of dealing or usage of trade. Guest Traction Limited does not Warrant that Guest Traction Limited will be uninterrupted or error free.

### **1.8. Limitation of Liability.**

Neither party will be liable to the other party Client for any indirect, incidental, punitive, or consequential damages or for any loss of profit, revenue, data, business or use arising out of this Agreement. In no event will Guest Traction Limited's cumulative liability exceed the total amounts paid by the Client to Guest Traction Limited during the two (2) months prior to the date of the event giving rise to the initial claim for which damages are recovered. In no event will the Client's cumulative liability exceed the total amounts the Client paid to Guest Traction Limited during the two (2) months prior to the date of the event giving rise to the initial claim.

### **1.9. Confidentiality.**

Any confidential or proprietary information of either party, whether of a technical, business or other nature, including but not limited to trade secrets, know-how, technology, and information relating to guests, business plans, promotional and marketing activities, finances, and other business affairs, including but not limited to the terms of this Agreement and either party (collectively Confidential

information) disclosed to the recipient party by the disclosing party will be treated by the recipient party as confidential and proprietary. Unless specifically authorized by the disclosing party, the recipient party will: (a) not disclose such Confidential Information to any third party; and (b) otherwise protect such Confidential Information from unauthorized use and disclosure to the same extent that it protects its own Confidential Information of a similar nature. This clause 4.9 shall not apply to any information that; (i) was already known to the recipient party, other than under an obligation of confidentiality, at the time of disclosure by disclosing party; (ii) was generally available to the public or otherwise part of the public domain at the time of its disclosure to the recipient party; (iii) became generally available to the public or otherwise part of the public domain after its disclosure and other than through any act or omission of the recipient party in breach of this Agreement; (iv) was disclosed to the recipient party, other than under an obligation of confidentiality, by a third party who had no obligation to the other party not to disclose such information to others; or (v) was developed independently by the recipient party without any use of Confidential Information.

#### **1.10. Indemnification.**

The parties agree to indemnify, defend and hold harmless the other party and its officers, directors, employees, representatives and agents, from and against any and all actions, causes of actions, claims, demands, liabilities, losses, judgments, damages or expenses (collectively, Claim or Claims) which either party may at any time incur, sustain or become subject to by reason of any claim brought by a third party and: (a) arising out of the defaulting party's breach of any provision, warranty or representation in this Agreement; (b) arising out of the defaulting party's wilful acts or omissions, negligence, or other similar wrongdoing; or (c) arising from either party's failure to comply with any law or regulation. The defaulting party will pay all costs, damages and expenses incurred by the non-defaulting party, including but not limited to, reasonable attorney's fees and costs awarded against or otherwise incurred by the non-defaulting party in connection with or arising from any such claim, provided that the defaulting party promptly notifies the non-defaulting party in writing of any such claim, and promptly tenders to the non-defaulting party's control of the defence and any settlement of such Claim.

#### **1.11. Third Party Service.**

If the Client decide to enable, access or use other services, be advised that the Client's access and use of such other services is governed solely by the terms and conditions of such other services, and Guest Traction Limited do not endorse, are not responsible or liable for, and make no representations as to any aspect of such other services, including, without limitation, their content or the manner in which they handle data (including the Clients Data) or any interaction between the Client and the provider of such other services. Guest Traction Limited is not liable for any damage or loss caused or alleged to be caused by or in connection with the Client's enablement, access or use of any such other services, or the Clients reliance on the privacy practices, data security processes or other policies of such other services. The Client may be required to register for or log into such other services on their respective websites. By enabling any other services, the Client is expressly permitting Guest Traction Limited to disclose the Client's login as well as the Client's data as necessary to facilitate the use or enablement of such other service subject to a written consent provided by the Client.

### **1.12. Intellectual Property Rights.**

Guest Traction Limited and the Client shall maintain all rights, title and interest in and to all our respective patents, inventions, copyrights, trademarks, domain names, trade secrets, know-how and any other intellectual property and/or proprietary rights (collectively, "Intellectual Property Rights"). The rights granted to either party, users and guests to use the Service under these terms do not convey any additional rights in the Service, or in any Intellectual Property Rights associated therewith. Subject only to limited rights to access and use the Service as expressly herein, all rights, title and interest in and to the Service and all hardware, software and other components of or used to provide the Service, including all related intellectual property rights, will remain with and belong exclusively to the respective parties. Guest Traction Limited shall have a royalty-free, worldwide, non-transferable, non-sub-licensable, revocable and limited license to incorporate into the Service or otherwise use any suggestions, enhancement requests, recommendations or other feedback Guest Traction Limited receive from the Client or the Client's users. Guest Traction Limited other product and service names, and logos used or displayed on the Service are registered or unregistered trademarks of Guest Traction Limited (collectively, "Marks"), and You may only use such Marks to identify You as a Subscriber; provided You do not attempt, now or in the future, to claim any rights in the Marks, degrade the distinctiveness of the Marks, or use the Marks to disparage or misrepresent Guest Traction Limited its services or products.

### **1.13. General.**

Neither this Agreement nor the licenses granted hereunder are assignable or transferable by Client without the prior written consent of Guest Traction Limited. The terms of this agreement including pricing may be changed by Guest Traction Limited from time to time subject to mutual agreement and the Client may be notified by Guest Traction Limited posting new terms and conditions on Guest Traction Limited website, or by email, or by other written notice subject to mutual agreement. This Agreement will be constructed in accordance with the laws of New Zealand, without reference to its choice of law provisions. The courts located in Wellington, New Zealand will be the exclusive venue for any claim or dispute between the parties whether related to this Agreement or otherwise and the parties hereby consent to the personal jurisdiction of those courts. The prevailing party in any dispute under this Agreement will be entitled to its costs and reasonable attorney's fees. All notices required or permitted to be given under this Agreement will be deemed given (i) three business days after being deposited in the mail, first class, postage prepaid, (ii) upon transmission, if sent by facsimile, (iii) upon delivery, if served personally or sent by any generally recognized overnight carrier, or (iv) upon transmission, if sent by e-mail and later confirmed by one of the preceding means. If any provision of this Agreement shall be judged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable.

### **1.14. Supply of Services**

Guest Traction Limited shall use all reasonable endeavours to maintain an online system we operate at 99.7%+ SaaS uptime. Guest Traction Limited warrants that it is skilled in database and online service management and will undertake to maintain this expertise. Support is provided during New Zealand Standard Time (NZST) 9am to 5:30pm business hours via email and phone. After hours support for urgent queries is available through a transfer to the on-call urgent after-hours support

person's mobile phone. Please note that after hours call out fees may be charged at GuestTraction Limited's discretion: \$195 ex GST per hour. One hour minimum charge.

Service Levels are designed to assist agents in prioritizing service, and ensure service standards, obligations and expectations are met or exceeded. Individual ticket SLA time remaining before SLA breach (or time since breach) is clearly visible in the support ticket system.

**Terms and Conditions updated 20<sup>th</sup> June 2023**