



## EXHIBIT A Subscription Terms and Conditions

### 1. Definitions

- (A) **“Agreement”** means, with respect to each individual Work Order, these terms and conditions and such Work Order, along with any other agreement in place between the parties.
- (B) **“Affiliate”** means all entities which control, are controlled by, or are under common control of the named party, whether directly or through one or more intermediaries, with “control” and “controlled” defined as ownership of more than fifty percent (50%) of the voting capital stock or other interest that has voting rights with respect to the election of the board of directors or similar governing authority.
- (C) **“Customer Data”** means all electronic data or information submitted by Customer to the Services in conjunction with Customer’s use of the Services which includes Personal Information.
- (D) **“Confidential Information”** means the following information, regardless of its form and whether the other party becomes aware of it before or after the commencement of this Agreement, (i) any object, material, information and know-how which relates to the operation, finances or business of the disclosing party, (ii) all other information treated by the disclosing party as confidential and all notes and other records prepared by the other party based on or incorporating such information, (iii) the existence and terms of this Agreement; and all copies of the information, notes and other records referred to in clauses (i), (ii) and (iii), but does not include information that has entered the public domain or made available to the receiving party by a third party (through no fault of the receiving party, any of its officers, employees or agents and by no breach of a third party obligation of confidence) or any information that was developed independently of the disclosing party and any of its officers, employees or agents.
- (E) **“Documentation”** means the Vendor-provided documentation, use and implementation descriptions, user guide, or other technical specifications associated with or included within the Services, which may be made available on Vendor’s website or through electronic means.
- (F) **GST** has the meaning given in *A New Tax System (Goods and Services Tax) Act 1999* (Cth), and includes any additional tax, penalty, fine, interest or other charge relating to GST.
- (G) **GST Law** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth), as amended from time to time.
- (H) **“Malicious Code”** means viruses, worms, time bombs, Trojan horses, and other harmful or malicious code, files, scripts, agents, or programs.
- (I) Personal Information has the same meaning as defined under the *Privacy Act 1988* (Cth).
- (J) **“Service(s)”** means Vendor’s services that Customer or Customer’s Affiliates identified under a Work Order, including the following: IN-Gauge<sup>SM</sup> Performance Management Software; data extraction process to support PMS, POS, data warehouse, 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>.
- (K) **“Subscription Term”** means either the Subscription Term or each Renewal Term as the case dictates and as set forth in the Work Order.
- (L) **“Users”** means individuals who are authorized by Customer to use the Services, for whom subscriptions to a Service have been ordered, and who have been supplied unique user login identifications. Users may include but are not limited to Customer’s employees, consultants, contractors, and agents.
- (M) **“Work Order”** means the documents for placing orders hereunder which reference these Terms and Conditions, including addenda thereto, that are entered into between Customer and Vendor or any of Vendor’s Affiliates from time to time, including addenda and supplements thereto.

### 2. Services Provision and Usage Limits

- (A) **Provision of Services.** Vendor shall make the Services available to Customer pursuant to this Agreement and the relevant Work Order during the Subscription Term set forth in the Work Order.



- (B) **Room and User Subscriptions.** Unless otherwise specified in the applicable Work Order, (i) Services are accessed on a subscription basis and shall not be accessed by no more than the number of Users or used to support more than the number of rooms (“**Rooms**”) specified in the Work Order, (ii) additional User or Room subscriptions may be purchased during the applicable Subscription Term, and (iii) the added usage subscriptions shall terminate on the same date as expiration or termination of the Subscription Term. The Services may be subject to other limitations, such as, for example, limits on usage, on disk storage space, or on the number of calls Customer is permitted to make against Vendor’s application programming interface. Any such limitations are specified in the Work Order. The Services provide real-time information to enable Customer to monitor Customer’s compliance with such limitations, if applicable, and this Agreement.
- (C) **Affiliates.** Each Affiliate of Customer that enters into a Work Order under this Agreement agrees to be bound by the terms of this Agreement as if it were an original party hereto. Work Orders shall be deemed incorporated herein by reference. No Customer Affiliate may utilize the Services under a Work Order unless agreed to in writing by Vendor.

### 3. **Vendor Support**

Vendor shall provide Vendor’s Support Plan for the Services to Customer as set forth in Exhibit B attached hereto, at no additional charge, and/or upgraded support if purchased separately under the Work Order.

### 4. **Customer Responsibilities**

- (A) **Customer’s Responsibilities.** Customer shall (i) ensure Users’ compliance with this Agreement; (ii) be responsible for the accuracy, quality, and legality of Customer Data and of the means by which Customer acquired Customer Data; (iii) use commercially reasonable efforts to prevent unauthorized access to or use of the Services, and notify Vendor promptly of any such unauthorized access or use; (iv) use the Services only in accordance with the Documentation and all applicable laws and government regulations; and (v) be responsible for the manner in which Customer uses the Services, including the policies and procedures Customer establishes to protect the security of its data, computer network, and other facilities, its choice of equipment, software, and online content, and all other matters related to how Customer uses the Services. Customer shall not (i) make the Services available to anyone other than Users; (ii) sell, resell, rent, or lease the Services; (iii) use the Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, in violation of this Agreement, or applicable laws; (iv) use the Services to store or transmit Malicious Code; (v) interfere with or disrupt the integrity or performance of the Services or third-party data contained therein; (vi) attempt to gain unauthorized access to the Services or their related systems or networks; (vii) copy, modify, or create derivative works of the Service or attempt to ascertain the underlying processes or code of the Service; or (viii) use the Service to develop, modify, or create a product or service that competes with Service or has substantially similar functionality as the Service.
- (B) **Representations and Warranties.** Customer represents and warrants that (i) it has full right and authority to enter into this Agreement; (ii) it will not use the Services in any manner which is in violation of any law or governmental regulation; (iii) the Customer Data will not violate or infringe the rights of others, including, without limitation, any patent, copyright, trademark, trade dress, trade secret, privacy, publicity, or other personal or proprietary right; (iv) the Customer Data will not include indecent or obscene material or constitute a defamation or libel of any third party and will not result in the obligation of Vendor to make payment of any third party licensing fees; and (v) it will comply with all relevant export and encryption laws and regulations of the United States and the country in which the Services are utilized (“**Export Laws**”).
- (C) **Performance.** In addition to the excused performance contemplated under Section 14 (Force Majeure), Vendor will be excused from failures to: (i) perform or provide any services, or (ii) meet any obligations described in this Agreement if (A) Customer fails to perform Customer’s responsibilities as identified in any Work Order or in any other provisions of this Agreement (collectively, a “**Customer Failure**”), and (B) such Customer Failure directly causes Vendor’s failure to perform (an “**Excused Performance Failure**”). A Customer Failure includes the failure of Customer to purchase application support maintenance coverage with respect to Customer owned or licensed software applications to the extent such lack of application maintenance support causes such failure. In the event of a Customer Failure which results in an Excused Performance Failure, Vendor will, as soon as reasonably possible under the circumstances, (i) give Customer notice of the Customer Failure and the Excused Performance Failure, and (ii) use reasonable efforts to provide the Services, and to otherwise mitigate the adverse consequences of the Customer Failure.

### 5. **Professional Services**

No on-site service or professional service is included under this Agreement. Any such service requested by Customer shall be provided at Vendor’s standard rates as then in effect if negotiated under separate terms and conditions between Vendor and Customer.

### 6. **License**



In consideration for the payment of all applicable charges, Customer is granted the right to use the Services strictly in accordance with and subject to any accompanying Documentation. Customer is prohibited from creating any internet links to or from the Service, other than Customer's own internal intranets. Except as specifically set forth herein, Vendor has no obligation to provide maintenance or other support of any kind for any third-party software, including without limitation any error corrections, updates, enhancements, or other modifications.

## **7. Customer Data**

Customer shall retain all title, copyright, and other proprietary rights in and to any Customer Data that is entered in the Services during the Subscription Term of this Agreement. Vendor shall treat Customer Data as Confidential Information as set forth in Section 17 (Confidentiality), and will take commercially reasonable actions to protect the security and integrity of said Customer Data. Upon written request by Customer within thirty (30) days of the effective date of termination of the relevant Work Order, and provided all outstanding fees have been paid, Vendor shall make available to Customer a file of Customer Data via the Services or permit Customer to extract and transfer such data. After such thirty (30) day period, Vendor shall have no obligation to maintain or provide any Customer Data to Customer. After the 30 day period from termination has elapsed, the Vendor must delete or destroy Customer Data (unless requested earlier by Customer) and provide confirmation to Customer in writing. Where there is a data breach, the Vendor must immediately (within 48 hours) advise Customer by telephone, email and in writing. Customer Data must not be transferred outside of Australia unless Customer has provided prior written consent.

The Vendor must, and must ensure its personnel, at all times comply with all applicable laws regulating the use of Personal Information by Customer or Vendor including the *Privacy Act 1988* (Cth).

## **8. Statistical and Performance Information**

Vendor may compile performance statistics related to the operations of its hosting services, which may be based in whole or in part on the Services delivered to Customer. Vendor retains all title, copyright, and other proprietary rights to this statistical and performance information. Such statistical and performance information shall not reference Customer by name without the prior written consent of Customer.

## **9. Disclaimer of Warranties**

Customer agrees that it is solely responsible for assessing its own computer and transmission network needs and the results to be obtained therefrom. CUSTOMER ASSUMES RESPONSIBILITY FOR CUSTOMER'S USE AND USERS' USE OF THE SERVICES, SOFTWARE, AND/OR EQUIPMENT PROVIDED BY VENDOR AND THE INTERNET. CUSTOMER UNDERSTANDS AND AGREES FURTHER THAT THE INTERNET IS ACCESSIBLE BY PERSONS WHO MAY ATTEMPT TO BREACH THE SECURITY OF VENDOR'S AND/OR CUSTOMER'S NETWORK. VENDOR HAS NO CONTROL OVER AND EXPRESSLY DISCLAIMS ANY AND ALL LIABILITY OR RESPONSIBILITY WHATSOEVER FOR SUCH MATERIALS OR ACTIONS AND CUSTOMER AND CUSTOMER'S USERS ACCESS THE SERVICES AT THEIR OWN RISK. THE SERVICES, FACILITIES, AND RELATED SOFTWARE AND/OR EQUIPMENT PROVIDED BY VENDOR UNDER THIS AGREEMENT ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, ALL OF WHICH ARE HEREBY DISCLAIMED INCLUDING BUT NOT LIMITED TO WARRANTIES OF TITLE, NONINFRINGEMENT, OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. NO ADVICE OR INFORMATION GIVEN BY VENDOR, ITS AFFILIATES, OR ITS CONTRACTORS OR THEIR RESPECTIVE EMPLOYEES SHALL CREATE A WARRANTY. NOTWITHSTANDING THE ABOVE, THIS CLAUSE DOES NOT OPERATE TO LIMIT OR EXCLUDE ANY WARRANTIES THAT CANNOT BE EXCLUDED BY LAW.

## **10. Indemnity**

(A) Vendor shall defend, indemnify, and hold harmless Customer and its directors, officers, agents, and employees ("**Customer Indemnified Parties**") from and against any and all liabilities, costs, and expenses, including reasonable attorneys' fees, associated with third party claims against any Customer Indemnified Parties to the extent based on (i) an allegation that the Service infringes, misappropriates, or otherwise violates any intellectual property rights of such third party; (ii) any breach of the Vendor's obligation in clause 23 or (iii) fraud, criminal offence or willful misconduct of the Vendor and its directors, officers, agents, and employees (each, a "**Customer Claim**").

Customer agrees to defend, indemnify, and hold harmless Vendor and their respective directors, officers, agents, and employees harmless from and against any and all liabilities, costs, and expenses, including reasonable attorneys' fees actually incurred, associated with third party claims against Vendor to the extent based on an allegation arising out of or relating to: (i) a breach of Section 4(A) (Customer Responsibilities), Section 4(B) (Representations and Warranties), or Section 7 of this Agreement by Customer or Users; (ii) Customer Data; (iii) acts or omissions of Customer or Customer's agents or contractors in connection with the installation, maintenance, presence, use, or removal of equipment or software not provided by Vendor in connection with the provision of the Services; and

(B) claims for infringement of any third party proprietary right, including copyright, patent, trade secret, or trademark rights, arising from the use of any services, equipment, or software not provided by Vendor.



- (C) Vendor will have no liability to the extent that the Customer Claim is caused by or the result of: (i) modifications to the Service made other than by Vendor or on Vendor's behalf; (ii) the combination, operation, or use of the Service with equipment, devices, software, or data not authorized by Vendor or necessarily contemplated under the Documentation; (iii) use of the Service in violation of this Agreement or any other written instructions provided by Vendor; or (iv) Vendor's compliance with any designs or specifications provided to it by Customer.
- (D) For a party to obtain indemnification under this Section 10, the party seeking to be indemnified (the "**Indemnified Party**") will: (i) promptly notify the other party (the "**Indemnifying Party**") in writing of a third-party claim; (ii) grant the Indemnifying Party sole control of the defense and resolution of the claim; and (iii) provide the Indemnifying Party, at the Indemnifying Party's expense, with all assistance, information, and authority required for the defense or resolution of the claim. The Indemnifying Party shall not enter into a settlement of any claim that imposes any liability or material obligation on the Indemnified Party or materially prejudices the Indemnified Party's rights without the Indemnified Party's prior written consent that the Indemnified Party shall not unreasonably withhold, condition, or delay.
- (E) THIS SECTION 10 IS VENDOR'S SOLE LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR ANY CLAIM SUBJECT TO INDEMNIFICATION UNDER THIS SECTION 10.

### **11. Fees and Expenses**

- (A) Customer will pay all fees due according to the pricing and terms listed in the Work Order(s) throughout the Subscription Term. If at any time the fees for the Service fall below the fees calculated based on any minimum usage shown in the Work Order(s), Customer shall not be entitled to any refund or reduction in fees. Customer agrees that Customer's subscription and payment of fees hereunder are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by Vendor regarding future functionality or features.
- (B) After the initial Subscription Term (or the completion of each Renewal Term) or the initial term of any Work Order, Vendor shall have the right to increase its fees under any Work Order at any time upon sixty (60) days prior written notice to Customer, provided that Vendor may not increase its fees under a Work Order more than once in any twelve (12) month period, and no such increase shall be in excess of 5% per annual period.

### **12. Payment Terms**

Unless otherwise specified on the Work Order, the Services are billed and payable within thirty (30) days of the invoice date. Vendor may, at its discretion, pass through credit card or other third party payment processing fees if permissible under applicable law. Any payment not received within thirty (30) days of the invoice date shall accrue interest of the lower of either (A) one and one-half percent (1.5%) or (B) the highest rate permissible under applicable law, per month on the unpaid balance. If Vendor terminates this Agreement on account of Customer's uncured breach, Vendor will be entitled to recover payment for all Services rendered as well as cost for implementation set-up and activation if termination occurs within the first six (6) months of the Agreement; and Vendor will be entitled to, as liquidated damages, a termination equal to sixty percent (60%) of the aggregate fees payable for each full or partial month remaining in the Subscription Term. THE PARTIES HERETO ACKNOWLEDGE AND AGREE THAT THE ACTUAL DAMAGES TO Vendor IN SUCH EVENT 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.

### **13. Assignment**

Without the prior written consent of Vendor, Customer's rights to any Services under this Agreement and this Agreement may not be assigned, sublicensed, or otherwise transferred, voluntarily or otherwise, by Customer and any attempt to do so in violation of this Section shall be null and void ab initio, except that Vendor may assign or transfer this Agreement in whole without Customer's consent (provided written notice is provided to the Customer) (A) to any of its Affiliates, or (B) upon a change of control of Vendor, upon a sale of all or substantially all assets of Vendor, by operation of law, or due to a merger, consolidation, or reorganization of Vendor.

### **14. Force Majeure**

Neither party shall be liable, nor shall any credit allowance or other remedy be extended, for any failure or delay in its performance under this Agreement due to causes beyond such party's reasonable control, including but not limited to: (A) acts of God, fire, flood, or other catastrophes; (B) any law, order, regulation, direction, or action of any governmental entity or agency, or any civil or military authority; (C) national emergencies, insurrections, riots, wars; strikes, lock-outs, work stoppages, or other labor difficulties; or (D) failure of the internet (not resulting from the actions or inaction of such party), provided that such affected party (i) gives the other party prompt notices of such cause and (ii) uses reasonable commercial efforts to promptly correct such failure or delay in its performance. If Customer is unable to operate its business due to the foregoing subclauses (A) through (C) ("**Closure Event**"), the Subscription Term of the Service that is not used during that time shall extend for the period of the Closure Event, provided such period shall not extend longer than three (3) months.



### **15. Limitation of Liability**

- (A) IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, OR LOST OR IMPUTED PROFITS OR ROYALTIES, LOST DATA, OR COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES ARISING FROM OR RELATED TO THE SERVICES PROVIDED UNDER THIS AGREEMENT WHETHER FOR, AMONG OTHER THINGS, BREACH OF WARRANTY OR ANY OBLIGATION ARISING THEREFROM, AND WHETHER LIABILITY IS ASSERTED IN, AMONG OTHER THINGS, CONTRACT OR TORT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE AND STRICT PRODUCT LIABILITY), IN EACH CASE REGARDLESS OF WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF ANY SUCH LOSS OR DAMAGE.
- (B) OTHER THAN WITH RESPECT TO PAYMENT DEFAULTS BY CUSTOMER, BOTH PARTY'S LIABILITY HEREUNDER SHALL IN NO EVENT EXCEED AN AMOUNT EQUAL TO (i) TWELVE (12) MONTHS FEES. CUSTOMER HEREBY WAIVES ANY CLAIM THAT THESE EXCLUSIONS DEPRIVE IT OF AN ADEQUATE REMEDY OR CAUSE ANY REMEDY UNDER THIS AGREEMENT TO FAIL OF ITS ESSENTIAL PURPOSE. The provisions of this Section allocate the risks between Vendor and Customer and Vendor's pricing reflects the allocation of risk and limitation of liability specified herein.
- (C) No action or claim, regardless of form, arising out of this Agreement may be brought by Customer more than two (2) years after Customer knew or should have known of the event which gave rise to the cause of action, unless such restriction is not enforceable under applicable law.
- (D) THE CUSTOMER AND VENDOR AGREE THAT THE LIMITATIONS OF LIABILITY SET FORTH IN THIS SECTION 15 ARE A FUNDAMENTAL BASIS OF THE BARGAIN, THAT VENDOR HAS SET ITS FEES IN RELIANCE ON THE ENFORCEABILITY OF THESE PROVISIONS, AND THAT THEY SHALL APPLY NOTWITHSTANDING THAT ANY REMEDY SHALL FAIL ITS ESSENTIAL PURPOSE.

### **16. Term and Renewal**

Unless otherwise set forth in the Work Order, this Agreement is effective from the Effective Date and shall continue through the Subscription Term of the Service set forth in the Work Order; thereafter, this Agreement will automatically renew for additional twelve (12) month terms (each a "**Renewal Term**") unless Customer provides Vendor written notice of its intent not to renew this Agreement thirty (30) days prior to the end of the then existing term. Notwithstanding anything contained in this Agreement, this Agreement shall remain in effect so long as Vendor is providing Services under any Work Order. FPG will provide written notice to the Customer ninety (90) days prior to the end of the Subscription Term (or Renewal Term) to inform the Customer that the end of the Subscription Term (or Renewal Term) is nearing and the term will auto-renew if not terminated by the Customer thirty (30) days prior to the end of the term.

### **17. Confidentiality**

- (A) The parties mutually acknowledge that the Services delivered by Vendor to Customer under this Agreement are the trade secrets and the Confidential Information of Vendor. Customer will keep confidential the Services, and each party will keep confidential any Customer Data, Confidential Information, financial, statistical, business, technical, copyrighted or confidential or proprietary information of the other party which may be submitted by one party to the other (including the price paid for the Services and its related services, any discounts, any special payment terms, and any other negotiated terms of this license), and each party agrees to keep such information confidential by using the same care and discretion that it uses with similar confidential and proprietary information of its own but no less than a reasonable standard of care and will instruct its personnel to do so.
- (B) If it is necessary for a party to disclose Confidential Information to a third party by law or order or any court or tribunal of competent jurisdiction, government agency or regulatory body, the party must ensure that the person who the Confidential Information is disclosed to is kept confidential and must before making the disclosure, notify and consult with the other party as soon as practicable and follow any reasonable directions from the other party.
- (C) Prior written approval must be obtained from the other party before any public comment is made that contains either party's name or logo, .

### **18. Suspension, Termination for Cause**

- (A) In addition to the termination provisions of this Agreement, Vendor may suspend the provision of any Services upon the failure of Customer to pay any amount when due hereunder or Customer or any party acting on Customer's behalf breaches the terms of this Agreement, provided Customer has been notified and given the opportunity to remedy the payment failure or if Customer's use of the Service is causing immediate and ongoing harm to Vendor or others.



- (B) In addition, Vendor may terminate this Agreement in the event of (i) Customer's failure to pay any uncontested amount when due hereunder; (ii) the filing of a petition in bankruptcy by or against Customer which, in the case of an involuntary petition, is not dismissed within sixty (60) days; and (iii) any default of this Agreement, including but not limited to violation of Customer's obligations under Sections 4(A) and 4(C), which continues for a period of thirty (30) days.
- (C) Customer may terminate this Agreement in the event of (i) if the Vendor commits a material breach of this Agreement and is not remedied within 20 days of being required to do so (ii) the Vendor commits an act of serious misconduct including any criminal offence and breach of clause 23 of this Agreement or (iii) the filing of a petition in bankruptcy or insolvency event by or against Vendor which, in the case of an involuntary petition, is not dismissed within sixty (60) days.

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

(A) The table below defines the Vendor entity the Customer is contracting with under this Agreement based upon where Customer is domiciled. This table also specifies the party to direct notices to, what jurisdiction and venue will apply in interpreting this Agreement or resolving any disputes arising out of or in connection with this Agreement, and which courts have exclusive jurisdiction and venue over the parties with respect to the performance and interpretation of this Agreement.

If Customer is domiciled in:	The Vendor entity is:	Notices should be addressed to:	The governing law is:	The courts having exclusive jurisdiction and venue are:
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
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, 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



- (B) This Agreement will be governed in accordance with the applicable law according to the table in Section 19(A) without regard to its conflict of law provisions. The parties agree that exclusive jurisdiction and venue for any actions arising out of or in any way relating to this Agreement will be in the applicable state or federal courts according to the table in Section 19(A). Each party hereby consents to the jurisdiction of such courts and waives any right it may otherwise have to challenge the appropriateness of such forums, whether on the basis of *forum non conveniens* or otherwise.
- (C) Except as otherwise specified in the Agreement or Work Order, 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 Agreement, Work Order or subsequent documentation provided by the Customer.

#### **20. Severability**

If a court declares one or more provisions or parts of this Agreement invalid, illegal, or unenforceable with jurisdiction over the parties to this Agreement, the remaining provisions will nevertheless remain in full force and effect in such jurisdiction, unless such severance would frustrate the contractual intent of the parties.

#### **21. Relationship of the Parties**

The relationship between Vendor and 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 Vendor, or in any other way legally bind Vendor in any fashion. Vendor has no authority, apparent or otherwise, to contract for or on behalf of Customer, or in any other way legally bind Customer in any fashion. Neither Vendor nor Customer 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. Each party is solely responsible for its employees, contractors, directors, officers and representative agents and neither party's employees, contractors, directors, officers, or representative agents will be entitled to or benefit from the other party's benefit or entitlement plans.

#### **22. Construction & Legal Advice**

In the event of any dispute over the terms in the Agreement, the terms in the 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 these terms.

#### **23. Foreign Corrupt Practices Act FCPA and Anti-Money Laundering**

- (A) Vendor 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 Vendor 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 Vendor in connection with this Agreement.
- (B) Neither party has received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from any employees or agents of either party in connection with this Agreement. If Customer shall learn of any violation of the above restriction, if permitted by applicable law, Customer will use reasonable efforts to promptly notify Vendor at [Admin@FrontlinePG.com](mailto:Admin@FrontlinePG.com).
- (C) Vendor represents and warrants to Customer that with respect to this Agreement or in undertaking any work prior to but relevant to this Agreement (i) it is compliant with the provisions of all anti-bribery or anti-corruption law applicable to this Agreement or any conduct undertaken pursuant to this Agreement (the Anti-Bribery Requirements); (ii) neither it nor any of its directors, officers, employees, agents or Suppliers have made, offered, promised or authorized, any benefit, whether directly or through any other person or entity, to or for the use or benefit of any Government Official, where such benefit would violate any of the Anti-Bribery Requirements; and (iii) it will take such steps as may be necessary to ensure that its directors, officers, employees, agents or Suppliers abide by all Anti-Bribery Requirements.

#### **24. Export Controls**

Each party shall comply with the Export Laws and regulations of the applicable jurisdictions in providing and using Services. Without limiting the generality of the foregoing, Customer is not and shall not make Services available to any person or entity that is: (A) located in a country that is subject to a U.S. government embargo; (B) listed in 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 (C) engaged in activities directly or indirectly related to the proliferation of weapons of mass destruction.



## **25. Taxes**

Customer agrees to pay when due (or reimburse Vendor for) all taxes including all sales, use, value-added and other taxes (federal, state or otherwise), which Vendor is at any time obligated to pay or collect in connection with the Services and the license of the Services, all of which will be invoiced in addition to the fees under the Work Order, except any taxes based on Vendor's net income. Any delay by Vendor in collecting any such tax will in no way release Customer of Customer's obligation under this Section.

Terms defined in the GST Law have the same meaning in this clause unless the context otherwise requires.

### **25.1 GST pass on**

If GST is or will be payable on a supply made under or in connection with this Agreement, the consideration otherwise provided for that supply under this Agreement is increased by the amount of that GST; and the recipient must make payment of the increase as and when the consideration otherwise provided for, or relevant part of it, must be paid or provided or, if the consideration has already been paid or provided, within seven days of receiving a written demand from the Vendor.

### **25.2 Later adjustment to price or GST**

If an adjustment event arises in relation to a supply which results in the amount of GST on a supply being different from the amount in respect of GST already recovered by the Vendor, the Vendor within 14 days of becoming aware of the adjustment event may recover from the recipient the amount by giving seven days written notice.

### **25.3 Tax invoices / adjustment notes**

The right of the Vendor to recover any amount of GST under this Agreement is subject to the Vendor issuing of the tax invoice or adjustment note to the recipient except where the recipient is required to issue the tax invoice or adjustment note.

### **25.4 Reimbursements**

Costs actually or estimated to be incurred or revenue actually or estimated to be earned or lost by a party that is required to be reimbursed or indemnified by another party or used as the basis for calculation of consideration for a supply under this Agreement must exclude the amount of GST referable to the cost to the extent to which an entitlement arises or would arise to claim an input tax credit and in relation to revenue must exclude any amount in respect of GST referable to the revenue.

### **25.5 Withholding**

Customer is entitled to withhold any payment required to be made under this Agreement which is subject to any withholding required by Law.

## **26. Survival**

Notwithstanding the expiration or termination of this Agreement or any renewal period hereunder, the parties agree that the terms of Sections 4, 6,7, 9, 10, 11,12, 15, 17, 18, 19, and 25 through 31 and any other term of this Agreement that by its very nature must survive the expiration or termination of the Agreement do so survive.

## **27. Headings; Interpretation**

The headings used herein are for identification and reference purposes only and shall not be used in the construction and interpretation of this Agreement. Unless the intent is expressly otherwise in specific instances, use of the words "include," "includes," or "including" in this Agreement shall not be limiting, "or" shall not be exclusive, singular defined terms do not exclude the plural, and "expiration" and "termination" may be used interchangeably.

## **28. Counterparts**

This Agreement may be executed in counterparts, which taken together shall form one legal instrument. Signatures shall be valid whether by paper original, fax, PDF, or electronic.

## **29. Prevailing Language of Agreement & Notices**

(A) The Agreement is in English and if the 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.



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

**30. Amendment**

Changes to this Agreement can only be made in writing with the signed agreement of an authorized representative of both Customer and Vendor.

**31. Additional Terms and Conditions**

The additional terms and conditions set forth in each Work Order shall be incorporated into this Agreement.

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



## EXHIBIT B Standard Support Plan

### 1. Online Ticket Support

Vendor will provide Customer with Online Ticket Support as the primary support channel for all Services. All tickets submitted will be classified into case types and responded to within regular business hours of Customer location.

### 2. Correction of Malfunctions.

Vendor will correct Malfunctions as provided herein. “**Malfunction**” shall mean a failure of Service to operate pursuant to the Documentation. This Support Plan is the sole remedy with respect to Malfunctions of the Service. Malfunctions caused by third party failures, Customer failures, or circumstances beyond Vendor’s reasonable control are not considered Malfunctions.

The definitions of the Malfunction classifications are as follows:

- (a) Severity Level 1: A problem which renders Service inoperative, causes a significant and ongoing interruption to the end-user’s business activities or causes an unrecoverable loss or corruption of data.
- (b) Severity Level 2: A problem which causes the Services to be inoperative, disrupted or malfunctioning and which materially interferes with Customer’s use of the Services.
- (c) Severity Level 3: A problem which causes the Services not to function in accordance with applicable specifications, including the Documentation, but which causes only a minor impact on Customer’s use of the Services and for which an acceptable circumvention is available.
- (d) Severity Level 4: Any general questions and issues pertaining to the Services and all malfunctions which are not included in the other Malfunction classifications.

### 3. Procedure.

- (a) Report of Malfunction. With respect to a report of any Malfunction, Customer will submit such malfunction via the Online Ticket system to describe Malfunction in reasonable detail and the circumstances under which Malfunction occurred or is occurring and will, with the assistance of Vendor, classify Malfunctions as a Severity Level 1, 2, 3, or 4. Vendor’s reasonable determination of the Severity Level will control.
- (b) Critical Malfunctions. If a Severity Level 1 or 2 Malfunction (each, a “**Critical Malfunction**”) cannot be corrected to Customer’s reasonable satisfaction through communication with Vendor within **eight (8)** hours after Vendor receives the description of Malfunction via the Online Ticket system, Vendor will: (1) escalate to Vendor customer service management; (2) take and continue to take reasonable actions to most expeditiously resolve the Critical Malfunction; (3) provide a written response to Customer of the steps taken and to be taken to resolve the problem, the progress to correction and the estimated time of correction, and provide updates every **twenty-four (24)** hours until the Critical Malfunction is resolved; and (4) every **twenty-four (24)** hours, provide increasing levels of technical expertise and Vendor management involvement in finding a solution to the Critical Malfunction until it has been resolved.
- (c) Vendor Level of Effort. Vendor will work continuously until any Critical Malfunction for which a correction or workaround has not been achieved until resolved. Unless otherwise specified by Customer, Vendor will work continuously during normal work hours in Vendor location to resolve any Severity Level 3 Malfunction. Vendor and Customer will mutually agree upon a schedule within which to resolve any Severity Level 4 Malfunction.
- (d) Action Required from Vendor. For a Critical Malfunction, Vendor will commence a correction plan, which Vendor will then provision access to Customer for Customer to test. For a Severity Level 3 or 4 Malfunction, Vendor will provide a correction as promptly as reasonably achievable, and at Customer’s request will seek to establish a mutually agreed upon schedule for the correction to be provided.

### 4. Service Levels

- (a) The Vendor will ensure an uptime of > 95% of the Services at all times during the Subscription Term and any Renewal Term. Customer will be entitled to terminate this Agreement upon 14 days’ written notice if Customer has provided a notice of the Vendor failing to achieve the Service Levels and the Vendor subsequently fails to meet Service Levels for (i) a continuous period of 3 months; or (ii) 6 times in any continuous period of 12 months.