



## EPHESOFT PROFESSIONAL SERVICES AGREEMENT

**SUBJECT TO YOUR PROCUREMENT OF PROFESSIONAL SERVICES, UPON EXECUTION OF AN APPLICABLE STATEMENT OF WORK (“SOW”) AND/OR EPHESOFT QUOTE/SALES ORDER (“SALES ORDER”), THIS PROFESSIONAL SERVICES AGREEMENT (“PSA”) SHALL GOVERN EPHESOFT’S PROVISION OF PROFESSIONAL SERVICES TO YOU.**

### **1. Services**

**1.1. Scope of Services.** Subject to the terms and conditions of this Agreement, Ephesoft will perform those services ("Services") with respect to the Ephesoft products separately purchased by Client as set forth in one or more Statement of Work ("SOW") document(s) and as amended and/or supplemented from time to time by the mutual written agreement of the parties and incorporated herein by reference. The SOW will describe the services to be performed ("Services"), the dates of the Services (the "Schedule"), the Client obligations and other requirements necessary for completion of the Services ("Dependencies"), any identifiable work product to be delivered by Ephesoft ("Deliverables"), the method of calculating the fee owed to Ephesoft for the Services, whether time and material rates or another method (the "Fee"), and any other terms that apply to that specific SOW. Each SOW together with the terms of this Agreement constitutes a separate contract that will be effective upon execution by authorized representatives of Ephesoft and Client. In the event of any conflict between this Agreement and the terms of a SOW, the terms of the SOW will govern the project to which the SOW relates.

Alternatively, Ephesoft may be engaged to provide Services without a detailed SOW. In the absence of a SOW, a signed Sales Order or similar agreement shall define the Scope of Services.

**1.2. Change Orders.** If Client requests or Ephesoft recommends changes during performance of a SOW, these changes must be made in writing and signed by both parties ("Change Order"). If the Change Order is made via email to the other party's designated contact person, that email approval will be considered proof of acceptance. The Change Order will set forth the impact on the Services, Schedule, Dependencies, Deliverables and/or Fee. The Client will have five (5) business days to reject the Change Order. If said rejection is not made within the five (5) business day period, the Change Order is deemed mutually accepted. Ephesoft reserves the right to decline to perform work due to a Change Order that would result in an increase in Ephesoft's level of effort. Each accepted Change Order will be incorporated herein by reference and subject to the terms and conditions of this Agreement.

**1.3. Acceptance.** Unless otherwise agreed, upon final completion and delivery of Services, Client will have five (5) business days in which to notify Ephesoft in writing whether the Services fail to comply with the relevant SOW or Sales Order and the reasons for such failure. If Ephesoft is not notified of any problems within this time period, the Services will be deemed to be accepted by Client.

**2. Client Duties and Responsibilities.** Client will make available in a timely manner for Ephesoft's use, at no charge to Ephesoft, all technical data, computer facilities, programs, files, documentation, test data, sample output, or other information, resources, and personnel required by Ephesoft as set forth in the applicable document for the performance of the Services. Client will be responsible for and assumes the risk of any issues or problems resulting from the content, accuracy, completeness, competence, or consistency of all Client computer facilities, programs, files, documentation, test data, sample output, or other information, resources, and personnel supplied by Client. Client will provide, at no charge to Ephesoft, reasonable office space and equipment at Client's facilities (such as copiers, fax machines and modems) as Ephesoft requires in performing the Services.

**3. Interdependencies; Client and Third-Party Delays.** Client acknowledges that meeting the Schedule is contingent upon timely completion of activities by Client as contemplated by the parties under this Agreement including, without limitation, those activities designated to Client in Section 2 above and/or in the applicable SOW document ("Client Obligation"). Client will immediately advise Ephesoft in writing as soon as it becomes aware of any developments that may delay completion of a scheduled Deliverable including, without limitation, Client's failure or inability to perform a Client Obligation. The Schedule (though only an estimate) will be equitably adjusted by the parties (but in no event less than a day-for-day adjustment) in writing in the event of: (a) any delay caused by Client's failure or inability to perform a Client Obligation; (b) any delay due to Client's request for changes (whether pursuant to a Change Order or otherwise); (c) any delay due to a third-party's act, failure to act or delay in performing any obligation

whatsoever; or (d) any other delay incurred as a result of Client's action(s) or omission(s). No such delay will relieve or suspend Client's obligation to pay Ephesoft under Article 4.

#### 4. Fees and Payment

**4.1. Fees and Expenses.** Client will pay Ephesoft all fees set forth in the SOW or Sales Order. Client will reimburse Ephesoft for all reasonable costs and expenses incurred by Ephesoft in its performance of the Services under this Agreement. This would comprise of reasonable travel and living expenses, including but not limited to airfare, lodging, mileage, auto rental and incidentals.

**4.2. Payment.** Unless otherwise set forth in the applicable SOW or Sales Order, Client will make all payments under this Agreement in U.S. dollars within thirty (30) calendar days after the date of Ephesoft's invoice(s). In addition to any other remedy available to Ephesoft for late payments, Client will be obligated to pay Ephesoft interest on the overdue amount at the rate of one and one-half percent (1.5%) per month or the maximum rate allowed under law, whichever is less, for each month, or partial month, calculated from the date such payment was due until the date paid. Client will reimburse Ephesoft for all costs incurred by Ephesoft (including reasonable attorneys' fees, collection fees, and court costs, of not less than fifteen percent (15%) of the outstanding balance due, if any) in connection with any collection efforts related to or arising out of this Agreement.

**4.2.1. Taxes.** Fees and expenses under this Agreement are exclusive of all taxes including state and local use, sales, property and similar taxes. Client agrees to pay any such taxes.

#### 5. Term and Termination

**5.1. Term.** The term of this Agreement will commence on the Effective Date of the agreement, SOW or Sales Order referencing this PSA and will continue in effect for the length of time referenced in the SOW or Sales Order for the Services. Each SOW or Sales Order shall commence on the date it is last signed, and shall expire upon completion of the project, or as otherwise set forth the applicable SOW or Sales Order. Once signed by both parties, a SOW or Sales Order shall be non-cancellable, except as otherwise explicitly stated in such SOW or Sales Order.

**5.2. Termination.** Either party may terminate this agreement for convenience upon written notice in the event that there are no active SOWs or Sales Orders. If the Client has entered into an End User License Agreement ("EULA"), a Subscription License and Services Agreement ("Cloud SLA"), or similar agreement with Ephesoft then this PSA will terminate automatically when those software licenses, and all SOWs and agreements referencing this PSA, are terminated or expired.

**5.3. Suspension of Services.** Notwithstanding any other provision of this Agreement, Ephesoft may, in its sole discretion, suspend Services and the delivery of a Deliverable if: (a) Client materially breaches any of its obligations under this Agreement including, without limitation, failure by Client to pay any amount under this Agreement within thirty (30) days after the date of Ephesoft's invoice therefor; or (b) Ephesoft determines that Client may be unable to make any scheduled or expected payment. Any such suspension by Ephesoft: (i) will not constitute termination of this Agreement or any SOW or Sales Order (and Client will continue to be bound by its obligations under this Agreement); (ii) will be deemed to modify the Schedule outward to the same extent as the period of delayed payment, performance or other material breach, without penalty to Ephesoft; (iii) will entitle Ephesoft to reimbursement by Client for any and all costs and expenses incurred by Ephesoft in connection with any such suspension; and (iv) may be cancelled or revoked in Ephesoft's sole discretion. Without limiting the foregoing, any such suspension will be considered a delay caused by Client pursuant to Article 3.

**5.4. Return of Materials.** Upon any expiration or termination of this Agreement, except as necessary to exercise the rights granted by Ephesoft to Client pursuant to Section 7, each party will return promptly or, at the other party's request, destroy all documents and other tangible objects containing or representing Confidential Information of the other party except to the extent that such documents must be retained to satisfy auditing or regulatory requirements. If requested by the other party, each party will provide the other party with written certification of compliance with the foregoing obligations under this Section.

**5.5. Survival.** Notwithstanding any expiration or termination of this Agreement, all payment obligations incurred prior to expiration or termination will survive, and the following provisions will survive: Articles 4, 6, 7, 9 and 10, and Sections 5.4 and 8.2. All other rights granted under this Agreement will cease upon expiration or termination of this Agreement.

#### 6. Confidential Information

**6.1. "Confidential Information"** means any information disclosed under this Agreement by either party ("Disclosing Party") to the other party ("Receiving Party") that: (a) is in written, graphic, machine readable or other tangible form and is marked "Confidential," "Proprietary" or in some other manner to indicate its confidential nature; (b) oral information disclosed by the

Disclosing Party to the Receiving Party pursuant to this Agreement, provided that such information is designated as confidential at the time of disclosure and reduced to a written summary by the Disclosing Party, marked in a manner to indicate its confidential nature and delivered to the Receiving Party within ten (10) calendar days after its oral disclosure; and (c) information otherwise reasonably expected to be treated in a confidential manner under the circumstances of disclosure.

Notwithstanding the foregoing, the following information will be deemed the Confidential Information of Ephesoft whether or not so designated upon disclosure or confirmed in writing: (i) Ephesoft pricing; (ii) Ephesoft Pre-Existing Technology, Ephesoft Work Product, and Ephesoft Tools (as defined in Section 7); and (iii) any know-how, designs, layouts, configurations, methods, processes, formulae, specifications, functionality, performance data, test results or error or bug information provided by Ephesoft to Client under this Agreement or otherwise obtained by Client from use or examination of the Deliverables.

Confidential Information may also include information of a third-party that is in the possession of the Disclosing Party and is disclosed to the Receiving Party under this Agreement. Confidential Information will not include any information that: (1) was publicly known and made generally available in the public domain prior to the time of disclosure by the Disclosing Party; (2) becomes publicly known and made generally available after disclosure by the Disclosing Party to the Receiving Party through no action or inaction of the Receiving Party; (3) was already in the possession of the Receiving Party without confidentiality obligations at the time of disclosure by the Disclosing Party as shown by the Receiving Party's files and records immediately prior to the time of disclosure; (4) is obtained without confidentiality obligations by the Receiving Party from a third-party without a breach of such third-party's obligations of confidentiality; or (5) is independently developed by the Receiving Party without use of or reference to the Disclosing Party's Confidential Information.

The obligations set forth in this Section 6.1 shall continue for a period of three (3) years from completion of the last SOW or Sales Order.

**6.2. Non-Use and Non-Disclosure.** The Receiving Party will use the Disclosing Party's Confidential Information solely for the purposes of performing its obligations and exercising its rights under this Agreement. The Receiving Party will not disclose any Confidential Information of the Disclosing Party to third parties or to such party's employees, except that, subject to Section 6.3 below, the Receiving Party may disclose the Disclosing Party's Confidential Information to those employees and contractors of the Receiving Party who are required to have the information in order to perform Receiving Party's obligations and exercise the Receiving Party's rights under this Agreement, provided however that such employees or contractors are subject to a confidentiality agreement with terms no less restrictive than those contained herein. If the Receiving Party is required by law to make any disclosure that is prohibited or otherwise constrained by this Agreement, the Receiving Party will provide the Disclosing Party with prompt written notice of such requirement prior to such disclosure so that the Disclosing Party may seek a protective order or other appropriate relief. Subject to the foregoing sentence, the receiving party may furnish that portion (and only that portion) of the Confidential Information that it is legally compelled or is otherwise legally required to be disclosed; provided, however, that the Receiving Party provides such assistance as the Disclosing Party may reasonably request in obtaining such order or other relief at the Disclosing Party's option and expense.

**6.3. Maintenance of Confidentiality.** The Receiving Party will use commercially reasonable efforts to prevent unauthorized use or disclosure of the Disclosing Party's Confidential Information. The Receiving Party will ensure that its employees who have access to Confidential Information of the Disclosing Party have signed a non-use and non-disclosure agreement in content at least as protective of the Disclosing Party's Confidential Information as the provisions of this Agreement prior to any disclosure of the Disclosing Party's Confidential Information to such employees. The Receiving Party will promptly return all copies of the Disclosing Party's Confidential Information as requested by such Disclosing Party at any time in writing; provided, however, the parties agree that Ephesoft's continued access to Client's Confidential Information which is required for the Services will be deemed a Client Obligation.

**6.4. Authorized Disclosure.** Notwithstanding any other provision of this Agreement, each party may disclose the terms of this Agreement: (a) subject to Section 6.2, in connection with the requirements of an initial public offering or other filing in connection with applicable securities law; (b) in confidence, in connection with a merger or acquisition or proposed merger or acquisition, or the like; (c) in confidence, to accountants, banks, attorneys and financing sources and their advisors; and/or (d) in confidence, in connection with the enforcement of this Agreement or rights under this Agreement.

## 7. Proprietary Rights

### 7.1. Definitions of Proprietary Rights.

**7.1.1. "Intellectual Property Rights"** means all current and future worldwide patents and patent applications (including, without limitation, all reissues, divisions, renewals, extensions, continuations and continuations-in-part), inventions (whether patentable or not), copyrights (including, without limitation, rights in audiovisual works and moral rights), trade secrets, trademarks, service marks, trade names, and all other intellectual property rights and proprietary right, whether arising under the laws of the United States, or any other country, state or jurisdiction.

**7.1.2. "Ephesoft Pre-Existing Technology"** means any Technology (defined below) made, conceived, or reduced to practice by Ephesoft or its contractors or agents prior to or independently of this Agreement, and all modifications, enhancements and derivative works thereof, including all Intellectual Property Rights in and to any of the foregoing.

**7.1.3. "Ephesoft Work Product"** means any Technology made, conceived, or reduced to practice by Ephesoft or its contractors or agents during performance of the Services (but excluding all Ephesoft Pre-Existing Technology), and all modifications, enhancements and derivative works thereof, including all Intellectual Property Rights in and to any of the foregoing.

**7.1.4. "Technology"** means all inventions (whether patentable or not), discoveries, literary works and other works of authorship (including, without limitation, software in object code and source code format), designs, know-how, ideas and information.

**7.2. Ownership (Non-Software Work Product).** Upon payment of all required Fees, Ephesoft hereby grants Client a worldwide, non-exclusive, fully-paid, non-transferable perpetual license to use the non-software work product for Client's internal business purposes. Furthermore, Ephesoft grants to Client at no additional charge a worldwide, non-exclusive, fully-paid, non-transferable perpetual license to use any know-how, designs, layouts, configurations, methods, processes, formulae, specifications, functionality, performance data, test results or error or bug information internally in connection with the Deliverables.

### **7.3. Ownership (Software).**

**7.3.1. "Developed Software"** means software created or owned by Ephesoft identified as a Deliverable in a SOW or Sales Order and delivered by Ephesoft in accordance with specifications developed during the Services or set forth in the SOW or Sales Order. Developed Software may consist of Custom Software and/or Ephesoft Software, as defined below. 7.3.1.1. "Custom Software" means that portion of the Developed Software first created by Ephesoft under the SOW or Sales Order. Ephesoft retains all rights in the Custom Software. Upon payment of all required Fees, Ephesoft hereby grants Client a worldwide, non-exclusive, fully-paid, non-transferable perpetual license to use the Custom Software for Client's internal business purposes.

**7.3.1.2. "Ephesoft Software"** means pre-existing software owned by Ephesoft incorporated into the Developed Software. Ephesoft retains all rights to Ephesoft Software. Upon payment of all required Fees, Ephesoft hereby grants Client a worldwide, non-exclusive, fully-paid, non-transferable perpetual license to use the Ephesoft Software for Client's internal business purposes.

**7.3.2. "Third-Party Software"** means software owned by a third-party and delivered by Ephesoft to Client. Third-Party Software is either licensed directly by Client from the third-party or through Ephesoft as sublicensor. Client's rights in the Third-Party Software are set forth in the license agreement between Client and the third-party or the sublicense from Ephesoft, as applicable.

### **7.4. Deliverables.**

**7.4.1. Rights.** Ephesoft shall own all rights, title, and interest in and to the Deliverables (excluding any Customer Confidential Information provided to Ephesoft for its providing of Professional Services), and related intellectual property. Subject to the terms and conditions of this Agreement, Ephesoft grants Client a limited, non-transferable, non-sublicensable, non-exclusive right, under Ephesoft's Intellectual Property Rights in the Deliverables (excluding all Ephesoft Commercially-Available Software), to use and reproduce the Deliverables solely for Client's internal business use in conjunction with Client's use of the Commercially-Available Software as authorized by Ephesoft in writing and solely for so long as Client is authorized to use such Ephesoft Commercially-Available Software. Except as expressly granted in this Article, Ephesoft retains all right, title and interest in and to all Ephesoft Pre-Existing Technology, Ephesoft Work Product and Deliverables, including all Intellectual Property Rights therein.

**7.4.2. Tools.** Notwithstanding any other provisions of this PSA: (i) nothing shall be construed to assign or transfer any intellectual property rights in the proprietary tools, libraries, know-how, techniques, and expertise ("Tools") used by Ephesoft to develop the deliverables.

**7.4.3. Use Restrictions.** Client shall not itself, or through any affiliate, agent, or third-party: (a) decompile, disassemble, reverse engineer, or otherwise attempt to (i) derive source code or underlying ideas, algorithms, structure or organization from the Deliverables or (ii) defeat, avoid, bypass, remove, deactivate or otherwise circumvent any software protection mechanisms in the Deliverables, including without limitation any such mechanism used to restrict or control the functionality of the Deliverables

(except that the foregoing provision shall not apply to the extent that such activities may not be prohibited under applicable law); (b) sell, lease, license, sublicense, distribute or otherwise provide to any third-party or any other person the Deliverables, in whole or in part; (c) modify or create derivative works of the Deliverables; (d) use or reproduce the Deliverables, except as specifically permitted under this Agreement; or (e) use the Deliverables to provide processing services to any third-party or otherwise use the Deliverables on a service bureau basis. Client shall not remove, alter, cover or obfuscate any patent, copyright, trademark or other proprietary notices, labels or marks of Ephesoft or its licensors on or in the Deliverables, and Client shall reproduce such notices, labels and marks on any copies of the Deliverable that Client make in connection with Client's permitted use of the Deliverables. Client shall promptly notify Ephesoft of any unauthorized use, disclosure, reproduction, or distribution of the Deliverables, which comes to Client's attention, or which Client reasonably suspects. Client is solely responsible for obtaining all equipment, and the compatibility thereof with the Deliverables, and for paying all fees including, without limitation, all taxes and any related costs or fees, necessary to use the Deliverables.

**7.4.3. Client Materials.** Subject to the terms and conditions of this Agreement, Client grants Ephesoft and its contractors and agents a limited, non-transferable fully-paid, royalty-free, non-sublicenseable, non-exclusive right during the term of this Agreement to use, reproduce, modify, prepare derivative works of, perform, display, transmit, make, have made and import any Pre-Existing Technology provided by Client to Ephesoft or its contractors or agents in connection with the performance of the Services under this Agreement as necessary or useful to perform the Services. Except as expressly set forth in this Article 7, Client retains all right, title and interest in and to any client materials, including all Client Pre-Existing Intellectual Property Rights.

## **8. Limited Warranties and Disclaimer**

**8.1. Limited Warranty.** With respect to each Deliverable, Ephesoft warrants to Client that, for a period of thirty (30) days after the date of delivery of such Deliverable to Client ("Deliverable Warranty Period"), such Deliverable will substantially conform to any applicable functional specifications for such Deliverable that are described in the applicable SOW or Sales Order or any Change Order thereto. If any Deliverable does not perform as expressly warranted in this Section 8.1, Client will notify Ephesoft in writing and Ephesoft will, at its sole option and expense: (a) replace or modify such Deliverable with a Deliverable that performs as expressly warranted in this Section 8.1; or (b) if Ephesoft determines that the foregoing is not commercially reasonable, accept return of such Deliverable (if applicable) and refund to Client the Fees paid by Client associated with such Deliverable under this Agreement. The foregoing limited warranty does not cover repair or replacement of or refunds for any Deliverable if the nonconformity to such limited warranty is caused, in whole or in part, by: (i) alteration, modification or correction other than by Ephesoft; (ii) software, hardware or interfacing not provided or specified in the applicable Service Specs by Ephesoft; (iii) abuse, misuse or improper installation; or (iv) a change to Client's computing environment that would affect the specific Deliverable. THE FOREGOING PROVISIONS OF THIS SECTION 8.1 STATE THE ENTIRE LIABILITY AND OBLIGATIONS OF EPHESOFT, AND THE EXCLUSIVE REMEDY OF CLIENT, WITH RESPECT TO ANY BREACH OF THE LIMITED WARRANTY IN THIS SECTION 8.1.

**8.2 Disclaimer.** EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN SECTION 8.1, EPHESOFT DOES NOT MAKE ANY OTHER REPRESENTATIONS, WARRANTIES OR CONDITIONS OF ANY KIND, WHETHER ORAL OR WRITTEN, WHETHER EXPRESS, IMPLIED, OR ARISING BY STATUTE, CUSTOM, COURSE OF DEALING OR TRADE USAGE, WITH RESPECT TO THE SUBJECT MATTER OF THIS AGREEMENT, IN CONNECTION WITH THIS AGREEMENT. EPHESOFT SPECIFICALLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. EPHESOFT DOES NOT WARRANT THAT THE DELIVERABLES OR ANY SERVICES PROVIDED UNDER THIS AGREEMENT WILL MEET CLIENT'S REQUIREMENTS, THAT THE OPERATION OF THE DELIVERABLES WILL BE UNINTERRUPTED OR ERROR FREE, OR THAT DEFECTS IN THE DELIVERABLES WILL BE CORRECTED.

**9. Limitation of Liability.** IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES ARISING OUT OF OR RELATED TO THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOST DATA, REVENUE OR PROFITS, HOWEVER CAUSED AND ARISING UNDER ANY THEORY OF LIABILITY, INCLUDING BUT NOT LIMITED TO CONTRACT OR TORT (INCLUDING PRODUCTS LIABILITY, STRICT LIABILITY AND NEGLIGENCE), AND WHETHER OR NOT SUCH PARTY WAS OR SHOULD HAVE BEEN AWARE OR ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. IN NO EVENT SHALL EPHESOFT'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE NET AMOUNT EPHESOFT HAS ACTUALLY RECEIVED FROM CLIENT UNDER THE SERVICE SPECS APPLICABLE TO SUCH CLAIM.

## **10. Miscellaneous**

**10.1. Non-Solicitation.** Client acknowledges and agrees that the employees of Ephesoft who perform the Services are a valuable asset to Ephesoft and are difficult to replace. Accordingly, during the term of this Agreement and for a period of one (1) year thereafter, Client shall not solicit, whether directly or indirectly, the employment of any Ephesoft employees without the prior written consent of Ephesoft. If Client violates this Section 10.1, the parties agree that Client shall pay to Ephesoft the sum of one hundred thousand dollars (\$100,000) as liquidated damages. The parties further agree that precise monetary damages for Client's violation of this Section 10.1 would be difficult to ascertain and that the foregoing sum represents a fair and conservative approximation of cost of recruitment, hiring and training that would be incurred by Ephesoft.

**10.2. Independent Development.** Nothing in this Agreement (including, without limitation, the receipt of information under this Agreement) shall: (a) limit Ephesoft's development, marketing or distribution of software or other technology involving any functionality or ideas, whether similar to those disclosed by Client or otherwise; (b) limit Ephesoft from undertaking similar efforts or discussions with third parties who may compete with Client; or (c) create obligations binding in any way on Ephesoft limiting or restricting the assignments, activities, or training of employees or contractors of Ephesoft.

**10.3. Independent Contractor.** Ephesoft is an independent contractor. Client will have no responsibility to provide fringe benefits or to withhold taxes normally withheld from an employee's pay on behalf of Ephesoft's employees.

**10.4. Subcontractors.** Ephesoft may, in its sole discretion, use third-party contractors to fulfill its obligations under this Agreement.

**10.5. Notices.** All notices, demands or other communications, other than a Change Order, under this PSA will be in writing, will reference this PSA, and will be deemed given (i) when delivered personally, (ii) five (5) days after having been sent by registered or certified mail, return receipt requested, or (iii) one (1) day after deposit with a commercial overnight carrier, with written verification of receipt. All communications will be sent to the address for such party as last provided to the other, subject to modification by giving notice as provided herein.

**10.6. Governing Law.** This Agreement will be interpreted and construed in accordance with the laws of the State of California, United States, without regard to conflict of laws principles. The United Nations Convention on the Sale of Goods will not be applicable to this Agreement or any of the transactions contemplated by the Agreement.

**10.7. Infringement Indemnification.** Ephesoft, at its expense, will defend Client against any claim that the Developed Software provided hereunder infringes or violates any copyright or trade secret of a third-party, and will pay all costs and damages finally awarded or agreed upon in settlement; provided that Client gives Ephesoft prompt written notice of such claim, sole authority to defend or settle the claim and reasonable assistance in defending the claim. Ephesoft will obtain for Client the right to continue using the Developed Software or replace or modify the Developed Software so that it becomes non-infringing. Ephesoft will not have any liability under this Section 10.7 if the alleged infringement is based upon Client's modification of the Developed Software or Client's combination of the Developed Software with other technology not provided or approved by Ephesoft. This Section 10.7 states Client's sole and exclusive remedy with respect to third-party infringement claims.

**10.8. Assignment.** This Professional Services Agreement will bind and inure to the benefit of the parties and their respective successors and assigns.

**10.9. Waiver.** No failure to exercise or delay by a party in exercising any right, power, or remedy under this License Agreement operates as a waiver of such right, power, or remedy. A single or partial exercise of any right, power, or remedy does not preclude any other or further exercise of that or any other right, power, or remedy. A waiver is not valid or binding on the party granting the waiver unless made in writing.

**10.10. Severability.** If any provision or portion thereof, of this Agreement is found to be invalid, unlawful or unenforceable to any extent, such provision of this Agreement will be enforced to the maximum extent permissible by applicable law so as to affect the intent of the parties, and the remainder of this Agreement will continue in full force and effect. The parties will negotiate in good faith an enforceable substitute provision for any invalid or unenforceable provision that most nearly achieves the intent and economic effect of such provision.

**10.11. Construction.** If there is a conflict between any term in the body of this Agreement and any term of the applicable SOW, the term in the SOW will prevail with respect to such conflict. The section and paragraph headings used in this Agreement are inserted for convenience only and will not affect the meaning or interpretation of this Agreement. Unless otherwise expressly stated to the contrary herein, all remedies are cumulative, and the exercise of any express remedy by either party herein does not by itself waive such party's right to exercise its other rights and remedies available at law or in equity.

**10.12. No Third-Party Beneficiaries.** The parties hereto expressly agree that there are no third-party beneficiaries of this Agreement.

**10.13. Force Majeure.** Neither party will incur any liability to the other party on account of any loss or damage resulting from any delay or failure to perform all or any part of this Agreement if such delay or failure is caused, in whole or in part, by events, occurrences, or causes beyond the reasonable control and without negligence of the parties. Such events, occurrences, or causes will include, without limitation, acts of God, strikes, lockouts, riots, acts of war, failures of the Internet, earthquakes, fire and explosions, but the inability to meet financial obligations is expressly excluded.

**10.14. Entire Agreement.** This Agreement (including the Exhibits and any addenda hereto signed by both parties) contains the entire agreement of the parties with respect to the subject matter of this Agreement and supersedes all previous communications, representations, understandings and agreements, either oral or written, between the parties with respect to said subject matter. No terms, provisions or conditions of any purchase order, acknowledgement or other business form that either party may use in connection with the transactions contemplated by this Agreement will have any effect on the rights, duties or obligations of the parties under, or otherwise modify, this Agreement, regardless of any failure of a receiving party to object to such terms, provisions or conditions. This Agreement may not be amended, except by a writing signed by both parties.



## EXHIBIT A

### TRAVEL AND EXPENSE POLICY

The following are reimbursable expenses, if they are in compliance with the applicable provisions of the Ephesoft Travel and Expense Policy, and are for business purposes on behalf of the Client:

- Airfare, airfare change fees (if necessary), and airline baggage fees
- Ride share services, train fare, bus fare, taxicabs, bridge/ferry and related tips
- Car rental expenses, tolls, and parking charges
- Personal mileage, if using own vehicle
- Meals including tips, not to exceed \$60.00 per day
- Hotel or motel charges and related tips
- Charges for internet connectivity

**Airfare.** Ephesoft associates are expected to travel economy class and to take the lowest reasonable fare available. Associates may retain credits from frequent flyer programs. However, use of these programs should not result in additional expense to the Client. The cost of upgrading an airline ticket to another class is not reimbursable.

Many airlines now charge for either the first or second item of baggage checked. Baggage fees are generally reimbursable. However, Ephesoft associates are expected to minimize the occurrence of these fees and only check the fewest bags possible. Meals or snacks, purchased from an airline, are generally reimbursable but shall be classified as meals not airfare.

Other ancillary fees charged by airlines for optional services are considered personal charges and will not be billed to the Client. These include, but are not limited to, fees for early boarding, assigned seats, preferential seating (aisle, window, exit or other rows), class of service upgrades, and entertainment.

**Ground Transportation.** Ephesoft associates will use sensible business judgement when selecting ground transportation. When practical Ephesoft will use hotel/airport shuttle services and ride share services such as Uber and Lyft in lieu of renting a car. If a rental car is required it is expected that reservations will be made for an intermediate size or smaller, depending on the type of travel. Ephesoft will minimize Client costs on rental cars by declining rental car insurance. When using a personal vehicle, Client will be billed at current IRS rate per mile, which covers depreciation, insurance, and fuel.

**Lodging.** Practical judgment will be used when selecting a hotel or motel. Hotels of moderate and reasonable comfort will be sought, rather than deluxe or luxury brands. Each traveler will use their best judgment in selecting a location and hotel to stay, recognizing that their health and safety are of paramount importance. Preferred hotels include: Courtyard, Fairfield Inn, Springhill Suites, Hampton Inn or equivalent. There will not be any overnight lodging if the associate's home base is within 50 miles. Incidentals generally are not reimbursable, except for in-room Wi-Fi access, or other Client related expenses. Room upgrades are not reimbursable.

**Meals.** Ephesoft does not use "Per Diem" (i.e. a flat daily rate to cover business expenses), and Clients will be billed for actual out-of-pocket expenses (i.e. actual cost incurred for meals eaten while traveling on Client business). Total daily meal expenses for the associate should not exceed \$60.00. Tips between 15-20% are acceptable, tipping over 20% will not be reimbursed.