Oracle Canada ULC Professional Services Agreement

This **NetSuite Professional Services Agreement** ("**PSA**") is between Oracle Canada ULC ("Oracle") and the entity which has accepted this PSA through a document which references this agreement ("Customer"). This PSA sets forth the terms and conditions that govern orders placed under this PSA. Oracle and Customer hereby agree as follows:

Definitions

"Cloud Service" means, collectively, the NetSuite online business application suite (and any optionally procured modules), (the "**NetSuite Service**") and the SuiteProjects Pro online Professional Services Automation application suite (and any optionally procured modules) (the "**SuiteProjects Pro Service**").

"Deliverables" means anything developed by Oracle, including training materials, and delivered to Customer as part of the Professional Services**.**

"Estimate/Order Form" means an Oracle estimate, renewal notification or order form in the name of and executed by Customer and accepted by Oracle which specifies the Cloud Service, and any Support Services and/or Professional Services to be provided by Oracle subject to the terms of this Agreement.

"Professional Services" means the general consulting, implementation, and/or training services to be provided to Customer pursuant to the terms hereof, and an Estimate/Order Form or Statement of Work, as applicable.

"Statement of Work" or "**SOW**" means a separate document or Estimate/Order Form between Oracle and Customer that details the Professional Services to be delivered by Oracle.

"Users" means individuals who are authorized by Customer to use the Professional Services in the relevant Estimate/Order Form, SOW or amendment. Users may include but are not limited to Customer's and Customer's affiliates' employees, consultants, contractors and agents.

1.   Scope of Services.

1.1.   Subject to the terms and conditions of this PSA, Oracle will provide Customer with Professional Services as set forth in the applicable Statements of Work executed by Oracle and Customer). All Statements of Work shall be deemed part of and subject to this PSA.

During the term of this PSA, and subject to terms and conditions herein, Customer has the non-exclusive, worldwide, limited right to use Deliverables solely for Customer's internal business operations including in connection with its authorized use of the applicable Cloud Service.

1.2.   The agreement referenced in Customer's Estimate/Order Form for the Cloud Services, such as a Subscription Services Agreement (referred to herein as the "**Master Agreement**") governs Customer's use of the Cloud Service and any other services ordered thereunder.

2.   Terms and Conditions for Training.

2.1   Training Deliverables. All training services, including any Deliverables, are provided for Customer's internal training purposes only. Customer may not replicate the Deliverables or use the Deliverables to develop any of the products described in such training Deliverables. Maintenance, support and updates are not provided for Training Deliverables.

2.2   Intentionally left blank.

2.3   Access to Demo Account. In connection with Oracle's provision of training hereunder, Oracle may provide attending Customer Users temporary and limited access to the training services in a NetSuite Trial Demo Account provisioned pursuant to the Trial Account Agreement found at https://www.oracle.com/corporate/contracts/cloud-services/netsuite/contracts.html.

3.   Change Management Process. If Customer or Oracle requests a change in any of the specifications, requirements, Deliverables, or scope (including drawings and designs) of the Professional Services described in any Statement of Work, the party seeking the change shall propose the applicable changes by written notice or as otherwise specified in the SOW.

4.   Proprietary Rights.

4.1   Oracle Intellectual Property Rights. All rights, title and interest in and to the Professional Services (including without limitation all intellectual property rights therein and all modifications, extensions, customizations, scripts or other derivative works of the same provided or developed by Oracle) and anything developed or delivered by or on behalf of Oracle under this PSA (including without limitation Deliverables as defined herein) are owned exclusively by Oracle or its licensors. Except as provided in this PSA, the rights granted to Customer do not convey any rights in the Professional Services, express or implied, or ownership in the Professional Services or any intellectual property rights thereto. Customer grants Oracle a royalty free, worldwide, perpetual, irrevocable, transferable right to use, modify, distribute and incorporate into the Cloud Service (without attribution of any kind) any suggestions, enhancement request, recommendations, proposals, correction or other feedback or information provided by Customer or any Users related to the operation or functionality of the Cloud Service. Any rights in the Professional Services or Oracle's intellectual property not expressly granted herein by Oracle are reserved by Oracle. Oracle, NetSuite and SuiteProjects Pro service marks, logos and product and service names are marks of Oracle (the "**Oracle Marks**"). Customer agrees not to display or use the Oracle Marks in any manner without Oracle's express prior written permission. The

trademarks, logos and service marks of third party application providers ("**Marks**") are the property of such third parties. Customer is not permitted to use these Marks without the prior written consent of such third party which may own the Mark.

4.2   SuiteCloud Technologies. Customer customizations may require the use of the SuiteCloud features governed by the SuiteCloud Terms of Service found at https://www.oracle.com/corporate/contracts/cloud-services/netsuite/.

5.   Professional Services Warranty.

5.1   Oracle warrants that Professional Services will be provided in a professional manner consistent with industry standards. Customer must notify Oracle of any warranty deficiencies within 60 days from performance of the deficient Professional Services.

5.2   ORACLE DOES NOT WARRANT THAT THE PROFESSIONAL SERVICES WILL BE PERFORMED ERROR-FREE OR UNINTERRUPTED, THAT ORACLE WILL CORRECT ALL PROFESSIONAL SERVICES ERRORS, OR THAT THE PROFESSIONAL SERVICES WILL MEET CUSTOMER'S REQUIREMENTS OR EXPECTATIONS. ORACLE IS NOT RESPONSIBLE FOR ANY ISSUES RELATED TO THE PERFORMANCE, OPERATION OR SECURITY OF THE PROFESSIONAL SERVICES THAT ARISE FROM CUSTOMER DATA OR THIRD PARTY APPLICATIONS OR PROFESSIONAL SERVICES PROVIDED BY THIRD PARTIES.

5.3   FOR ANY BREACH OF THE PROFESSIONAL SERVICES WARRANTY, CUSTOMER'S EXCLUSIVE REMEDY AND ORACLE'S ENTIRE LIABILITY SHALL BE THE CORRECTION OF THE DEFICIENT PROFESSIONAL SERVICES THAT CAUSED THE BREACH OF WARRANTY, OR, IF ORACLE CANNOT SUBSTANTIONALLY CORRECT THE DEFICIENCY IN A COMMERCIALLY REASONABLE MANNER, CUSTOMER MAY END THE DEFICIENT PROFESSIONAL SERVICES AND ORACLE WILL REFUND TO THE CUSTOMER THE FEES FOR THE TERMINATED PROFESSIONAL SERVICES THAT CUSTOMER PRE-PAID TO ORACLE FOR THE PERIOD FOLLOWING THE EFFECTIVE DATE OF TERMINATION.

5.4   TO THE EXTENT NOT PROHIBITED BY LAW, THIS WARRANTY IS EXCLUSIVE AND THERE ARE NO OTHER EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS, INCLUDING FOR SOFTWARE, HARDWARE, SYSTEMS, NETWORKS OR ENVIRONMENTS OR FOR MERCHANTABILITY, SATISFACTORY QUALITY AND FITNESS FOR A PARTICULAR PURPOSE.

6.   Limitations of Liability.

6.1   IN NO EVENT WILL EITHER PARTY OR ITS AFFILIATES BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES, OR ANY LOSS OF REVENUE, PROFITS (EXCLUDING FEES UNDER THIS PSA), SALES, DATA, DATA USE, GOODWILL, OR REPUTATION

6.2   IN NO EVENT SHALL THE AGGREGATE LIABILITY OF ORACLE AND ITS AFFILIATES ARISING OUT OF OR RELATED TO THIS PSA OR CUSTOMER'S ESTIMATE/ORDER FORM OR SOW, WHETHER IN CONTRACT, TORT, OR OTHERWISE, EXCEED THE TOTAL AMOUNTS ACTUALLY PAID UNDER CUSTOMER'S ESTIMATE/ORDER FORM OR SOW FOR THE PROFESSIONAL SERVICES GIVING RISE TO THE LIABILITY DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH LIABILITY.

7.   Indemnification.

7.1   If a third party makes a claim against either Customer or Oracle ("Recipient" which may refer to Customer or Oracle depending upon which party received the Material), that any information, design, specification, instruction, software, service, data, hardware, or material (collectively, "Material") furnished by either Customer or Oracle ("Provider" which may refer to Customer or Oracle depending on which party provided the Material) and used by the Recipient infringes the third party's intellectual property rights, the Provider, at the Provider's sole cost and expense, will defend the Recipient against the claim and indemnify the Recipient from the damages, liabilities, costs and expenses awarded by the court to the third party claiming infringement or the settlement agreed to by the Provider, if the Recipient does the following:

   a.   notifies the Provider promptly in writing, not later than 30 days after the Recipient receives notice of the claim (or sooner if required by applicable law);

   b.   gives the Provider sole control of the defense and any settlement negotiations; and

   c.   gives the Provider the information, authority and assistance the Provider needs to defend against or settle the claim.

7.2   If the Provider believes or it is determined that any of the Material may have violated a third party's intellectual property rights, the Provider may choose to either modify the Material to be non-infringing (while substantially preserving its utility or functionality) or obtain a license to allow for continued use, or if these alternatives are not commercially reasonable, the Provider may end the license for, and require return of, the applicable Material and refund any unused, prepaid fees the Recipient may have paid to the other party for such Material. If such return materially affects Oracle's ability to meet obligations under the relevant order, then Oracle may, upon 30 days prior written notice, terminate the order. If such Material is third party technology and the terms of the third party license do not allow us to terminate the license, then Oracle may, upon 30 days prior written notice, end the Services associated with such Material and refund any unused, prepaid fees for such Services.

7.3   The Provider will not indemnify the Recipient if the Recipient (a) alters the Material or uses it outside the scope of use identified in the Provider's user or program documentation or user guides, or (b) uses a version of the Material which has been

superseded, if the infringement claim could have been avoided by using an unaltered current version of the Material which was made available to the Recipient. The Provider will not indemnify the Recipient to the extent that an infringement claim is based upon any Material not furnished by the Provider. Oracle will not indemnify Customer to the extent that an infringement claim is based on a third party application or any Material from a third party portal or other external source that is accessible or made available to Customer by the Professional Services (e.g., a social media post from a third party blog or forum, a third party Web page accessed via a hyperlink, marketing data from third party data providers, etc.).

7.4   This Section 7 provides the parties' exclusive remedy for any infringement claims or damages.

8.   Payment Provisions.

8.1   Fees and Payments. Fees and expenses for each applicable project shall be set forth in the applicable SOW and the Estimate/Order Form. In event of conflict with regard to fees specifically, the fees stated in the Estimate/Order Form shall take precedence. The terms in the applicable SOW related to the actual rates to be charged and the days and description of the Professional Services to be performed thereunder shall control as to the engagement described in that SOW. All fees payable are due within 30 days from the invoice date unless otherwise specified in Customer Estimate/Order. All fees are non-refundable, except as otherwise explicitly stated in the applicable SOW or this PSA.

8.2   Taxes. Oracle fees do not include any local, state, federal or foreign taxes, levies or duties of any nature, including value-add, sales or withholding taxes ("**Taxes**"). Customer is responsible for paying all Taxes, excluding only taxes based on Oracle's income. If Oracle has the legal obligation to pay or collect Taxes for which Customer is responsible under this Section, the appropriate amount shall be invoiced to and paid by Customer unless Customer provides Oracle with a valid tax exemption certificate authorized by the appropriate taxing authority.

9.   Term; Termination and Suspension.

9.1   Term. This PSA is valid for the Estimate/Order Forms (including SOWs) which reference this PSA. Each SOW shall commence on the date it is last signed and shall expire upon completion of the project set forth in the applicable SOW, or as otherwise set forth in the applicable SOW. Once signed by both parties, a SOW and/or an Estimate/Order Form shall be non-cancellable, and fees paid non-refundable, except as otherwise explicitly stated in such SOW or Estimate/Order Form.

9.2   Suspension and Termination.

9.2.1   Suspension for Delinquent Account. Oracle reserves the right to suspend Customer's access to and/or use of the Professional Services if any payment is due but unpaid.

9.2.2   Termination. In the event that Customer is a party to Master Agreement and Customer's right to use the Cloud Services is terminated pursuant to such Master Agreement, Oracle may terminate this PSA and/or any SOW hereunder if Oracle is unable to deliver the Professional Services due to termination of the Master Agreement and related Cloud Services. Customer must pay within 30 days all amounts that have accrued prior to such termination of the PSA and applicable SOW Upon termination or expiration of this PSA, Customer shall have no rights to continue use of the Professional Services or Deliverables.

9.2.3   Termination for Cause. If either Customer or Oracle breaches a material term of this PSA or any Estimate/Order Form or SOW and fails to correct the breach within 30 days of written specification of the breach, then the breaching party is in default and the non-breaching party may terminate (a) in the case of breach of any Estimate/Order Form or SOW, the Estimate/Order Form and any applicable SOW under which the breach occurred; or (b) in the case of breach of the Agreement, the Agreement and all Estimates/Order Forms and SOWs that have been placed under the Agreement. If Oracle terminates any orders as specified in the preceding sentence, Customer must pay within 30 days all amounts that have accrued under such orders prior to such termination, as well as all sums remaining unpaid for the Professional Services under such Estimates/Order Forms and SOWs plus related taxes and expenses. Except for nonpayment of fees, the nonbreaching party may agree in its sole discretion to extend the 30 day period for so long as the breaching party continues reasonable efforts to cure the breach. Customer agrees that if it is in default under this Agreement, Customer may not use those Professional Services ordered.

9.2.4   Customer agrees that Oracle shall not be liable to Customer or other third party for any suspension pursuant to this Section 9.2.

10.   Confidentiality.

10.1   By virtue of this PSA, the parties may disclose to each other information that is confidential ("**Confidential Information**"). Confidential Information shall be limited to the terms and pricing under this PSA and Customer's Estimate/Order Forms and Statements of Work and all information clearly identified as confidential at the time of disclosure.

10.2   A party's Confidential Information shall not include information that: (a) is or becomes a part of the public domain through no act or omission of the other party; (b) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (c) is lawfully disclosed to the other party by a third party without restriction on the disclosure; or (d) is independently developed by the other party.

10.3   Each party agrees not to disclose the other party's Confidential Information to any third party other than as set forth in the following sentence for a period of five years from the date of the disclosing party's disclosure of the Confidential Information

to the receiving party. Each party may disclose Confidential Information only to those employees, agents or subcontractors who are required to protect it against unauthorized disclosure in a manner no less protective than required under this PSA, and each party may disclose the other party's Confidential Information in any legal proceeding or to a governmental entity as required by law.

11.   Governing Law and Jurisdiction. This PSA is governed by the substantive and procedural laws of the province of Ontario and each party agrees to submit to the exclusive jurisdiction of, and venue in, the courts in Toronto, Ontario in any dispute arising out of or relating to this PSA.

12.   Notice. Any notice required under this PSA shall be provided to the other party in writing. If Customer has a legal dispute with or if Customer wishes to provide a notice under the Indemnification Section of this PSA, or if Customer becomes subject to insolvency or other similar legal proceedings, Customer will promptly send written notice to: Oracle Canada ULC, 100 Milverton Drive Mississauga, Ontario L5R 4H1, Attention: General Counsel, Legal Department.

13.   General Provisions.

13.1   Entire Agreement.

13.1.1   This PSA incorporates by reference all SOWs, and this PSA, together with such referenced items, constitute the entire understanding between Customer and Oracle and are intended to be the final and entire expression of their agreement. The parties expressly disclaim any reliance on any and all prior discussions, emails, RFP's and/or agreements between the parties. There are no other verbal agreements, representations, warranties undertakings or other agreements between the parties.

13.1.2   Under no circumstances will the terms, conditions or provisions of any purchase order, invoice or other administrative document issued by Customer in connection to this PSA be deemed to modify, alter or expand the rights, duties or obligations of the parties under, or otherwise modify, this PSA, regardless of any failure of Oracle to object to such terms, provisions, or conditions. In the event of any inconsistencies between the terms of an SOW and this PSA, the SOW shall take precedence.

13.1.3   This PSA shall not be modified, or amended, except as expressly set forth herein, or in writing and signed or accepted electronically by the party against whom the modification, amendment or waiver is to be asserted, or by a properly executed SOW.

13.2   Other General Provisions.

13.2.1   Assignment. This PSA shall inure to benefit and bind the parties hereto, their successors and assigns. Customer may not assign this PSA or give transfer of the Professional Services or any interest in the Professional Services to another individual or entity. There are no third-party beneficiaries to this PSA.

13.2.2   Oracle is an independent contractor, and each party agrees that no joint venture, partnership, or agency relationship exists between the parties.

13.2.3   Each party is solely responsible for all of its employees and agents and its labor cost and expenses and for any and all claims, liabilities or damages or debts of any type whatsoever that may arise on account of each party's activities or those of its employees or agents in the performance of this PSA. Oracle reserves the right to use third parties (who are under a covenant of confidentiality with Oracle), including, but not limited to, offshore subcontractors to assist with the Professional Services, including, without limitation, any data migration, configuration, implementation and custom code development processes.

13.2.4   Oracle's business partners and other third parties, including any third parties with which the Professional Services have integrations or that are retained by Customer to provide consulting services, implementation services or applications that interact with the Professional Services, are independent of Oracle and are not Oracle's agents. Oracle is not liable for, bound by, or responsible for any problems with the Professional Services arising due to any acts of any such business partner or third party, unless the business partner or third party is providing Professional Services as Oracle's subcontractor on an engagement ordered under this Agreement and, if so, then only to the same extent as Oracle would be responsible for our resources under this Agreement.

13.2.5   Non-Impediment. Nothing in this PSA shall be construed as precluding or limiting in any way the right of Oracle to provide consulting, development, or other services of any kind to any individual or entity (including without limitation performing services or developing materials which are similar to and/or competitive with the Professional Services and/or Deliverables hereunder).

13.2.6   Force Majeure. Neither party shall be liable for loss, delay, non-performance (excluding payment obligations) to the extent resulting from any force majeure event, including, but not limited to, acts of God, strike, riot, fire, explosion, flood, earthquake, natural disaster, terrorism, act of war, civil unrest, criminal acts of third parties, failure of the Internet, governmental acts or orders or restrictions, failure of suppliers, labor stoppage or dispute (other than those involving Oracle employees), or shortage of materials, provided that such party uses reasonable efforts, under the circumstances, to notify the other party of the circumstances causing the delay and any to resume performance as soon as possible and any delivery date shall be extended accordingly.

13.2.7   The Section headings used in this PSA are included for reference purposes only and shall not affect the meaning or interpretation of this PSA in any way. Provisions that survive termination or expiration of this PSA are those relating to limitation of liability, indemnification, payment and others which by their nature are intended to survive.

13.2.8   If any provision is held by a court of competent jurisdiction to be contrary to law, such provision shall be eliminated or limited to the minimum extent necessary so that this PSA shall otherwise remain in full force and effect. A waiver of any breach under this PSA should not constitute a waiver of any other breach or future breach.

13.2.9   The parties have agreed that this ordering document be drafted in English. Les parties ont convenu que ce document de commande sera rédigé en anglais.