PROPOSAL NON-DISCLOSURE TERMS

ATTENTION! THE FOLLOWING PROPOSAL NON-DISCLOSURE TERMS WILL BE LEGALLY BINDING ON THE YOU UPON YOUR ACCEPTING, ACCESSING, OR USING CONFIDENTIAL INFORMATION AND/OR DOCUMENTS REFERENCING THESE NON-DISCLOSURE TERMS. YOU SHOULD CAREFULLY READ THE FOLLOWING NON-DISCLOSURE TERMS <u>BEFORE</u> ACCESSING AND/OR USING SUCH CONFIDENTIAL INFORMATION.

If the hyperlink location of these Proposal Non-Disclosure Terms ("Non-Disclosure Terms") is referenced in information or documents disclosed or made available to you (hereinafter "Company") then Company's access and use of such information and documents shall be subject to the terms and conditions of these Non-Disclosure Terms.

Owner's Confidential Information may only be utilized for purposes of evaluating a potential commercial transaction between the parties ("Purpose"). "Owner" means Oracle America, Inc. and may be an Affiliate of Oracle. "Recipient" means Company and may be an Affiliate of Company.

1. **Confidential Information.** "Confidential Information" means any commercial, financial, marketing, business, technical or other data, know-how, or other information related to Owner or its business which is disclosed either: (a) in tangible form and is marked "confidential" or "proprietary", or (b) orally or visually, and is designated as confidential or proprietary at the time of or within ten (10) days following disclosure, or (c) relates to the pricing or other terms of any product or service offering of Owner or its suppliers or of any agreement or proposed arrangement between the parties, or (d) under the circumstances, a person exercising reasonable business judgment would understand to be confidential or proprietary. Notwithstanding anything to the contrary in these Non-Disclosure Terms, Recipient acknowledges and agrees that even if individual portions of information are publicly available or non-proprietary, the specific combination of information provided to Recipient shall be deemed confidential and proprietary. For clarification, Confidential Information of Owner shall include Confidential Information disclosed by its Affiliates and to Recipient's Affiliates.

2. **Confidentiality.** The Recipient agrees to:
- use the Owner's Confidential Information solely for the Purpose;
- use the same degree of care, but not less than a reasonable degree of care, in protecting the Owner's Confidential Information, to prevent unauthorized use or publication, as it uses to protect its own confidential information;
- not reverse engineer, disassemble or decompile the Owner's Confidential Information;
- not export any Confidential Information without the Owner's written consent; or
- not disclose to any third party or copy any of the Owner's Confidential Information without the Owner's written consent, such consent not to be unreasonably withheld, except that Recipient may disclose Owner's Confidential Information to its and its Affiliates' employees, contractors or professional advisors PROVIDED: (a) said persons have a need to know for the Purpose; (b) Recipient remains liable for said persons' use of Owner's Confidential Information; and (c) each individual is under binding obligations of confidentiality no less restrictive than these Non-Disclosure Terms.

3. **Term.** These Non-Disclosure Terms shall remain in effect until terminated by either party with thirty (30) days prior written notice; provided however, that Recipient's obligation to protect Owner's Confidential Information shall survive expiration or written termination of these Non-Disclosure Terms for three (3) years from the last disclosure, except where source code or other Confidential Information that qualifies as a trade secret under applicable law is disclosed in which case the obligation is perpetual.

4. **Exclusions.** These Non-Disclosure Terms do not apply to Confidential Information:
- which was in the public domain at the time of its disclosure, or which becomes public domain property through no fault of the Recipient;
- which was rightfully in the Recipient's possession prior to disclosure by the Owner;
- which was rightfully disclosed to Recipient by a third party without restriction;
- which was independently developed by the Recipient without use of or reference to the Owner's Confidential Information; or
- disclosure of which is required under law, PROVIDED the Owner is given prompt prior written notice of the need for disclosure.

5. **Ownership.** Full ownership of Confidential Information remains with the Owner. No license, express or implied, is granted other than to use the Confidential Information for the Purpose.

6. **Return.** Upon termination or expiration of these Non-Disclosure Terms or upon Owner's request, whichever is earlier, Recipient shall immediately return to the Owner all Confidential Information (including all copies thereof) or certify in writing that all Confidential Information (including all copies thereof) has been destroyed.

7. **Equitable Relief.** In the event of a breach, or threatened breach, of these Non-Disclosure Terms, the Owner may seek appropriate equitable relief, including injunction, in addition to whatever remedies it may have at law.

8. **Warranty.** The Owner warrants that it has the right to disclose the Confidential Information to the Recipient. All other warranties, whether express or implied, are disclaimed.

9. **Independent Development.** Nothing in these Non-Disclosure Terms prevents either party from independently developing competing software, products or systems, provided such development by Recipient is not based upon the Confidential Information received from the Owner.

10. **Separate Agreements**. In the event the Company has entered into a separate agreement (either directly with Oracle or an authorized Oracle reseller) for the NetSuite product and services, the parties acknowledge and agree that such agreement (and not these Non-Disclosure Terms) will govern the parties' rights and obligations in connection with the provisioning, access and use of the NetSuite product and services.

11. **General.** These Non-Disclosure Terms are the entire agreement between the parties and supersedes all prior agreements relating to the Purpose. Nothing in this agreement is intended to limit or restrict

liability for fraudulent pre-contractual representation. The laws of the State of California govern these Non-Disclosure Terms. Any dispute shall be brought in federal or state court in San Mateo or Santa Clara, California only. No waiver or modification of these Non-Disclosure Terms is binding without the prior written consent of the other party. Neither party is required to proceed with any proposed transaction contemplated in this relationship. If any part of these Non-Disclosure Terms is held invalid or unenforceable, the remaining parts are unaffected. Nothing in this agreement is intended to confer a benefit on any third party.

12. **Affiliates.** The term "Affiliate" shall mean any entity which directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with that party, by way of majority voting stock ownership or the ability to otherwise direct or cause the direction of the management and policies of the party. In the event that Owner discloses Confidential Information to an Affiliate of Recipient pursuant to these Non-Disclosure Terms, Recipient represents and warrants to Owner that (i) such Affiliate is subject to confidentiality obligations no less stringent than the obligations set forth herein, (ii) such Affiliate is authorized to receive access to the Confidential Information, and (iii) Recipient will remain fully liable for its' Affiliate's breaches of these Non-Disclosure Terms.