



PROFESSIONAL SERVICES ANNEX

THIS PROFESSIONAL SERVICES ANNEX IS PART OF THE AGREEMENT BETWEEN CUSTOMER AND SUPPLIER TO REFLECT THE PARTIES' AGREEMENT WITH REGARD TO THE PERFORMANCE OF PROFESSIONAL SERVICES.

This PSA was last updated on May 12th, 2018.

BACKGROUND INFORMATION

Subject to the terms and conditions of the Agreement, Customer may request that Supplier provide certain Professional Services related to Customer's use of the Services, including, by way of example, configuration of the Services, customization of the Services and/or training of Customer personnel regarding use of the Services.

1 PROFESSIONAL SERVICES AND DELIVERABLES

1.1 Professional Services

Supplier and Customer will develop and enter into one or more statements of work incorporating a description of the specific Professional Services requested by Customer (each, and as modified by the parties from time to time, a "Work Schedule"). Each Work Schedule will set forth, among other things, project scope, various project activities and tasks to be performed by the parties, Deliverables and roles and responsibilities of the parties. Supplier will provide to Customer those Professional Services described as its obligation in each Work Schedule (collectively, the "Professional Services").

1.2 Deliverables and Acceptance

Deliverables, if any, under this PSA will be as set forth under any Work Schedule. Each Work Schedule will describe, if applicable, the deliverables that Supplier is obligated to furnish to Customer hereunder (collectively, the "Deliverables"), the acceptance criteria for each of the Supplier Deliverables (the "Acceptance Criteria") and the completion criteria, if any, to signify completion of each phase of a project.



Customer shall review, evaluate and/or test, as the case may be, each of the Supplier Deliverables within the applicable time period set forth in a Work Schedule (with respect to each Supplier Deliverable, the "Acceptance Period") to determine whether or not such Deliverable satisfies the applicable Acceptance Criteria in all material respects. If Customer does not furnish a written notice to Supplier specifying that a Supplier Deliverable has failed to satisfy its Acceptance Criteria in all material respects prior to the end of the Acceptance Period therefor, then Customer will be deemed to have accepted such Supplier Deliverable. If any Supplier Deliverable fails to satisfy its Acceptance Criteria in any material respect, then Customer will notify Supplier in writing specifying the respects in which such Deliverable does not conform to the applicable Acceptance Criteria and what modifications are necessary to make it conform thereto. Thereafter, Supplier shall use its diligent commercially reasonable efforts to modify such Supplier Deliverable to so conform and the Deliverable will be resubmitted for acceptance by Customer. If, after repeated attempts, Supplier is unable to remedy any non-conforming portion of any Supplier Deliverable, Customer may terminate pursuant to Section 9.2 herein. Customer's remedies and Supplier's entire liability to Customer as a result thereof will be subject to the limitations set forth in Section 7 hereof. If requested by Supplier, Customer will promptly sign and deliver to Supplier a mutually acceptable certificate evidencing such acceptance.

2 PROJECT SCHEDULE; CHANGES

2.1. Project Schedule; Changes

Each Work Schedule will set forth the projected work effort and schedule applicable to the Professional Services. All statements and agreements concerning time are good faith estimates based upon information available and circumstances existing at the time made, and each Work Schedule is subject to equitable adjustment upon any material change in such information or circumstances, the occurrence of an excusable delay (as provided for in Section 2.2 hereof) or upon modification of the scope, timing or level of work to be performed by Supplier. Either party will be entitled to propose changes in accordance with the change procedure provided in each Work Schedule. It is mutually acknowledged that any such change may affect the fees or charges payable to Supplier and/or the project schedule. Neither party shall have any obligation respecting any change until an appropriate change order or amendment to the applicable Work Schedule is executed and delivered by both parties.

2.2. Excusable Delays and Failures

Supplier will be excused from delays in performing, or from its failure to perform, hereunder to the extent that such delays or failures result from causes beyond Supplier's reasonable control. A delay caused by a subcontractor engaged by Supplier will not be considered an excusable delay of Supplier, unless such delay is an excusable delay that affects such subcontractor, in which case such delay will be deemed an excusable delay of Supplier. Without limiting the generality of the foregoing, Customer acknowledges that Customer's failure or delay in furnishing necessary information, equipment or access to facilities, delays or failure by Customer in completing tasks required of Customer or in otherwise performing



Customer's obligations hereunder or under any Work Schedule and any assumption contained in a Work Schedule which is untrue or incorrect will be considered an excusable delay or excusable failure to perform hereunder and may impede or delay completion of the Professional Services. Customer further acknowledges that such delays or failures may result in additional charges for the Professional Services.

3 PAYMENT

3.1. Project Fees and Reimbursable Items

Customer shall pay to Supplier the fees and other compensation set forth in each Work Schedule. Customer will also reimburse Supplier for all reasonable out-of-pocket travel, living and other ancillary expenses paid or incurred by Supplier in connection with the Professional Services and any other reimbursable items set forth in each Work Schedule. Supplier will have no obligation to perform any Professional Services when any amount required to be paid by Customer remains due and unpaid beyond the date such amount is due. Any suspension of Professional Services by Supplier as a result of Customer's failure to make payment as required will extend the due dates of Supplier Deliverables and other (Professional) Services to the extent impacted by such suspension or delay. Fees for Supplier Deliverables and other Professional Services shall be subject to a 10% discount per 30 days of non-excusable delay.

3.2. Invoices; Payments

Supplier will invoice Customer for all fees, charges and reimbursable items payable to Supplier on a monthly basis as such payments are due. Customer will pay the invoiced amount in full within 30 days of the date of each invoice, without deduction, setoff, defense or counterclaim for any reason. Moreover, the invoiced amount will be increased, as of right and without previous notice of default, (a) with a late interest at the rate of 1% of the outstanding balance per month, from the date such payment was due until the date of effective payment, and (b) by way of a conventional penalty clause by 12%.

If any charge owed by Customer is 30 days or more overdue, Supplier may, without limiting its other rights and remedies, suspend Services until such amounts are paid in full, provided that Supplier has given Customer at least 10 calendar days' prior notice that its account is overdue.

For practical reasons, Customer may be invoiced by EFESO on behalf of Supplier.

3.3. Taxes

Charges for Professional Services hereunder do not include any federal, state, local or foreign taxes, duties or levies of any nature ("Taxes"). Any Taxes required to be paid by Supplier as a result of the Professional Services rendered hereunder (other than Taxes based on Supplier's income) shall be billed to and paid by Customer.



4 CONTRACT PROPERTY

4.1 Contract Property

Supplier hereby grants Customer a worldwide, non-exclusive, non-assignable, non-transferable, non-revocable license to use for its internal business purposes anything developed by Supplier for Customer under this PSA (“Contract Property”). The Contract Property shall remain the sole and exclusive property of Supplier and Customer obtains only the right to use the same solely in accordance with the terms of this PSA.

Any intellectual or industrial property right created in newly created materials during the term of this PSA, including any modifications, enhancements and/or derivatives in relation to the Contract Property, and excluding Customer Data as defined in the Agreement, shall automatically vest in Supplier.

To the extent permitted by applicable law, Customer hereby waives all moral rights in relation to any intellectual or industrial property rights that are (meant to be) vested in Supplier by virtue of this clause, to which it would otherwise be entitled under the laws of any relevant jurisdiction.

5 OBLIGATIONS OF THE PARTIES

5.1 Working Environment

For any Professional Services to be provided by Supplier at any of Customer’s sites, Customer shall provide Supplier’s personnel with (i) a suitable and adequate work environment, including space for work and equipment for performance of the Professional Services; (ii) access to and use of Customer’s facilities and relevant information, including software, hardware and documentation, and Customer will provide and maintain PC workstations for such personnel’s use and assist such personnel in a timely manner by promptly correcting any hardware or software problems that would affect the performance of Professional Services; and (iii) any other items set forth in each Work Schedule.

5.2 Customer’s Personnel Commitment

Customer will ensure that all Customer’s personnel who may be necessary or appropriate for the successful implementation of the Professional Services will, on reasonable notice, (i) be available to assist Supplier’s personnel by answering business, technical and operational questions and providing requested documents, guidelines and procedures in a timely manner; (ii) participate in the Professional Services as outlined in the Work Schedule; (iii) participate in progress and other Service related meetings; (iv) contribute to software and system testing; and (v) be available to assist Supplier with any other activities or tasks required to complete the Professional Services in accordance with the Work Schedule.



6 WARRANTY

6.1. Limited Warranty

With respect to any Supplier Deliverable or Professional Services, Supplier warrants the following for a period of thirty (30) days following final acceptance by Customer of the particular Supplier Deliverable or the performance of such other Professional Services (the “Warranty Period”):

- a) the applicable Professional Services rendered hereunder will be performed by qualified personnel;
- b) the Professional Services performed will substantially conform to any applicable requirements set forth in the Work Schedule;
- c) the Supplier Deliverables will materially conform to the corresponding specifications for such Supplier Deliverables; as set forth in the applicable Work Schedule.

6.2. Remedies

Supplier does not warrant that any Supplier Deliverable will operate uninterrupted or error-free, provided that Supplier shall remain obligated pursuant to this Section 6. In the event that any Supplier Deliverable or Professional Service fails to conform to the foregoing warranty in any material respect, the sole and exclusive remedy of Customer will be for Supplier, at its expense, to promptly use commercially reasonable efforts to cure or correct such failure. Upon failure of the foregoing, Customer’s remedies, and Supplier’s entire liability, as a result of such failure, shall be subject to the limitations set forth in Section 7 hereof. The foregoing warranty is expressly conditioned upon (i) Customer providing Supplier with prompt written notice of any claim thereunder prior to the expiration thereof, which notice must identify with particularity the non-conformity; (ii) Customer’s full cooperation with Supplier in all reasonable respects relating thereto, including, in the case of modified software, assisting Supplier to locate and reproduce the non-conformity; and (iii) with respect to any Supplier Deliverable, the absence of any alteration or other modification of such Supplier Deliverable by any person or entity other than Supplier.

6.3. Disclaimer

Except as expressly provided under sections 6.1 and 6.2, Supplier makes no other warranty of any kind than provided in the abovementioned sections, whether express, implied, statutory or otherwise, and Supplier 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. Supplier disclaims all liability and indemnification obligations for any harm or damages caused by any third-party hosting providers.



6.4. Responsibility of Customer

In the event that Customer asserts any claim for warranty services hereunder and such claim relates to any matter that is determined not to be Supplier's responsibility hereunder (including any problem with Customer's computer hardware or software that was not caused by any Professional Services performed by Supplier), Customer will be responsible to pay Supplier for all costs incurred for all evaluation, correction or other services performed by Supplier relating to such claim on a time and materials basis at Supplier's then standard billing rates.

7 LIMITATION OF LIABILITY AND REMEDIES

7.1. Exclusion of Damages

Except as expressly provided herein, in no event shall either party be liable to the other party or any other person or entity for any special, exemplary, indirect, incidental, consequential or punitive damages of any kind or nature whatsoever (including, without limitation, lost revenues, profits, savings or business) or loss of records or data, whether in an action based on contract, warranty, strict liability, tort (including, without limitation, negligence) or otherwise, even if such party has been informed in advance of the possibility of such damages or such damages could have been reasonably foreseen by such party.

7.2. Total Liability

In no event shall either party's liability to the other party or any other person or entity arising out of or in connection with this PSA or the Professional Services exceed, in the aggregate, the total fees paid by Customer to Supplier for the particular Professional Services or Supplier Deliverable with respect to which such liability relates (or in the case of any liability not related to a particular portion of the Professional Services, the total fees paid by Customer to Supplier under the applicable Work Schedule), whether such liability is based on an action in contract, warranty, strict liability or tort (including, without limitation, negligence) or otherwise. Supplier will not be liable for any damages claimed by Customer based upon any third-party claim, except for claims by Supplier's subcontractors against Customer relating to work performed at Supplier's request under this PSA. The limitations specified in this Section 7 will survive and apply even if any limited remedy specified in this PSA is found to have failed of its essential purpose. No action arising out of or in connection with this PSA or any of the Professional Services or Products provided hereunder may be brought before the competent court as assigned in section 10.2 by either party more than one (1) year after the cause of action has accrued, with explicit exclusion of an action for nonpayment of any monies due to Supplier hereunder, for which the legal term remains applicable.

8 RELATIONSHIPS

8.1. No Employee Relationship



Supplier's employees are not and shall not be deemed to be employees of Customer. Supplier shall be solely responsible for the payment of all compensation to its employees, including provisions for employment taxes, workmen's compensation and any similar taxes associated with employment of Supplier's personnel. Supplier's employees shall not be entitled to any benefits paid or made available by Customer to its employees.

8.2. Subcontractors

Supplier may engage third parties to furnish services in connection with the Professional Services or Products, provided that such third parties have executed appropriate confidentiality agreements with Supplier. In addition, Professional Services may be performed by affiliates of Supplier. No such engagement will relieve Supplier from any of its obligations under this PSA.

9 TERM AND TERMINATION

9.1. Term

The term of this PSA will commence on the date of undersigning the Work Schedule and will remain and continue in effect, unless sooner terminated, as provided hereunder.

9.2. Termination

This PSA may be terminated by either party (the "non-breaching party") upon written notice to the other party if any of the following events occur by or with respect to such other party (the "breaching party"): (i) the breaching party commits a material breach of any of its obligations hereunder and fails to cure such breach within the time period set forth in Section 9.3 hereof or fails to reach an agreement with the non-breaching party regarding the cure thereof; or (ii) any insolvency of the breaching party, any filing of a petition in bankruptcy by or against the breaching party, any appointment of a receiver for the breaching party, or any assignment for the benefit of the breaching party's creditors.

9.3. If either party commits a material breach, as set forth above, and such party fails to reach an agreement with the other party regarding cure of such breach within thirty (30) days after receipt of notice of such breach, the non-breaching party may, in addition to other remedies, terminate this PSA in whole or in part.

9.4. Termination by Supplier

In the event Supplier terminates this PSA pursuant to Section 9.2, Supplier will be entitled to recover payment for all Professional Services rendered through the date of termination (including for work in progress), those costs incurred in anticipation of performance of the Professional Services to the extent



they cannot reasonably be eliminated, any other termination costs Supplier incurs, including, but not limited to, cancelling any secondary contracts it undertook in anticipation of performance of the Professional Services, any reasonable wind-down expenses, any reasonable expenses incurred in reallocating Supplier personnel to other projects, and any other actual damages suffered by Supplier.

9.5. Termination by Customer

In the event Customer terminates this PSA pursuant to Section 9.2, Customer may retain all Supplier Deliverables delivered to or for the benefit of Customer hereunder through the date of termination, upon payment by Customer for all Deliverables and any other Professional Services rendered through the date of termination (including work in progress). In addition, Customer may recover its actual damages, subject to the limitations set forth in Section 7 hereof.

9.6. Survival

In the event of termination or upon expiration of this PSA , Sections 3, 6 (subject to the expiration of any warranty period), 7, 9, and 10 hereof will survive and continue in full force and effect.

10 GENERAL

10.1 Changes to scope

Any changes to the scope of work under a Work Schedule shall be made by written change order or amendment to the Work Schedule signed by an authorized representative of each party prior to implementation of such changes.

10.2 Governing Law

The validity and interpretation of this PSA and the rights and obligations of the parties hereunder shall be exclusively governed by Belgian law. The parties hereby waive the application of the rules on the conflict of laws and the United Nations Convention on the Sale of Goods (CISG). All disputes arising out of this PSA and/or in connection with this PSA shall be subject to the exclusive jurisdiction of the courts of Brussels.

10.3 Assignment of Agreement

Neither party may assign any of its rights or obligations hereunder, whether by operation of applicable law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld or delayed). Notwithstanding the foregoing, either party may assign this PSA in its entirety (including all



Work Schedules), without the consent of the other party, to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets not involving a direct competitor of the other party, provided that he informs the other party thereof within 24 hours. A party's sole remedy for any purported assignment by the other party in breach of this paragraph shall be, at the non-assigning party's election, termination of this PSA upon written notice to the assigning party. In the event of such a termination by Customer being the non-assigning party, Supplier shall refund Customer any prepaid fees covering the remainder of the term of all subscriptions after the effective date of termination. Subject to the foregoing, this PSA shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

10.4 Counterparts; Facsimile

This PSA may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement. The parties agree that a facsimile signature may substitute for and have the same legal effect as the original signature.

10.5 Entire Agreement

This PSA, including all exhibits and addenda hereto and all Work Schedules, constitute the entire agreement between the parties and supersede any and all previous representations, understandings, or agreements between Customer and Supplier with regard to the Professional Services. This PSA may only be amended by an instrument in writing signed by the parties. This PSA shall be construed without regard to the party that drafted it. Any ambiguity shall not be interpreted against either party and shall, instead, be resolved in accordance with other applicable rules concerning the interpretation of contracts.

10.6 Balance between this PSA and the Agreement

In the event that certain matters are not defined or stipulated in this PSA, the corresponding provision of that matter provided in the Agreement shall apply, which has a complementary role. However, to the extent there are any conflicts or inconsistencies between this PSA and the Agreement, the provisions of the PSA shall govern and control.

10.7 Severability

If any provision of this PSA is held by a court of competent jurisdiction to be contrary to applicable law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by applicable law, and the remaining provisions of this PSA shall remain in effect.