

## NETSUITE SUITECLOUD TERMS OF SERVICE

(Previously called “SuiteFlex Platform Agreement” or “SuiteFlex Terms of Service”)

**IMPORTANT! THIS NETSUITE SUITECLOUD TERMS OF SERVICE (“AGREEMENT”) GOVERNS USE OF SUITECLOUD TECHNOLOGIES AND BUNDLES (AS DEFINED IN THIS AGREEMENT). THIS AGREEMENT WILL BE LEGALLY BINDING WHEN YOU CLICK THE “I AGREE” BUTTON BELOW. CAREFULLY READ THIS AGREEMENT BEFORE CLICKING “I AGREE.”**

**YOU REPRESENT THAT YOU HAVE AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF YOUR COMPANY (OR OTHER LEGAL ENTITY). IF YOU DO NOT HAVE SUCH AUTHORITY, OR YOU DO NOT AGREE WITH THE TERMS AND CONDITIONS IN THIS AGREEMENT, DO NOT CLICK THE “I AGREE” BUTTON; INSTEAD, CLICK THE “I DISAGREE” BUTTON.**

**This Agreement will be effective as of the date you click “I agree.”**

### **1. Definitions.**

“Bundle” means a collection of custom objects, scripts, data, or modification of standard objects deployed within the Service that is created by Developer, NetSuite, or a third party using SuiteBundler and is intended for use with the Service.

“Customer Data” means all data contained on the Service about or provided from Users.

“Developed Property” means any Bundles, plug-ins, software, technologies, inventions, or other subject matter made, conceived or reduced to practice by Developer in whole or in part in exercising the rights or licenses granted by NetSuite, including without limitation, in using the SuiteCloud Technologies, and all intellectual property rights therein.

“Developer” means the User that makes Developed Property available to Users or third parties. Developer may be NetSuite.

“Early Access Technologies” means certain versions, features, or functionality of the SuiteCloud Technologies or Service that are marked or identified as early access, non-production, beta, pre-release, or test (or with other similar terminology).

“Main Terms” means the agreement between User and NetSuite (e.g., NetSuite License Agreement, Subscription Services Agreement, SuiteFlex or SuiteCloud Developer Network Program Agreement, Solution Provider Agreement, Trial Account Agreement, Systems Integrator Agreement, Referral Partner Agreement, Reseller Agreement or similar agreement, or in the absence of any such agreement under the then-current version of NetSuite Main Terms of Service located at [www.netsuite.com/tos](http://www.netsuite.com/tos)).

“NetSuite” means NetSuite Inc.

“Prohibited Open Source Software” means any software that is subject to terms that, as a condition of access, use, copying, modification or redistribution, require such software or derivative works thereof to be disclosed or distributed in source code form, to be licensed for the purpose of making derivative works, or to be redistributed free of charge. Prohibited Open Source Software includes, without limitation, software distributed under the GNU Affero General Public License, GNU General Public License, or GNU Lesser/Library GPL.

“Service” means NetSuite’s cloud-based suite of business management applications, including financials/Enterprise Resource Planning, Customer Relationship Management, Professional Services Automation, and omnichannel commerce software suites. For purposes of this Agreement, the “Service”

includes any updates, modifications, bug fixes, upgrades, enhancements, and new versions of the Service, and any Service Bundles.

“Service Bundle” means a Bundle made available by NetSuite as module or feature of the Service and which is procured by a User pursuant to an Estimate/Order Form.

“SuiteCloud Technologies” means the technologies made available to User by NetSuite pursuant to this Agreement that can be used to customize, automate, import, export, or integrate data or functionality into or with the Service including, but not limited to, any (i) application programming interfaces, (ii) extensions, (iii) libraries, (iv) tools, (v) interfaces which enable plug-ins, (vi) sample code, (vii) unlocked Bundles developed and shared by NetSuite, and (viii) documentation. SuiteCloud Technologies include, but are not limited to, SuiteBuilder, SuiteFlow, SuiteScript, SuiteScript Debugger, SuiteCloud IDE, SuiteTalk, SuiteBundler, and SuiteSignOn. SuiteCloud Technologies do not include Service Bundles.

“Third Party Tools” means the tools, platforms, environments, or functionality developed by a party other than NetSuite and which are accessible through or with the Service. Third Party Tools may include open source software.

“User” means an authorized user of the Service and, for purposes of this Agreement, includes entities that have the right to access and use the Service pursuant to Main Terms or an individual authorized by such entity.

## **2. Applicability of Other Agreements.**

User has previously entered into the Main Terms in order to access the Service. This Agreement governs use of the SuiteCloud Technologies, and includes terms related to development of materials using the SuiteCloud Technologies, including but not limited to, Developed Property. Except as expressly set forth in this Agreement, in the event of a conflict between the Main Terms and this Agreement, the Main Terms will apply with respect to access and use of the Service, and this Agreement will apply with respect to use of the SuiteCloud Technologies, development of materials using the SuiteCloud Technologies, and use of materials developed using the SuiteCloud Technologies.

## **3. Licenses, Rights, and Restrictions.**

(a) Service. User’s right to access and use the Service is set forth in the Main Terms.

(b) SuiteCloud Technologies. Subject to User’s compliance with this Agreement, including the limitations set forth herein, the Main Terms, and payment of any applicable fees, NetSuite grants to User a non-exclusive, limited, non-transferrable right and license to use the SuiteCloud Technologies to create, store, use, make available, install, or uninstall Developed Property for use in connection with the Service. NetSuite may make available SuiteCloud Technologies through the Service, in documentation, or in connection with support. Certain SuiteCloud Technologies may be modifiable by User if specifically permitted by NetSuite in writing (including in any documentation, notices, or other agreements governing use) and enabled by the SuiteCloud Technologies. To the extent that NetSuite includes open source software in or with SuiteCloud Technologies, this Section 3(b) will not apply, and the open source licenses governing such open source software will apply to User’s access and use of such open source software.

(c) Restrictions. User will not (i) use the Service for service bureau use, outsourcing, renting, or time-sharing, (ii) use the Service for volume, stress, security, or performance testing activities without prior written permission from NetSuite, (iii) reprint, distribute, or embed any documentation or other content made available by NetSuite, (iv) copy, modify, or create a derivative work of the Service or SuiteCloud Technologies (other than as expressly permitted herein), (v) reverse engineer, reverse assemble, disassemble, or decompile any part of the Service, (vi) attempt to discover any source code of the Service or SuiteCloud Technologies (unless made available by NetSuite) or use unauthorized modified versions of the Service or SuiteCloud Technologies, (vii) use the Service, Development Tools, or SuiteCloud Technologies to develop a similar or competitive product or service, (viii) gain or attempt to gain

unauthorized access to the Service, Development Tools, or SuiteCloud Technologies, (ix) interfere with or disrupt the Service or a User's access to the Service, (x) introduce any Prohibited Open Source Software into the Service, (xi) permit a NetSuite competitor to use the SuiteCloud Technologies or its rights and licenses set forth in this Agreement, (xii) use the Service, Third Party Tools, or SuiteCloud Technologies in order to permit or enable third parties, Users, or other Developers to circumvent or exceed Service account limitations or requirements, submit actions or requests to the Service, or display any results of the Service, without an authorized account for each individual submitting such actions or viewing such results; or (xiii) replace functionality of the Service with a third party offering of the same or substantially similar functionality, the primary purpose or effect of which is to enable users of the Developed Property to use a third party technology to submit requests or transactions for processing and storing by the Service without being Users.

(d) Performance Quality. Except as set forth in the Main Terms, NetSuite may restrict or meter the use of the Service in order to manage performance quality for all Users.

(e) Security. Developer will use appropriate general security practices in connection with the development, implementation and use of all Developed Properties and will at all times comply with the NetSuite security and data privacy requirements provided by NetSuite from time to time. Without limiting the foregoing, Developer will implement technical, administrative, and operational security measures reasonably adequate to preserve the confidentiality, integrity, and security of Customer Data. This Section 3(e) is not applicable to the extent that NetSuite is Developer.

(f) Customer Data. To the extent that Developed Property transmits, stores, or processes Customer Data outside of the Service, Developer will not, without the prior written consent of the User (i) modify the Customer Data in a manner that adversely affects the integrity of such data in or as resubmitted to the Service and (ii) use Customer Data except expressly as permitted by the applicable User. Developer will maintain and process all Customer Data only as directed by User and in accordance with applicable privacy laws and regulations.

(g) Third Party Tools. Partner agrees that Partner's access to and use of Third Party Tools may be subject to additional terms and conditions, and Partner will agree to and comply with such terms and conditions to the extent applicable to Partner's activities permitted by this Agreement. Except where otherwise expressly stated, NetSuite does not guarantee compatibility with any third party products or services, including the Third Party Tools and NetSuite will not be responsible for any changes or new development therein which might interrupt use or interaction with the Service or the SuiteCloud Technologies. For the avoidance of doubt, Third Party Tools are not SuiteCloud Technologies.

(h) Fees. NetSuite may make available certain SuiteCloud Technologies, such as APIs, for a fee pursuant to an Estimate/Order Form. In addition, NetSuite may require Developer or User to pay subscription, usage, or other fees to NetSuite prior to making available or accessing and using, a Developed Property.

**4. Special Terms For Developed Property.** To the extent that User or Developer makes Developed Property available to Users through the Service or uses SuiteCloud Technologies or SuiteBundler, including to create, store, use, install, or uninstall one or more Bundles or Developed Property, the following terms apply:

(a) Review. NetSuite may host and operate all Developed Property created or otherwise published by Developer on Service, including without limitation, by installing such Developed Property into a NetSuite account as permitted by Developer and for the purpose of providing support or to maintain the proper functionality of the Service. Any terms or conditions set forth in such Developed Property will not be applicable to NetSuite if NetSuite is exercising its rights set forth in this Section 4(a).

(b) Inspection. NetSuite may inspect all Developed Property, including the source code and documentation related thereto, at any time. If, during such inspection, NetSuite determines that Developed Property violates this Agreement, including any security or data privacy requirements herein, or is

otherwise unsatisfactory, NetSuite may terminate this Agreement, require that Developer modify the Developed Property, uninstall the Developed Property, or suspend Developer's access to the Service until the violation or other issues are resolved.

(c) Publishing. Subject to the limitations set forth herein and any applicable registration requirements, and provided that Developer adequately labels the Developed Property to identify the entity publishing and responsible for the Developed Property, Developer may publish Developed Property that Developer develops within the Service and control access to such Developed Property by designating it as private (only viewable and installable by Developer), shared (only installable by Developer and any other User which is authorized by Developer), or public (installable by any User).

(d) License to Users. Developer grants User access to Developed Property in accordance with the terms of use set forth in the Bundle or otherwise agreed to by User. To the extent no such terms of use are included, Developer grants User a non-exclusive right and license to reproduce, install, and use any Bundle that Developer authorizes User to access in connection with the Service. Notwithstanding any rights granted by Developer to a User related to Developed Property, Developer agrees that NetSuite may exercise its rights under its agreement with a User with respect to such User's access and use of the Service at any time without notice or liability to Developer, including its right to suspend or terminate the Service for indefinite periods of time, or to cancel the Service at any time, which will have the effect of suspending User's access and use to such Developed Property.

(e) Pre-Release Versions of the Service. Provided that NetSuite makes available pre-release versions of the Service, Developer will ensure that each Bundle functions with each upgraded or updated version of the Service no later than the end of the testing period for the upgraded or updated version of the Service.

(f) Early Access Technologies. In the event that NetSuite makes available Early Access Technologies, Developer will adhere to any limitations and may not use such Early Access Technologies in a production environment or, unless expressly permitted by NetSuite, distribute any Bundles containing, accessing or created using Early Access Technologies to a User. NetSuite reserves the right to withdraw any Early Access Technologies from testing or disable the Early Access Technologies at any time in its sole discretion and never release it as a commercial product. Without limiting the foregoing, upon the earliest of (i) notice from NetSuite, (ii) the conclusion of any testing period specified by NetSuite for the Early Access Technologies in a testing agreement (if any), (iii) NetSuite's removal or deactivation of the Early Access Technologies, and (iv) the availability of the Early Access Technologies as SuiteCloud Technologies, Partner will cease all use of the Early Access Technologies. Partner acknowledges and agrees that NetSuite (either directly or through third party providers) will be reviewing and monitoring the performance of the Early Access Technologies during the course of the specified testing period for such Early Access Technologies.

(g) Feedback for Early Access Technologies. Developer's feedback and all other communications related to the Early Access Technologies will be Communications. Developer will promptly report to NetSuite any defects, errors or other problems in the Early Access Technologies. If NetSuite designates a point of contact, all such reporting should be provided to such contact.

(h) Testing. Upon NetSuite's request and prior to making each release of a Developed Property available to Users or other third parties, NetSuite and Developer agree to (i) configure an automated testing framework for the Developed Property, (ii) test, or have Developer test, Developed Property with the Service and other applications for each upgrade of such application, including maintenance releases, and (iii) approve release of the Developed Properties. In connection with the foregoing and solely to the extent Developer is legally entitled to do so, Developer will also provide access to and the right to use any tools, documentation, components, and environments required for use and operability of the Developed Property. Developer will conduct load and security testing solely when requested by NetSuite and as directed and in cooperation with NetSuite.

## **5. Intellectual Property Ownership.**

- (a) Developer Ownership. Subject to Section 5(b), as between Developer and NetSuite, Developer will retain its right, title and interest in and to Developed Properties.
- (b) NetSuite Ownership. As between NetSuite and User, NetSuite is the exclusive owner of all right, title and interest in and to the Service, the SuiteCloud Technologies, and Developed Property developed by NetSuite, including all intellectual property rights therein, and all intellectual property rights in connection with inventions, ideas, systems, programs, software, source code, modules, applications, documentation, including written or electronic reports, analysis or other working papers, and other work product developed, prepared or designed by NetSuite in connection with this Agreement, the Service, and the SuiteCloud Technologies.
- (c) Communications. In the event that User provides NetSuite with suggestions, enhancement requests, recommendations, proposals, documents, or other feedback related to NetSuite's products or services, including the Service (collectively, "Communications"), User grants NetSuite a royalty-free, worldwide, transferable, sublicenseable, irrevocable, perpetual right and license to use, modify, and distribute such Communications in any manner without compensation to User or attribution of any kind.
- (d) Non-assertion. Developer covenants not to "Assert" against NetSuite, its affiliates, licensees, contractors or Users, any patent within Developed Property or pertaining to the use of the Developed Property. For the purposes of this Agreement, "Assert" means to bring an action of any nature before any legal, judicial, arbitration, administrative, executive, or other type of body or tribunal that has or claims to have authority to adjudicate such action in whole or in part including, without limitation, the United States State and Federal Courts, the United States International Trade Commission and any foreign counterparts of any of the foregoing.

## **6. Third Party Applications and Services.**

- (a) Single Sign On. The Service enables single sign-on integration. By enabling single sign-on, User is authorizing its users to access and use the Service directly from a third-party service. Such third-party service may not have the same authentication and security features as the Service. User assumes all risk and responsibility arising from the use of, and access to and from, the Service enabled through single sign-on.
- (b) Compliance. User represents and warrants that its use of the Service with all Developed Property complies with all security, regulatory, and other compliance obligations, including but not limited to payment card industry data security standards ("PCI DSS") requirements. Developer will require Users to enter authorizations or credentials to use Developed Property directly into such Developed Property.

## **7. Termination.**

In the event that NetSuite reasonably believes that User has violated this Agreement, the Main Terms, or that User has otherwise acted unlawfully, NetSuite may suspend or terminate User's access to the SuiteCloud Technologies. User agrees that any termination of User's access to the SuiteCloud Technologies under any provision of this Agreement may be effected without notice to User and User agrees that NetSuite may immediately deactivate or terminate User's access to the SuiteCloud Technologies, and may bar any further use of the SuiteCloud Technologies. User agrees that NetSuite will not be liable to User, or to any third party, for terminating User's access to the SuiteCloud Technologies in conformance with this Section 7. In the event NetSuite terminates Developer's access to the SuiteCloud Technologies, Developer further agrees that Users who have received authorized access to Developed Property, will continue to access and use such Developed Property in accordance with the terms of User's agreement with Developer or this Agreement.

## **8. Representations.**

- (a) User, and to the extent applicable, Developer, agree, represent, and warrant that (i) the Developed Property, and any material used in connection with the Developed Property does not, and will not, infringe

any third party rights, (ii) it will not submit material in or through the Service that infringes any third party rights, including privacy and publicity rights, (iii) it will not submit or publish material in or through the Service that is defamatory, unlawful, obscene, libelous, threatening, pornographic, harassing, hateful, racially or ethnically offensive or encourages conduct that would be considered a criminal offense, give rise to civil liability, violate any law or is otherwise inappropriate, (iv) it will maintain compliance with all applicable regulatory, security and other compliance obligations or industry specific standards related to the Developed Property, including but not limited to any applicable PCI DSS requirements and all applicable credit card association, payment brand and card acquiring bank specific operating regulations, as they may be amended from time to time, (v) it will maintain, and strictly comply with the terms of its privacy policy or confidentiality commitment governing use of Developed Property, (vi) Developed Property will only store credit card or social security data in the Service in the designated encrypted fields for such data, (vii) Developed Property will not enable or cause User to exceed its authorized use of the Service or otherwise breach its agreement with NetSuite or a third party, and (viii) material submitted in or through the Service, including Developed Property, are free of any and all viruses, Trojan horses, trap doors, protecting codes or any other internal components, devices or mechanisms which are intended to: (A) cause the Developed Property or other software developed or installed to perform any material functions other than those described in its documentation; (B) halt, disrupt, limit access or grant improper or unauthorized access to, use of, or sabotage the Service or any other system, process or device; or (C) reveal any data or other information accessed through or processed by the Developed Property or other systems, processes, or devices. The foregoing representations are not applicable if Developer is NetSuite.

(b) In making Developed Property available to third parties, Developer will bear sole responsibility for the performance or non-performance of Developed Property and will make no representation or warranty on behalf of NetSuite, including without limitation, any representation that NetSuite has tested, certified, or endorsed such Developed Property.

## **9. Disclaimers.**

TO THE FULLEST EXTENT PERMISSIBLE PURSUANT TO APPLICABLE LAW, THE SUITECLOUD TECHNOLOGIES, EARLY ACCESS TECHNOLOGIES, SERVICE BUNDLES, AND DEVELOPED PROPERTY PROVIDED BY NETSUITE PURSUANT TO THIS AGREEMENT ARE PROVIDED "AS IS" AND "AS AVAILABLE" WITHOUT ANY WARRANTY OF ANY KIND. ANY EXPRESS OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS ARE HEREBY EXPRESSLY AND COMPLETELY DISCLAIMED. NETSUITE DOES NOT REPRESENT THAT THE SUITECLOUD TECHNOLOGIES, EARLY ACCESS TECHNOLOGIES, SERVICE BUNDLES, DEVELOPED PROPERTY DEVELOPED BY NETSUITE, OR OTHER MATERIAL PROVIDED BY NETSUITE PURSUANT TO THIS AGREEMENT (I) WILL BE ERROR-FREE, (II) WILL BE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS, (III) WILL MEET ANY USER REQUIREMENTS, OR (IV) WILL BE CORRECTED IF SUCH ITEMS CONTAIN DEFECTS.

NETSUITE IS NOT RESPONSIBLE FOR DEVELOPED PROPERTY OR OTHER MATERIALS DEVELOPED BY DEVELOPERS OTHER THAN NETSUITE. UNLESS OTHERWISE SET FORTH IN AN AGREEMENT BETWEEN DEVELOPER AND USER, ALL DEVELOPED PROPERTY PROVIDED BY DEVELOPERS ARE PROVIDED "AS IS" AND "AS AVAILABLE" WITHOUT ANY WARRANTY OF ANY KIND. ANY EXPRESS OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS ARE HEREBY EXPRESSLY AND COMPLETELY DISCLAIMED.

USER UNDERSTANDS AND AGREES THAT USE OF MATERIALS OR DATA OBTAINED THROUGH THE USE OF THE SERVICE (INCLUDING, WITHOUT LIMITATION MATERIALS PROVIDED BY OTHER USERS OR DEVELOPERS) IS AT ITS OWN DISCRETION AND RISK. USER WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE THAT RESULTS FROM THE INSTALLATION, USE, OR REMOVAL OF SUCH MATERIALS.

CERTAIN STATE LAWS DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES OR THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES. IF THESE LAWS APPLY TO USER, SOME OR ALL OF THE ABOVE DISCLAIMERS, EXCLUSIONS, OR LIMITATIONS MAY NOT APPLY TO USER, AND USER MAY HAVE ADDITIONAL RIGHTS.

#### **10. Indemnification.**

User will indemnify, defend (at NetSuite's option and election), and hold NetSuite, its affiliated companies, and their suppliers, licensors, customers, and contractors harmless from and against any claims, actions, proceedings, losses, damages, and liabilities, including attorneys' fees, arising out of or related to the Developed Property developed by User or User's violation of this Agreement. In connection with the foregoing, User will select counsel reasonably acceptable to NetSuite and provide NetSuite with monthly, detailed updates regarding any action covered by this Section 10. User may not enter into any settlement that imposes liability on NetSuite or restricts NetSuite's rights without NetSuite's prior written consent.

#### **11. Limitation of Liability.**

IN NO EVENT WILL NETSUITE BE LIABLE FOR ANY LOSS OF USE, LOSS OF DATA, INTERRUPTION OF BUSINESS, DOWNTIME, LOST PROFITS, OR ANY INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT PRODUCT LIABILITY, OR OTHERWISE, EVEN IF NETSUITE HAS BEEN ADVISED OF THE POSSIBILITY OF DAMAGES. USER ASSUMES ALL RESPONSIBILITY FOR DETERMINING WHETHER THE SERVICE AND SUITECLOUD TECHNOLOGIES ARE ACCURATE OR SUFFICIENT FOR USER'S PURPOSES. IN NO EVENT WILL NETSUITE'S TOTAL LIABILITY TO USER ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED US\$100.00.

#### **12. Confidentiality.**

(a) Definitions. For purposes of this Agreement, "Confidential Information" means all confidential and proprietary information of NetSuite disclosed to User, whether orally or in writing, that is identified in writing or verbally as confidential or proprietary, or would be understood by a reasonable person to be confidential or proprietary. Notwithstanding the foregoing, Confidential Information includes the Service, the SuiteCloud Technologies, Developed Property and other material made available by NetSuite, Early Access Technologies, roadmap information for NetSuite's products and services, Customer Data (not otherwise owned by User), and support cases related to the Service or the SuiteCloud Technologies.

(b) Obligations. User agrees: (i) to keep confidential all Confidential Information disclosed by NetSuite; (ii) not to use or disclose the Confidential Information of NetSuite except to the extent necessary to perform User's obligations or exercise User's rights under this Agreement; (iii) to protect the confidentiality of Confidential Information in the same manner as User protects the confidentiality of similar information and data of User (at all times exercising at least a reasonable degree of care in the protection of such Confidential Information), and (iv) to make Confidential Information available to authorized persons only on a "need to know" basis. Notwithstanding the foregoing, this Section 12 will not prohibit the disclosure of Confidential Information to the extent that such disclosure is required by law or order of a court or other compulsory governmental authority or regulation; provided that User first notifies NetSuite in writing sufficiently in advance to afford NetSuite an opportunity to seek a protective order or other relief.

(c) Exceptions. Confidential Information will not include information which: (i) is in the public domain at the time of its disclosure, or which becomes publicly known through no fault of User; (ii) was rightfully in User's possession prior to disclosure by NetSuite; or (iii) was rightfully disclosed by a third party without restriction.

(d) Return of Information. Upon written request from NetSuite, User will promptly return or destroy (and certify such destruction in writing to NetSuite) all Confidential Information in its possession.

### **13. Amendments.**

NetSuite may modify this Agreement in its sole discretion by providing notice to User. Notice may be posted within the Service, provided to an administrator of User's account, posted on the NetSuite website (currently, at [www.netsuite.com/tos](http://www.netsuite.com/tos)), or delivered in any other manner. Any such modification is effective upon the earlier of (i) notice to User or (ii) two weeks after being made available by NetSuite by posting on the NetSuite website. User's continued use of the SuiteCloud Technologies is acceptance of any such modification. Except for the foregoing, this Agreement may not be modified or amended except in a mutually agreed written amendment.

### **14. Compliance with Laws.**

User agrees that it will comply with all applicable federal, state, or local laws, ordinances, regulations, rules, decisions, orders, or requirements. Without limiting the foregoing, User will not permit access or use of the Service or SuiteCloud Technologies in violation of any U.S. export embargo, prohibition, or restriction.

### **15. Publicity.**

User will not (i) issue any press release, (ii) make any public statement, (iii) publicize this Agreement, or (iv) use any NetSuite mark or logo without the prior written consent of NetSuite.

### **16. Miscellaneous.**

(a) Relationship of the Parties. The parties to this Agreement are independent contractors, and nothing contained in this Agreement will be construed to (i) give either party the power to direct and control the day-to-day activities of the other, (ii) create a principal-agent or employer-employee relationship, or (iii) give either party the authority to bind the other party to any contract with a third party.

(b) Financial Responsibility. User will bear all of its own expenses in connection with the performance of this Agreement and will not be entitled to reimbursement of any such expenses by NetSuite.

(c) No Third Party Beneficiary. This Agreement is not made for the benefit of any third parties.

(d) Non-Waiver. No term or provisions hereof will be deemed waived and no breach excused, unless such waiver or consent will be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach of the other, whether express or implied, will not constitute consent to, waiver of, or excuse for any other different or subsequent breach.

(e) Survival. Sections 1, 8 - 12, 15, and 16 of this Agreement will survive expiration or termination of this Agreement.

(f) Assignment and Delegation. User may not assign this Agreement without the prior written consent of NetSuite.

(g) Governing Law and Arbitration. This Agreement and any dispute arising out of or in connection with this Agreement will be governed as to all matters, including, but not limited to the validity, construction, and performance thereof, by and under the laws of California, USA, without giving effect to conflict of laws principles thereof. If User's corporate headquarters are located in the United States, the state and federal courts located in San Mateo or San Francisco, California counties will have exclusive jurisdiction to adjudicate any dispute arising out of or relating to this Agreement and each party hereby consents to the exclusive jurisdiction of such courts. If User's corporate headquarters are located outside of



the United States, all disputes arising out of or in connection with this Agreement will be finally settled under the Rules of Arbitration of the International Chamber of Commerce by three (3) arbitrators appointed in accordance with the Rules of Arbitration of the International Chamber of Commerce. The arbitration proceedings will be conducted in the English language and take place in San Francisco, California.

(h) Injunctive Relief. Notwithstanding anything to the contrary set forth in this Agreement, NetSuite may, at its sole discretion, seek preliminary judicial relief in any court of competent jurisdiction (including, but not limited to, preliminary injunctive relief).

(i) Attorney's Fees. If it is necessary for NetSuite to retain the services of an attorney or attorneys to enforce the terms of this Agreement or to file an action to enforce any of the terms, conditions, or rights contained herein, or to defend any action, if NetSuite prevails in any such action, NetSuite will be entitled to recover from User its reasonable fees for attorneys and expert witnesses, plus such court costs and expenses as may be fixed by any arbitration panel or court of competent jurisdiction.

(j) Entire Agreement. This Agreement constitutes the entire understanding of the parties with respect to the subject matter hereof and supersedes all prior negotiations, discussions, undertakings, and agreements between the parties. If any of the provisions of this Agreement are declared to be invalid, such provisions will be severed from this Agreement and the other provisions hereof will remain in full force and effect.

(k) "SuiteFlex" renamed "SuiteCloud". The term "SuiteFlex" has been renamed "SuiteCloud." Except for the change in the name, the meaning and use of any term that previously included the word "SuiteFlex" is unchanged, and all use of the words SuiteCloud and SuiteFlex wherever they may appear in this Agreement and any other agreement, terms of service, or in the Service and documentation are synonymous and interchangeable.