

## NetSuite Inc. Third Party Terms

If the hyperlink location of these NetSuite Inc. Third Party Terms ("Third Party Terms") is referenced in the description for an item on a NetSuite Estimate/Order Form signed by an authorized representative of the procuring party ("you"), then the Third Party Terms govern your use of the item. The item and all associated elements (users, training, and implementation) procured from NetSuite on the Estimate/Order Form shall be subject solely to the terms and conditions of these Third Party Terms, and not the NetSuite License or Subscription Services Agreement. Any implementation services listed on a NetSuite Estimate/Order Form related to a Third Party Application shall be subject solely to the terms and conditions of the Statement of Work between you and NetSuite describing the implementation of the Third Party Application (the "SOW") and these Third Party Terms, notwithstanding the reference on the Estimate/Order Form or in such SOW to the NetSuite License or Subscription Services Agreement between you and NetSuite, which references all shall be deemed to be replaced with these Third Party Terms.

### Background.

(a) Third Party has appointed NetSuite to market and distribute the Third Party Application.

(b) You wish to access and use the Third Party Application and associated support and implementation services as set out in the Estimate/Order Form, and accept the license to use the Third Party Application on these Third Party Terms.

### 1. Definitions.

**"End User Limitations"** means any limitations on the use of the Third Party Application specified in the Estimate/Order Form, including (i) restrictions on the number of users authorized to access and use the Third Party Application, whether by you or any person acting under your instructions, and (ii) amount of disk space for the storage of your data specified for the Third Party Application.

**"Estimate/Order Form"** means a NetSuite estimate, renewal notification or order form executed by you and accepted by NetSuite which specifies the Third Party Application to be provided by NetSuite subject to these Third Party Terms.

**"Initial Term"** means the duration specified in the Estimate/Order Form during which you have procured the right to access and use the Third Party Application, which shall be coterminous with the expiration of the subscription Term for your NetSuite Service account in effect at the time the Third Party Application(s) is/are procured.

**"Third Party"** means the third party provider of the Third Party Application procured from NetSuite.

**"Third Party Application"** means the on-line, web-based application recently acquired by NetSuite,

provided by NetSuite as a reseller for a Third Party or as otherwise specified in an Estimate/Order Form.

**2. Grant of License.** Subject to your compliance with these Third Party Terms, including your payment of the fees set forth in each Estimate/Order Form for the use of the Third Party Application ("**Subscription Fees**"), NetSuite grants you a nonexclusive, nontransferable, revocable, limited license to use the Third Party Application:

- (a) online via the internet,
- (b) solely for your internal business purposes,
- (c) during the Term, and
- (d) in accordance with any End User Limitations.

In addition, if the Third Party Application includes an offline software component, then you acknowledge that such component shall be governed by the terms of the applicable Software EULA that can be found at [www.netsuite.com/termservice](http://www.netsuite.com/termservice) (or other similar sites) and shall apply if such component(s) are subsequently ordered or activated by you.

If you require or wish to add additional (i) users, (ii) storage space and/or (iii) functionality, you will be charged an additional fee for any additional usage/functionality of the Third Party Application in excess of that which is authorized under the applicable Estimate/Order Form.

NetSuite fees do not include any local, state, federal or foreign taxes, levies or duties of any nature, including value-added, sales use or withholding taxes ("**Taxes**"). You are responsible for paying all Taxes, excluding only taxes based on NetSuite's net income. If NetSuite has the legal obligation to pay or collect Taxes for which you are responsible, then the appropriate amount shall be invoiced to and paid by you unless you provide NetSuite with a valid tax exemption certificate authorized by the appropriate taxing authority.

Any late payments shall be subject to a service charge equal to 1.5% of the amount due (calculated on a monthly basis) or the maximum amount allowed by law, whichever is less.

**3. Restrictions.** You agree not to: (i) use the Third Party Application except as expressly authorized in these Third Party Terms and your Estimate/Order Form; (ii) use any device, software, or routine that (a) interferes with any application, function, or use of the Third Party Application, or (b) is intended to damage, detrimentally interfere with, surreptitiously intercept, or expropriate any system, data, or communication; (iii) outsource, rent, resell, sublicense, time-share, or otherwise share the Third Party Application with any third party including service bureau use; (iv) frame or mirror the login page for the Third Party Application; (v) decompile, disassemble or reverse-engineer the underlying

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software that is part of the Third Party Application or otherwise attempt to derive its source code; (vi) use the Third Party Application either directly or indirectly to support any activity that is illegal; (vi) access the Third Party Application for purposes of monitoring its availability, performance or functionality, or for any other benchmarking or competitive purposes; or (vii) authorize any third parties to do any of the above. You shall ensure that any use of the Third Party Application by your users is in accordance with the terms and conditions of these Third Party Terms.

**4. Ownership.** You agree that as between you, NetSuite and the Third Party, all rights, title and interest in and to all intellectual property rights in the Third Party Application are owned or held exclusively by NetSuite, the Third Party or its licensors. Except as provided in these Third Party Terms, the license granted to you does not convey any rights in the Third Party Application, express or implied, or ownership in the Third Party Application or any intellectual property rights thereto. Any rights not expressly granted herein are reserved by NetSuite and/or the Third Party. You may not delete or in any manner alter the copyright, trademark, and other proprietary rights notices appearing in or on the Third Party Application as provided.

**5. Your Responsibilities.** You will pay to NetSuite the Subscription Fees as set forth in the Estimate/Order Form for the Third Party Application. You are responsible for all activity occurring under your user accounts and will: (i) maintain the accuracy and completeness of the information you provide in your account registration, Estimate/Order Form, and authorized users; and (ii) notify NetSuite immediately of any unauthorized use of any password or account or any other known or suspected breach of security. You are responsible for obtaining, maintaining, and supporting all internet access, computer hardware, and other equipment and services needed for its access to the Third Party Application. All data provided in connection with your use of the Third Party Application ("**Customer Data**") will be stored on NetSuite's and/or such Third Party's servers. You own all Customer Data. You are solely responsible and liable for the Customer Data and you will control access to and management of the Customer Data through your account, including access by any authorized users and any other third party services providers that you engage, enable or procure. Third Party and/or NetSuite, as applicable, shall act as your data processing agent and process your Customer Data only on behalf and in the interest of you and in accordance with your instructions and directions. Without limiting the generality of NetSuite's disclaimers and limitations of liability regarding Third Party Applications, you specifically acknowledge that NetSuite shall have no responsibility or liability whatsoever with respect to any activities, acts and omissions of Third Party. You must abide by all applicable local, state, national and foreign laws, treaties and regulations in connection with your use of the Third Party Application, including those related to United States and other

applicable export regulations, data privacy, international communications and the transmission of technical or personal data. Neither the Third Party Application nor the data accessed on the Third Party Application may be exported or re-exported directly or indirectly by you or your users in violation of any such export laws or used for any purposes prohibited by such export laws.

**6. NetSuite Responsibilities.** NetSuite and/or Third Party will (i) routinely back up all Customer Data; (ii) use industry standard security measures to maintain your authorized users' login information (e.g., User IDs and passwords) for the Third Party Applications in confidence; and (iii) not use Customer Data for any purpose other than to exercise its rights and perform its obligations in providing the Third Party Application and applicable services pursuant to these Third Party Terms. NetSuite and Third Party may access your account and Customer Data as necessary to identify or resolve technical problems or respond to complaints about the Third Party Applications. If the fees for the Third Party Application are based on usage or the number or types of users of the Third Party Application, then NetSuite shall access and use Customer Data as reasonably necessary to determine the fees for the Third Party Application. NetSuite and Third Party will use commercially reasonable efforts to maintain the confidentiality of Customer Data. Notwithstanding any other provision, NetSuite and Third Party may disclose Customer Data if NetSuite or Third Party determine that such action is reasonably necessary: (a) to comply with the law, regulatory requirements, or legal or regulatory process; (b) to enforce these Third Party Terms; (c) to respond to claims that you are using the Third Party Applications to perform or support activities that violate the law or the rights of third parties; or (d) to the extent necessary, to contractors and service providers who have executed written agreements requiring them to maintain such information in confidence and use it only to facilitate the performance of their services in connection with the performance of these Third Party Terms. The operation of and access to the Third Party Applications may be interfered with by numerous factors outside of NetSuite and Third Party's control and NetSuite and Third Party will not be liable for any such costs, losses, expenses, damages, or liabilities arising out of or related to any delay or failure in performance under these Third Party Terms resulting directly or indirectly from causes beyond NetSuite or Third Party's reasonable control.

**7. Support.** NetSuite offers optional and "for fee" training classes, professional services consultation, and customer support services for the Third Party Application. NetSuite shall provide the level of support, if any, procured by you on the Estimate/Order Form with the Third Party Application. You shall seek support from NetSuite and not from Third Party.

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**8. Usage Data.** In addition to certain information about you, including your account information, authorized user information, and services and support information, that is needed to provide you with the Third Party Applications, NetSuite and Third Party may maintain, collect, or generate other information about you, including the duration and frequency of your use of the Third Party Applications, the pages viewed and searches performed, and other such anonymous data (collectively "**Usage Data**"). NetSuite and Third Party may use the Usage Data for determining fees and internal business purposes, including improving, testing and providing the Third Party Applications and additional services. NetSuite and Third Party may use and disclose Usage Data in aggregate form (e.g., data aggregated from your and other customers' use of the Third Party Applications, but does not identify you or any other customer) for promotion, statistical analysis, market analysis, financial analysis, and other such purposes.

**9. Term.** These Third Party Terms are effective commencing on the date you executed the Estimate/Order Form that references to these Third Party Terms and continues for the Initial Term and all renewal terms (collectively, the "Term"), unless terminated earlier pursuant to these Third Party Terms. As long as you continue to have the right to use and access the NetSuite Service, these Third Party Terms will automatically renew at the end of the Initial Term and each renewal term at the then current list price for a further 12 month period unless you agree otherwise in writing with NetSuite or provide NetSuite with notice of non-renewal, in writing, one (1) day prior to the expiration of the then current term.

**10. Termination; Effects of Termination.** Without limiting any other remedies available to it, NetSuite may immediately suspend access to the Third Party Application and/or terminate these Third Party Terms if: (a) you breach any material provision of these Third Party Terms that, (if it is capable of being cured) is not cured within thirty (30) days from written notice to you; or (b) NetSuite determines that your actions are likely to cause legal liability for such Third Party or its suppliers and other customers. Notwithstanding the above, with regard to non-payment of any amount owed to NetSuite by you, NetSuite shall provide you with two (2) delinquent notices with at least thirty (30) days time since the transmission of the first notice before suspending access to and/or use of the Third Party Application by you. NetSuite may terminate these Third Party Terms and the right to access the Third Party Application by written notice to you, if NetSuite's right to procure access and use of the Third Party Application is terminated by such Third Party, if NetSuite is contractually required to terminate these Third Party Terms, or if your right to access and use the NetSuite Service terminates.

Upon any expiration or termination of these Third Party Terms, or upon expiration of the Term, the

rights and licenses granted hereunder will automatically terminate, and you may not continue to use the Third Party Application. Additionally, with regard to any services, including professional services, NetSuite reserves the right to stop work on any project that has undisputed invoices that are outstanding more than 45 days. NetSuite and any such Third Party will have no liability for any costs, losses, damages, or liabilities arising out of or related to termination of these Third Party Terms. Except as otherwise expressly provided in these Third Party Terms, NetSuite and/or such Third Party may permanently delete the Customer Data after 30 days following termination or expiration of these Third Party Terms. Neither NetSuite nor Third Party will be liable in any way to you for any termination of access to the Third Party Application or Customer Data or deletion of the Customer Data in accordance with these Third Party Terms. The provisions of Sections 1, 4, 10, 11, 12, 13, 14, and 15 will survive termination of these Third Party Terms.

**11. Indemnity.** NetSuite will defend, indemnify and hold you harmless from and against any loss, damage, liability or cost (including reasonable attorneys' fees) arising out of a third party claim that the Third Party Application, as provided by NetSuite and used within the scope of these Third Party Terms, infringes or violates any third party's copyright, trademark, or misappropriation of a trade secrets rights; provided that you promptly notify NetSuite in writing of any and all such claims. In the event of any loss, damage, liability or cost for which NetSuite is obligated to indemnify you hereunder, NetSuite shall have sole control of the defense and all related settlement negotiations, and you shall reasonably cooperate with NetSuite and the Third Party in the defense and/or settlement thereof at NetSuite's expense; provided that you may participate in such defense using your own counsel, at your own expense. If your use of the Third Party Application is, or in NetSuite's opinion is likely to be, enjoined due to a claim specified above, NetSuite may, at its sole option and expense: (a) procure for you the right to continue using the Third Party Application under the terms of these Third Party Terms; (b) replace or modify the Third Party Application so that it is non-infringing; or (c) if options (a) and (b) above cannot be accomplished despite its reasonable efforts, then NetSuite may terminate the license rights and NetSuite's obligations hereunder with respect to the Third Party Applications and refund you the unused portion of the Subscription Fees paid for the Third Party Applications.

You will defend, indemnify and hold NetSuite and its licensors harmless from and against any and all loss arising out of a claim, suit action, or proceeding brought by any third party against NetSuite (i) alleging that the Customer Data or any trademarks or service marks other than NetSuite or Third Party marks, or any use thereof, infringes the intellectual property rights or other rights, or has caused harm to a third party, or (ii) arising out of or related to your breach of Section 3 (Restrictions); provided

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that NetSuite (a) promptly provides you notice of the claim, suit, action or proceeding, (b) gives you sole control of the defense and related settlement negotiations; and (c) provides you with all reasonably available information and assistance necessary to perform your obligations under this paragraph

**12. No Warranty.** NetSuite and Third Party do not offer financial, accounting or legal advice. The Third Party Application may provide general information about the possible use of the Third Party Application or related industry principles or standards (e.g., such as standard accounting principles), but such general information is intended for informational purposes only, and is not intended to be relied upon as professional accounting, regulatory or other advice. The Third Party Applications are provided "AS IS" and the entire risk as to satisfactory performance, accuracy, and effort is with you. NetSuite and Third Party do not warrant that the operation of the Third Party Application will be error free or uninterrupted. NETSUITE AND THIRD PARTY HEREBY EACH DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND WARRANTIES ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE. Third Party Applications are not within the scope of NetSuite's SSAE 16 (SOC1) / ISAE 3402 Type II Report.\*

\*or similar third party audit to an established industry standard selected by NetSuite.

**13. Limitation of Liability.** IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY EXCEED THE AMOUNTS ACTUALLY PAID BY AND/OR DUE FROM YOU TO NETSUITE FOR THE CURRENT TERM FOR THE RELEVANT THIRD PARTY APPLICATION. IN NO EVENT SHALL EITHER PARTY AND/OR ITS LICENSORS BE LIABLE TO ANYONE FOR ANY INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES OF ANY TYPE OR KIND (INCLUDING LOSS OF DATA, REVENUE, PROFITS, USE OR OTHER ECONOMIC ADVANTAGE) ARISING OUT OF, OR IN ANY WAY CONNECTED WITH THE THIRD PARTY APPLICATION, INCLUDING BUT NOT LIMITED TO THE USE OR INABILITY TO USE THE THIRD PARTY APPLICATION, OR FOR ANY INFORMATION OBTAINED FROM OR THROUGH THE THIRD PARTY APPLICATIONS, ANY INTERRUPTION, INACCURACY, ERROR OR OMISSION, REGARDLESS OF CAUSE, EVEN IF THE PARTY FROM WHICH DAMAGES ARE BEING SOUGHT (OR SUCH PARTY'S LICENSORS) HAVE BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. The foregoing limitations will not apply to (i) breach of Section 3 (Restrictions), and (ii) any losses suffered by NetSuite in connection with any breach of these Third Party Terms by you which causes or entitles Third Party to exercise any rights adversely to NetSuite, including rights to terminate any relevant agreement between Third Party and NetSuite.

**14. Dispute Resolution.** Each party agrees that before it seeks mediation, arbitration, or any other form of legal relief it shall provide written notice to the other of the specific issues in dispute (and referencing the specific portions of any contract between the parties which are allegedly being breached). Within thirty (30) days after such notice knowledgeable executives of the parties shall hold at least one meeting (in person or by video- or tele-conference) for the purpose of attempting in good faith to resolve the dispute. The parties agree to maintain the confidential nature of all disputes and disagreements between them, including, but not limited to, informal negotiations, mediation or arbitration, except as may be necessary to prepare for or conduct these dispute resolution procedures or unless otherwise required by law or judicial decision. The dispute resolution procedures in this Section 14 shall not apply prior to a party seeking a provisional remedy related to claims of misappropriation or ownership of intellectual property, trade secrets or confidential information.

**Mediation.** Except as provided herein, any and all disputes, claims or controversies arising out of or relating to the Third Party Terms shall be submitted to JAMS for mediation before arbitration or any other form of legal relief may be instituted. Mediation may be commenced by a party providing JAMS a written request for mediation setting forth the subject of the dispute and the relief requested. The parties will cooperate with JAMS in selecting a single mediator and scheduling a mediation, which should take place within 45 days following a request for mediation. The mediator shall be a retired judge who has had experience with technology disputes. The parties agree that they will participate in the mediation in good faith and share equally in its costs. The mediation shall take place in either San Francisco or Santa Clara County, California.

**Arbitration.** Except as provided herein, any dispute, claim or controversy arising out of or relating to the Third Party Terms or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate, shall be determined by arbitration in either San Francisco or Santa Clara County, California and before a single arbitrator. The arbitrator selected shall be a retired judge who has had experience with technology disputes. In any arbitration arising out of or related to the Third Party Terms, the parties agree the arbitrator is not empowered to award punitive or exemplary damages, and the parties waive any right to recover any such damages. The arbitration shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures if the amount in disputes exceeds \$250,000 USD and its JAMS Streamlined Arbitration Rules and Procedures when lesser amounts are in issue. The arbitrator shall issue a written reasoned decision. Each party shall bear their own costs in connection with the arbitration, although the arbitrator shall award the prevailing party its reasonable costs and attorneys' fees.

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**15. General.** The parties are independent contractors, and no branch or agency, partnership, association, joint venture, employee-employer, or franchiser-franchisee relationship is intended or created by these Third Party Terms. These Third Party Terms shall be governed by and construed in accordance with the laws of the State of California, as if performed wholly within the state and without giving effect to the principles of conflict of law. If the dispute resolution procedures set forth in the Third Party Terms are deemed unenforceable then any disputes, actions, claims or causes of action arising out of or in connection with these Third Party Terms will be brought exclusively in the federal or state courts located in the Northern District of California and the parties hereby consent to personal jurisdiction and venue therein. If any portion hereof is found to be void or unenforceable, the remaining provisions of these Third Party Terms shall remain in full force and effect. Neither party shall be liable for any loss or delay resulting from any force majeure event, including, but not limited to, acts of God, fire, natural disaster, terrorism, labor stoppage (other than those involving NetSuite employees), internet service provider failures or delays, civil unrest, war or military hostilities, criminal acts of third parties, and any payment date or delivery of Service date shall be extended to the extent of any delay resulting from any force majeure event. You may not assign these Third Party Terms, in whole or in part, without NetSuite's prior written consent; provided however, that you may assign these Third Party Terms without NetSuite's consent, in connection with a merger, acquisition, or sale of all or substantially all of your assets, provided that you provide NetSuite with prior notice. Any attempt to assign these Third Party Terms other than as permitted above will be null and void. These Third Party Terms and any Estimate/Order Forms constitute the complete and exclusive understanding and agreement between the parties regarding the Third Party Application and supersede all prior or contemporaneous agreements, emails, or understandings, written or oral, including the NetSuite Subscription Services Agreement and any different or additional terms and conditions stated by you in connection herewith in a purchase order or otherwise. Any waiver, modification or amendment of any provision of these Third Party Terms will be effective only if in writing and signed by a duly authorized representative of the party against whom such provision shall be applied. In the event of a conflict between these Third Party Terms and a valid Estimate/Order Form signed by you, the terms shall apply in the following order of precedence: (1) item description in an Estimate/Order Form; (2) these Third Party Terms; (3) pre-printed terms on the Estimate/Order Form. These Third Party Terms have been written in the English language. You waive any rights you may have under the law of your country to have these Third Party Terms written in the language of that country.