

Professional Services Agreement – Zone & Company Software Consulting APAC Pty Ltd

This Professional Services Agreement (“PSA”) is between **Zone & Company Software Consulting APAC Pty Ltd.**, having its offices at Brisbane City QLD 4000, ACN 655 741 272, hereafter referred to as “**ZONE**”, and the entity which has accepted this PSA through a quote which references this agreement (“**Customer**”). This PSA sets forth the terms and conditions that govern orders placed with, and all services provided by, ZONE, unless explicitly agreed upon in writing otherwise by both parties. ZONE and Customer hereby agree as follows:

1. Scope of Services.

1.1. ZONE will provide Customer with professional services as set forth in the applicable Quote (the “**Professional Services**”). From time to time, Customer may request additional professional services or changes to the Professional Services purchased, subject to approval in writing by ZONE. All other quotes and services provided by ZONE will be governed by this PSA as well.

1.2. In addition to the Professional Services, ZONE may also provide Customer with access to its software created to enhance the functionality of the NetSuite service made available as a SaaS service (“**the Service**”). This Service is governed by the Terms of Service which can be found at <http://www.zoneandco.com/legal>.

1.3. The Professional Services to be provided to Customer are described in a Statement of Work or listed on the Quote. Within 10 business days of Customers’ written acceptance of a Quote, ZONE will assign a consultant to perform the services (the “**Consultant**”). The start or kick-off date will be determined mutually by the parties.

1.4. For Professional Services with a predetermined price, such as Activation or Premium Implementation Packages, Customer may request a specification of the Professional Services purchased (the “**Services Specification**”). The Services Specification lists how many sessions or hours are included in the package, as well as other possible conditions and limitations. Any services requested by Customer that are outside the services listed in the Service Specifications, will be deemed out of scope and will be charged separately. ZONE may invoice such additional charges without prior Customer’s additional consent, unless agreed otherwise in writing.

1.5. All additional services, including but not limited to additional training, configuration or technical development related to the NetSuite Add-on, shall also be governed by this PSA.

2. Compensation for the services

2.1. All prices and fees are quoted exclusive of GST and other product or service-specific levies imposed by authorities. The Quote specifies the currency of the prices and Customer must pay in the same currency as the Quote. If the Quote does not specify a currency, the Quote is in AUD. Customer will bear Bank Charges related to the payment, if any. Payment must be received within fifteen (15) days



after the invoice is sent, unless the quote states otherwise. If payment is not received within this period, statutory interest will be owed.

2.2. ZONE will invoice services that are charged on a predetermined fee upon execution of the Quote by Customer, prior to the services being provided, unless the Quote states otherwise. ZONE will invoice services that are charged by the hour periodically but not less than monthly, after the services have been provided, unless the Quote states otherwise. Time and materials not included in an invoice for the invoicing period, will be added to a subsequent invoice.

2.3. Configurations and prices of services are subject to change at any time upon ninety (90) days written notice. Customer agrees to any such changes of prices or configurations unless Customer terminates in writing the Quote and the PSA within thirty (30) days of ZONE's notice. Such termination will be effective the date on which the new prices and/or rates will take effect.

2.4. Billing Reports and Disputed charges. For invoices containing items based on usage or hours, Customer may request a detailed billing report, the format of which is at ZONE's sole discretion. If Customer disputes an invoice, Customer must notify ZONE in writing of such dispute and submit all information and documentation that ZONE may require to determine the accuracy of the invoice. Any invoice dispute notice must be received by ZONE no later than ten (10) days after the invoice date. Notwithstanding any invoice dispute, Customer shall pay the full amount of any undisputed part of an invoice pending the resolution of such dispute. ZONE will respond to Customers' written dispute within thirty (30) days of receipt of such dispute. ZONE and Customer shall use best efforts to resolve all disputes.

3. Professional Services Warranties

3.1. ZONE warrants that Professional Services will be provided in a professional manner consistent with industry standards. Customer must notify ZONE of any warranty deficiencies in writing within 60 days from the last day of performance of the alleged deficient Professional Services.

3.2. ZONE does not provide any warranty or guarantee on the results of the Professional Services. Should the Professional Services include modification, configuration or customization of a product, such modification, configuration or customization is not guaranteed to be free of errors.

3.3. Because every project and customer is different, ZONE does not warrant meeting deadlines or budget targets.

3.4. ZONE does not warrant that the Professional Services will be performed free of error or uninterrupted, that ZONE will be able to correct all Professional Services errors, or that the Professional Services will meet Customer's requirements or expectations. ZONE 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.



3.5. Customer's exclusive remedy for warranty claims and ZONE's entire liability shall be the correction of the deficient Professional Services, or, if ZONE cannot substantially correct the deficiency in a commercially viable manner, Customer may terminate the deficient Professional Services and ZONE will refund to the Customer the fees for the terminated Professional Services that Customer pre-paid to ZONE for the period following the effective date of termination.

3.6. 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.

4. Duration of the agreement

4.1. Each agreed quote ("Quote") or agreed statement of work ("SOW") shall commence on the date it is signed by both parties, and shall expire upon completion of the project in the SOW, or as otherwise set forth in the applicable SOW. Once signed by both parties, an SOW and/or a Quote shall be noncancellable, except as otherwise explicitly stated in such SOW or Quote. This PSA will terminate automatically when all services on Quotes and SOWs referencing to this PSA are terminated or expired.

4.2. Notwithstanding the above, ZONE's obligation to provide Professional Services under a predetermined fee arrangement (such as activation or premium implementation projects) expires the earlier of:

- i) The agreement between Customer and ZONE is expired or terminated
- ii) Four weeks after the applicable product(s) for the services in scope have been moved to production, at ZONE's discretion. In a project with multiple phases, the four weeks start when the first part of the product is moved in Production.
- iii) 12 months from the date an SOW has been signed

4.3. All obligations of the parties that accrued prior to termination of this PSA shall survive termination of this PSA. In particular, the following provisions shall survive termination or expiration of this PSA: articles 5, 6 and 7.

5. Confidentiality

5.1. Confidential Information. Each party (as the "**Disclosing Party**") may disclose or make available Confidential Information to the other party (as the "**Receiving Party**"). "**Confidential Information**" means information in any form or medium (whether oral, written, electronic, or other) consisting of or relating to its technology, trade secrets, know-how, business operations, plans, strategies, customers, and pricing, including any written or oral information disclosed by the Disclosing Party in relation to the add-on, marked, designated, or otherwise identified as "confidential", or the confidential nature of which is known or can reasonably be deemed to be known by the other party. Notwithstanding the above, Confidential Information does not include information that: (a) was rightfully known to the



Receiving Party without restriction on use or disclosure prior to such information's being disclosed or made available to the Receiving Party in connection with this PSA, SOW, or Quote; (b) was or becomes generally known by the public other than by the Receiving Party's or any of its Representatives' noncompliance with this PSA, SOW, or Quote; (c) was or is received by the Receiving Party on a non-confidential basis from a third party that, to the Receiving Party's knowledge, was not or is not, at the time of such receipt, under any obligation to maintain its confidentiality; or (d) was or is independently developed by the Receiving Party without reference to or use of any of the Disclosing Party's Confidential Information.

5.2. Protection of Confidential Information. As a condition to being provided with any disclosure of or access to Confidential Information, the Receiving Party shall:

- i) not access or use Confidential Information other than as necessary to exercise its rights or perform its obligations under and in accordance with this PSA, SOW, or Quote;
- ii) except as may be permitted by and subject to its compliance with this PSA, SOW, or Quote, not disclose or permit access to Confidential Information other than to its representatives who: (i) need to know such Confidential Information for purposes of the Receiving Party's exercise of its rights or performance of its obligations under and in accordance with this PSA, SOW, or Quote; (ii) have been informed of the confidential nature of the Confidential Information and the Receiving Party's obligations under this PSA, SOW, or Quote; and (iii) are bound by confidentiality and restricted use obligations at least as protective of the Confidential Information as the terms set forth herein;
- iii) safeguard the Confidential Information from unauthorized use, access, or disclosure using at least the degree of care it uses to protect its similarly sensitive information and in no event less than a reasonable degree of care;
- iv) promptly notify the Disclosing Party of any unauthorized use or disclosure of Confidential Information and take all reasonable steps with Disclosing Party to prevent further unauthorized use or disclosure; and
- v) ensure its representatives' compliance with and be responsible and liable for any of its Representatives' non-compliance with the terms set forth herein.

5.3. Trade Secrets. Notwithstanding any other provisions of this PSA, SOW, or Quote, the Receiving Party's obligations hereunder with respect to any Confidential Information that constitutes a trade secret under any applicable law will continue until such time, if ever, as such Confidential Information ceases to qualify for trade secret protection under such applicable law other than as a result of any act or omission of the Receiving Party or any of its representatives.

5.4. Compelled Disclosures. If the Receiving Party or any of its representatives is compelled by applicable law to disclose any Confidential Information then, to the extent permitted by applicable law, the Receiving Party shall: (a) promptly, and prior to such disclosure, notify the Disclosing Party in writing



of such requirement so that the Disclosing Party can seek a protective order or other remedy; and (b) provide reasonable assistance to the Disclosing Party in opposing such disclosure or seeking a protective order or other limitations on disclosure. If the Disclosing Party waives compliance or, after providing the notice and assistance required under this article, the Receiving Party remains required by applicable law to disclose any Confidential Information, the Receiving Party shall disclose only that portion of the Confidential Information that the Receiving Party is legally required to disclose and, on the Disclosing Party's request, shall use commercially reasonable efforts to obtain assurances from the applicable court or other presiding authority that such Confidential Information will be afforded confidential treatment.

5.5. **Residual Information.** It is important for ZONE to be able to use its skills, experience, expertise, concepts, ideas, and know-how learned or acquired while providing the Professional Services for Customer, itself or any of its Customers in the ordinary course of its business. Therefore, Customer agrees that ZONE is entitled to retain and use without restriction any of the generalized knowledge, techniques, methodologies, practices, processes, skills, experience, expertise, concepts, ideas, and know-how learned or acquired by ZONE's personnel in the course of providing the Professional Services for Customer hereunder solely to the extent that they are retained in intangible form in the unaided memory of the personnel of Customer without intentionally memorizing such information or using any Customer's Confidential Information to refresh its recollection ("Residual Information"). Nothing in this PSA, SOW, or Quote is to be construed as to prevent ZONE from being able to do so, and further, such retention and use of Residual Information shall not be construed as a breach of this PSA, SOW, or Quote.

6. Liability

6.1. Except in case of gross negligence, willful misconduct or fraud by ZONE, and without excluding, restricting or modifying any statutory rights you may have as a consumer under the Australian Consumer Law, including as set out below, the aggregate liability of ZONE arising out of this PSA, the SOW, or a Quote, whether arising out of or related to breach of contract, tort (including negligence), or otherwise, is limited to the amounts actually paid by Customer in the twelve (12) calendar months prior to the day the damages first occurred.

6.2. If you are a consumer under the Australian Consumer Law, the following applies. Our goods and services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the service, you are entitled:

- i) to cancel your service contract with us; and
- ii) to a refund for the unused portion, or to compensation for its reduced value.

You are also entitled to choose a refund or replacement for major failures with goods. If a failure with the goods or services does not amount to a major failure, you are entitled to have the failure rectified in a reasonable time. If this is not done you are entitled to a refund for the goods and to cancel the



contract for the service and obtain a refund of any unused portion. You are also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure of the goods or service.

6.3. ZONE will not be liable or responsible to Customer, nor be deemed to have defaulted under or breached this PSA, an SOW, or Quote, for any failure or delay in fulfilling or performing any term of this PSA, an SOW, or Quote, when and to the extent such failure or delay is caused by or results from the following force majeure events ("**Force Majeure Event(s)**"): (a) acts of God;(b) failures or outages of the Internet or the telecommunication infrastructure, unavailability or malfunctioning of the NetSuite platform, (c) a (D)DOS or comparable attack, power failures, strikes, lockouts, business interruptions, and stagnation in deliveries, (d) flood, fire, earthquake, pandemics, including Covid19, or explosion; (e) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (f) government order, law, or action; and (g) embargoes or blockades in effect on or after the date of this PSA, an SOW, or Quote. ZONE shall give notice within five (5) days of the Force Majeure Event to Customer, stating the period of time the occurrence is expected to continue. ZONE shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. In the event that ZONE's failure or delay remains uncured for a period of sixty (60) days following written notice given by it under this article 6.3, Customer may thereafter terminate this PSA, an SOW, or Quote, upon five (5) days' written notice, without any liability for ZONE.

6.4. Subject to the other sections of this article 6, ZONE shall indemnify Customer from and against damages, suffered or incurred as a result of a third-party claim regarding alleged intellectual property infringement caused by the unaltered services provided to Customer by ZONE. The indemnification obligations hereunder only apply if Customer provides ZONE immediately with detailed written notice of any claim and Customer grants full control of the defense of such claims to ZONE. In the event of a claim under this section, at ZONE's option, Customer may terminate this PSA, the SOW, or Quote, or defer acceptance of services until the claim is resolved. If any portion of the Professional Services is, or in ZONE's opinion is likely to become, the subject of an intellectual property rights infringement claim, then ZONE, at its sole option and expense, will either: (A) obtain for Customer the right to continue to use such portion under these ; (B) replace the portion of the Professional Services with services that are substantially equivalent in function, or modify the Professional Services so that it becomes non-infringing and substantially equivalent in function; or (C) refund Customer the portion of the Professional Services paid to ZONE for the portion of the Professional Services that Customer may not use because of the infringement. The foregoing sets forth ZONE's exclusive and sole obligations and liability for (alleged) infringement of intellectual property rights.

6.5. 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, SOW, or Quote), sales, data, data use, goodwill, or reputation, regardless of whether the damages were foreseeable, and whether or not a party was advised of the possibility of the damages, and regardless of the legal or equitable theory (contract, tort, or otherwise) on which the claim is based.



6.6. All warranty's will become null and void, and ZONE will not be liable for any consequences if Customer modifies, removes or changes any (part of the) Professional Services.

7. Intellectual Property

7.1. All intellectual property rights, e.g., patents, copyrights, trademarks, designs, models, know-how and all proprietary and/or commercial rights and trade secret rights, tools, documentations, etc., in relation to the Professional Services, including modifications thereto, delivered and/or used by ZONE, are owned by ZONE or its licensor(s). No transfer or other grant of rights is given to Customer, unless explicitly stated in writing. This applies even if products, software and/or services have been specifically designed, developed, or compiled for Customer.

7.2. Unless otherwise agreed in writing, Customer may not make repairs, fixes, modifications to the Professional Services, nor allow or enable any third parties to do so. Customer may not, nor may enable and/or allow third parties to copy, translate, or reverse engineer any part of the Professional Services.

7.3. ZONE, in its sole discretion, may implement technical measures aimed at protecting the Professional Services, and Customer is prohibited from attempting to remove or circumvent such protections.

7.4. Customer is granted a limited non-exclusive license to use the Professional Services for the term set forth in the SOW or Quote. The license is non-transferable and non-sublicensable.

8. Miscellaneous

8.1. The Agreement shall be governed by Queensland law.

8.2. To the extent not otherwise provided for in mandatory law, all disputes related to the Service or this Agreement will be submitted to the competent court in Queensland.

8.3. If a provision in the PSA, SOW, or Quote prescribes that a notification must be performed 'in writing', this requirement will also be satisfied if the notification is made by e-mail.

8.4. The version of any communication of information as recorded by ZONE shall be deemed to be authentic, unless Customer supplies proof to the contrary.

8.5. If any provision of this PSA, SOW, or Quote will be held to be invalid or unenforceable for any reason, the remaining provisions will continue to be valid and enforceable. If a court finds that any provision of this PSA, SOW, or Quote is invalid or unenforceable, but that by limiting such provision, it would become valid and enforceable, then such provision will be deemed to be written, construed, and enforced as so limited.

8.6. ZONE has the right to transfer its rights and obligations under the PSA, SOW, or Quote to an affiliated party or to a third-party-purchaser of the relevant business activity of ZONE. ZONE will give Customer at least thirty (30) days' notice of any transfer hereunder.



8.7. ZONE's relationship with Customer pursuant to this PSA will be that of an independent contractor. This PSA does not create any joint venture, partnership, agency, or employment relationship between the parties.

8.8. 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. ZONE reserves the right to use third parties (who are under a covenant of confidentiality with ZONE), 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.

8.9. Should there be any discrepancy between the documents that constitute the full agreement between the parties, the documents take precedence in the following descending order:

- i) The SOW
- ii) The Quote or Quotes
- iii) The PSA
- iv) Attachments (if any)

