



## PROFESSIONAL SERVICES AGREEMENT

*Note: Capitalized terms not otherwise defined herein are defined in the SaaS Agreement (as defined below).*

### BACKGROUND:

Eka and Licensee have entered into that certain Software as a Service Subscription Agreement dated the Effective Date (the “SaaS Agreement”) and, in connection therewith, Licensee desires to obtain from Eka, and Eka desires to provide to Licensee, certain software configuration, installation, testing data migration, implementation and training services related to the System as set forth herein (collectively, the “Professional Services”).

### 1. PROFESSIONAL SERVICES IN GENERAL

1.1 Professional Services to be performed by Eka hereunder shall be performed in accordance with this Professional Services Agreement and the terms of the applicable Statement of Work. A “Statement of Work” shall mean any statement of work substantially in the form attached as Exhibit A, which shall be executed by authorized representatives of both parties and shall, at a minimum, specify the following: (a) a description of the project and the Professional Services to be performed by Eka; (b) any modifications to the Software to be developed (“Modified Software”) and the technical or functional specifications or acceptance test criteria, if any, with respect thereto; (c) the schedule of due dates for delivery and performance; (d) whether the Professional Services are being provided on a time and materials basis or a fixed fee basis, and in either case the SOW will identify the applicable rates or fixed fee; (e) the payment terms; and (f) such other information as may be agreed to by the parties. Each Statement of Work shall have no effect unless and until it is executed by Eka and Licensee.

1.2 If either party considers that any change or variation to a Statement of Work (a “Change”) is necessary, or that the actions or requests of the other party would require or would result in such a change or variation, such party will provide the other party with a Change Request, substantially in the form attached as Exhibit B (a “Change Request”). Eka will provide the impact analysis and the effect, if any, of the proposed Change on the rates for performance of the Professional Services specified in the applicable Statement of Work, its impact on delivery dates or supply times, and other effects which the proposed Change may have. Unless mutually executed, a Change Request shall have no force or effect.

1.3 Licensee shall ensure that: (a) Eka’s representatives have access to the System for the purpose of performing the Professional Services; (b) Licensee’s representatives shall not hamper Eka from performing the Professional Services, and (c) the

equipment and any necessary third party software identified in the Statement of Work or Order Form are procured and configured or installed, if necessary, in a timely manner as set forth in the Statement of Work. If Licensee fails to so provide any of the deliverables required pursuant to this Section 1.3, then without limiting any other remedies available to Eka, Licensee shall pay a fee to Eka to account for the expenses related to Eka’s resources allotted to performance of the affected Professional Services that remain idle during the period of delay.

### 2. DEVELOPMENT SERVICES

2.1 Any Modified Software will be incorporated into the System and licensed to Licensee pursuant to the terms of the SaaS Agreement upon payment in full of the applicable fees set forth in the applicable Statement of Work or Change Request. For avoidance of doubt, Modified Software is not an Update as described in the SaaS Agreement. Unless expressly agreed upon the parties in writing, Eka will have no obligation to provide support or maintenance services for such Modified Software. Eka will own all right, title and interest in and to any Modified Software and the provisions of Section 2 of the SaaS Agreement shall apply to the Modified Software.

2.2 Modified Software may be subject to testing and acceptance procedures if set forth in the applicable Statement of Work (the “Acceptance Tests”). The acceptance criteria for the Acceptance Tests (the “Acceptance Criteria”) shall be mutually agreed upon between the parties and set forth in an executed attachment to the applicable Statement of Work. Acceptance Criteria may include specifications, test cases, test data and standards for verifying test results. Eka will notify Licensee in writing upon completion of installation and initial testing of the applicable Modified Software.

2.3 Licensee shall have 15 days from the date of such notice to conduct and complete the any Acceptance Tests required by a Statement of Work. Upon completion of the Acceptance Tests, Licensee

will notify Eka in writing of (a) its acceptance of the applicable Modified Software or (b) its rejection of the Modified Software, which rejection shall occur only if the Modified Software fails to conform to the applicable Acceptance Criteria in any material respect. Such rejection notice shall specify in reasonable detail the non-conformities with the Acceptance Criteria. Failure to provide such notice or use by Licensee of the Modified Software in production shall constitute acceptance. For avoidance of doubt, a notice that, in Eka's reasonable determination, sets forth a Change Request or otherwise does not identify and describe a non conformity as set forth herein (e.g. introduces an issue not set forth in the Acceptance Test Criteria) shall not constitute notice and the Modified Software shall be deemed accepted. Upon receipt of a properly submitted rejection notice, Eka will have a reasonable opportunity to cause the Modified Software to conform to the agreed upon specifications and satisfy the Acceptance Criteria and the applicable Acceptance Tests will be conducted again promptly thereafter.

2.4 All intellectual property rights in and to the test data developed by Licensee for the purposes of the Acceptance Tests shall vest in Licensee. All intellectual property rights in and to the Software, including any Modified Software, shall vest solely in Eka and shall be licensed to Licensee as set forth in the SaaS Agreement.

### 3. PROJECT MANAGEMENT; DISPUTES

3.1 Each party shall designate a project manager ("Project Manager") for the purposes of each Statement of Work. The Project Manager shall have overall responsibility for managing and coordinating the performance of the party's obligations under this Professional Services Agreement including preparing and executing the Statements of Work and approved Change Requests, if any. The Project Manager shall be authorized to act for and on behalf of the party as a single point of contact in connection with all aspects of this Professional Services Agreement. The Project Managers under each Statement of Work shall respond promptly to all inquiries from the other party related to the Professional Services.

3.2 If a dispute arises out of or relates to the Statement of Work, including whether any Modified Software has satisfied the Acceptance Criteria, the parties agree that the Project Managers shall endeavor in good faith to settle the dispute within a reasonable timeframe.

### 4. FEES

4.1 Licensee shall pay Eka the non-refundable Fees set forth in the applicable Statement

of Work on such date as specified in each such Statement of Work. Unless otherwise stated on the Statement of Work, the Professional Services will be performed on a Time and Materials basis at the rates set forth thereon.

4.2 Eka may change its standard fees annually by giving Licensee 30 days' prior written notice of such change; provided, however that such increase shall not exceed ten percent in a calendar year. All payments shall be made in U.S. Dollars by wire transfer to the account specified by Eka. All overdue amounts on undisputed invoices shall bear interest until paid at a rate of one and one half percent per month or the maximum legal rate, whichever is less, and Licensee shall reimburse Eka for all reasonable costs in collecting past due amounts. An invoice shall be undisputed unless Licensee notifies Eka in writing within 30 days of receipt invoice providing reasonable detail as to the good faith nature of the dispute and cooperates with Eka to resolve such dispute promptly.

4.3 Licensee shall reimburse Eka for reimbursable expenses within 30 days of Eka's invoice. Reimbursable expenses include travel related expenses, including airfare (business class for trips exceeding four hours), lodging (minimum four star accommodation) and per diem allowances. Current rate cards will be supplied by Eka upon request and attached to applicable Statements of Work.

4.4 Eka shall not be liable for any taxes, including (a) withholding, value added, personal property, excise, export, import, sales, use or franchise taxes, (b) taxes based upon sales or use, whether domestic or foreign, or (c) levies, fees, tariffs, duties or charges (collectively, "Taxes") incurred in each case in connection with the Agreements. The Fees payable hereunder are exclusive of all Taxes. Licensee shall file any returns required to be filed with respect to any Taxes and pay any Taxes in accordance with applicable law. Licensee may not deduct or withhold any Taxes from any payment due to Eka except as required by law. If Licensee withholds or retains Taxes, then Licensee will increase the amount payable as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 4.4) Eka receives an amount equal to the amount it would have received had no such deductions been made and Licensee shall thereupon timely remit the full amount deducted to the governmental authority in accordance with applicable law. If, and to the extent that, Eka recovers any withheld amount from the governmental authority, then Eka will remit such

amount, less reasonable expenses associated with such collection effort, to Licensee. Licensee shall not be responsible for taxes or fees based on Eka's net income.

## **5. WARRANTIES, DISCLAIMERS AND LIMITATIONS**

5.1 Eka represents and warrants that the Professional Services will be performed in a professional and workmanlike manner in accordance with best industry standards. Eka also represents and warrants to Licensee that, for a period of 90 days from delivery, or if applicable, acceptance of any Modified Software as set forth in Section 2 above, Modified Software will perform in all material respects in accordance with the applicable Acceptance Criteria specified in such Statement of Work. The foregoing warranty shall not apply to any Modified Software (a) that has been modified by Licensee or by a third party on Licensee's behalf not authorized by Eka, (b) the combination, operation, or use of such deliverable with programs, data, services, software, hardware, operating systems, products and components of a third party, (c) that includes intellectual property rights of Licensee or a third party not authorized by Eka or (d) is not used as authorized hereby or by the SaaS Agreement. In the event of a breach of the foregoing limited warranty during the warranty period specified above, Licensee shall notify Eka in writing, providing details of the non-conformity, and, upon confirmation of the same by Eka, Eka will use commercially reasonable efforts to re-perform the Professional Services or promptly repair or replace the Modified Software to cause the same to perform in accordance with this limited warranty. Any notice received after the expiration of such warranty will be void and of no force or effect. The foregoing sets forth Eka's sole and exclusive obligation and Licensee's sole and exclusive remedy in the event of any breach of this warranty.

5.2 EXCEPT AS EXPRESSLY SET FORTH IN SECTION 5.1, EKA HEREBY DISCLAIMS ALL REPRESENTATIONS, WARRANTIES AND CONDITIONS REGARDING ANY DELIVERABLES, AND THE PERFORMANCE OF ANY PROFESSIONAL SERVICES, PROVIDED UNDER THIS PROFESSIONAL SERVICES AGREEMENT, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING, USAGE OR TRADE. WITHOUT LIMITING THE FOREGOING, EKA DOES NOT WARRANT THAT ANY MODIFIED SOFTWARE SHALL MEET LICENSEE'S REQUIREMENTS OR SHALL OPERATE IN THE COMBINATIONS SELECTED BY LICENSEE.

LICENSEE UNDERSTANDS AND AGREES THAT THE DISCLAIMER OF WARRANTIES IN THIS PROFESSIONAL SERVICES AGREEMENT IS A FUNDAMENTAL PART OF THIS PROFESSIONAL SERVICES AGREEMENT AND THAT EKA WOULD NOT AGREE TO ENTER THIS PROFESSIONAL SERVICES AGREEMENT WITHOUT SUCH DISCLAIMER.

5.3 TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL EKA BE LIABLE TO LICENSEE OR ANY PARTY CLAIMING THROUGH OR UNDER LICENSEE FOR ANY LOST PROFITS, LOST DATA, EQUIPMENT DOWNTIME, OR FOR ANY INDIRECT, SPECIAL, EXEMPLARY, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, HOWEVER ARISING, RESULTING FROM THIS PROFESSIONAL SERVICES AGREEMENT OR THE PERFORMANCE OR USE OF THE SYSTEM OR MODIFIED SOFTWARE, EVEN IF EKA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL ANY SUCH DAMAGES PAYABLE BY EKA TO LICENSEE HEREUNDER EXCEED THE AMOUNTS PAID TO EKA UNDER A SPECIFIC STATEMENT OF WORK DURING THE SIX MONTHS PRECEDING THE CLAIM. LICENSEE ACKNOWLEDGES AND AGREES THAT THE FOREGOING LIMITATIONS OF LIABILITY ARE AN ESSENTIAL BASIS FOR THE PROFESSIONAL SERVICES AGREEMENT BETWEEN THE PARTIES AND THAT IN THEIR ABSENCE THE ECONOMIC TERMS OF THIS PROFESSIONAL SERVICES AGREEMENT WOULD BE SUBSTANTIALLY DIFFERENT.

## **6. TERM AND TERMINATION**

6.1 This Professional Services Agreement shall commence on the date set forth on the signature page hereto and will terminate upon the termination of the SaaS Agreement (the "Term").

6.2 Notwithstanding the foregoing, this Professional Services Agreement, including any outstanding Statements of Work, may be terminated by (a) mutual agreement of the parties at any time, (b) Eka, if Licensee fails to pay any amount due to Eka within 10 days of the due date, (c) either party if the other party breaches any provision of this Professional Services Agreement and such breach is not cured, if curable, within 30 days of receiving written notice thereof, and (d) Eka, if Licensee seeks protection under, or becomes subject to, any bankruptcy law or other insolvency statute or law.

6.3 Upon termination or expiration of this Professional Services Agreement for any reason, each party shall, within 30 days thereafter, return or destroy the other party's Confidential Information. The termination of this Professional Services Agreement shall not limit either party from pursuing other available remedies, including injunctive relief, nor shall such termination or expiration relieve Licensee of its obligation to pay the Fees that accrued prior to such date. Immediately upon termination of this Professional Services Agreement as set forth in this Section 6, Licensee shall pay Eka all amounts owed

to Eka hereunder pursuant to Section 4. The provisions of Sections 4, 5.2, 5.3, 6.3, and 7 shall survive any termination.

## 7. MISCELLANEOUS.

The provisions of Section 5 (Confidentiality) and Section 9 (General Terms) of the SaaS Agreement are incorporated herein by reference as if fully set forth herein.

**\*\*\* SIGNATURE PAGE TO FOLLOW \*\*\***

IN WITNESS WHEREOF, the parties have caused this Professional Services Agreement to be executed as of the date set forth below by their authorized representatives.

**EKA SOFTWARE SOLUTIONS PTE LTD.**

**[INSERT LICENSEE NAME AND INFORMATION]**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

EXHIBIT A  
FORM OF STATEMENT OF WORK



STATEMENT OF WORK NO:

Instruction on SOW no: **Three digit customer initial +YYYY + sequential number for the customer within the year. For example: VIT-2019-001. Please delete this instruction before submission to the customer.**

EFFECTIVE DATE: [insert date]

1. **Statement of Work**

- 1.1 **Introduction.** This Statement of Work (“SOW”) defines the services to be performed pursuant to the Professional Services Agreement dated (insert date) (the “PSA”), between Eka and Licensee (as defined in the PSA). The terms of the PSA are incorporated herein by reference.
- 1.2 **Project Objectives.** Outline objectives in terms of milestones relevant to the business.
- 1.3 **Scope of Work.** To achieve the project objectives, the following activities and deliverables will be included as part of the scope of work.

Activity	Scope	Deliverables

- 2. **Description of Services.** To ensure a successful and timely implementation of the project Licensee must identify the appropriate resources. The Project Plan shall be mutually agreed upon between the parties with respective timelines before the start of any Project.

- 2.1 **Overall Responsibilities.** This table defines the overall project responsibilities for Eka and Licensee. In general, the teams will work together to define and implement the overall solution; however, the table below defines the overall responsibility for the main project activities.

Eka	Licensee

**2.2 Deliverables Sign-Off Process.**

**2.3 Key Assumptions.** This section provides the key assumptions for the project.

2.3.1 *General Assumptions*

2.3.2 *Project Assumptions*

2.3.3 *Technical Assumptions*

**3. Project Schedule/Plan**

**4. Acceptance Testing and Criteria, if applicable**

**5. Term**

**6. Fees and Expenses (including current travel reimbursement policies)**

**7. Payment Schedule**

**8. Other Terms and Conditions**

**Signatures**

<b>Eka's Representative</b>	<b>Licensee's Representative</b>
Name: _____	Name: _____
Title: _____	Title: _____
Signature: _____	Signature: _____
Date: _____	Date: _____
Email: _____	Email: _____

**EXHIBIT B  
CHANGE REQUEST FORM**

**Change Request Form**

**STATEMENT OF WORK NO:**

**CHANGE REQUEST NO:** Should be a sequential number for the SOW.

<b>Change Information (Completed by Requester)</b>				
Detailed Description				
Additional documents attached				
Reason for Change				
Requester Priority				
Requested Delivery Date				
Date of Submission				
<b>Impact Analysis (To be completed by Eka)</b>				
Description				
Classification				
Impacted Work Products				
Timeline Impact				
Cost Impact				
Payment Terms				
Dependencies/Assumptions				
<b>Effort and Schedule Impact (To be completed by Eka)</b>				
Sl. #	Tasks	Start Date	End Date	Estimated Effort (in Person Hours)

**Signatures**

<b>Eka's Representative</b>	<b>Licensee's Representative</b>
Name:	Name:
Title:	Title:
Signature:  _____	Signature:  _____
Date:	Date:
Email:	Email: