

SUITECLOUD TERMS OF SERVICE

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

IMPORTANT! THIS SUITECLOUD TERMS OF SERVICE (“AGREEMENT”) GOVERNS USE OF SUITECLOUD TECHNOLOGIES AND DEVELOPED PROPERTY (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 Customizations, data, configurations, or modifications of standard objects created using SuiteBundler for use by a User with the Service.

“SuiteApp” means (i) a collection of Customizations, data, configurations, or modifications of standard objects created using the SuiteCloud Technologies other than SuiteBundler for use by a User with the Service or (ii) a Bundle.

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

“Customizations” means custom objects, scripts, plug-ins or workflows developed by Developer and intended for use with the Service.

“Developed Property” means any SuiteApps, Customizations, plug-ins, software, technologies, inventions, or other subject matter made, conceived or reduced to practice by Developer in whole or in part using SuiteCloud Technologies or SuiteCloud IDE, and all intellectual property rights therein.

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

“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 Oracle (e.g., 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 Main Terms of Service located at www.netsuite.com/tos).

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

“SuiteCloud Technologies” means the technologies made available to User by Oracle 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, and (vii) documentation. SuiteCloud Technologies include, but are not limited to, SuiteBuilder, SuiteFlow, SuiteScript, SuiteScript Debugger, SuiteTalk, SuiteBundler, SuiteCloud Development Framework, SuiteGL 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 Oracle 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, Oracle 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. Oracle 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 Oracle in writing (including in any documentation, notices, or other agreements governing use) and enabled by the SuiteCloud Technologies. To the extent that Oracle 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 Oracle, (iii) reprint, distribute, or embed any documentation or other content made available by Oracle, (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 Oracle) or use unauthorized modified versions of the Service or SuiteCloud Technologies, (vii) use the Service or SuiteCloud Technologies to develop a similar or competitive product or service, (viii) gain or attempt to gain unauthorized access to the Service 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 Oracle 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, Oracle 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 Oracle security and data privacy requirements provided by Oracle 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 Oracle 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. User agrees that User'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 User's activities permitted by this Agreement. Except where otherwise expressly stated, Oracle does not guarantee compatibility with any third party products or services, including the Third Party Tools and Oracle 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. Oracle may make available certain SuiteCloud Technologies, such as APIs, for a fee pursuant to an Estimate/Order Form. In addition, Oracle may require Developer or User to pay subscription, usage, or other fees to Oracle prior to making available or accessing and using, a Developed Property. Any applicable fees payable are due within 30 days from the invoice date unless otherwise specified in an Estimate/Order Form.

4. Special Terms For Developed Property. To the extent that User or Developer makes Developed Property available to Users through or in connection with the Service, the following terms apply:

(a) Hosting. Oracle 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 Oracle 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 Oracle if Oracle is exercising its rights set forth in this Section 4(a).

(b) Inspection. Oracle may inspect all Developed Property, including the source code and documentation related thereto, at any time. If, during such inspection, Oracle determines that Developed Property violates this Agreement, including any security or data privacy requirements herein, or is otherwise unsatisfactory, Oracle may terminate this Agreement, require that Developer modify the Developed Property, uninstall or disable, or require that Developer or User uninstall, the Developed Property, or suspend Developer's access to the Service until the violation or other issues are resolved.

(c) Making Developed Property Available to Users. 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 making available and responsible for the Developed Property, Developer may make Developed Property that Developer develops available within the Service to other Users as further described in applicable documentation. In doing so, Developer is solely responsible for (i) controlling access to, and the accessible attributes of, Developed Property as further described in the documentation, (ii) the terms governing access and use, and (iii) having authorized account access and all necessary permissions prior to installing a Developed Property into the Service account of a User.

(d) License to Users. Developer grants User access to Developed Property in accordance with the terms of use set forth in the Developed Property or as otherwise agreed to by User. To the extent no such terms of use are included or otherwise agreed to by User, Developer grants User a non-exclusive right and license to reproduce, install, and use any Developed Property that Developer makes available to User to access in connection with the Service. Notwithstanding any rights granted by Developer to a User related to Developed Property, Developer agrees that Oracle 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 Oracle makes available pre-release versions of the Service, Developer will ensure that each SuiteApp 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. While under no obligation to do so, Oracle may make Early Access Technologies available from time to time. If it does, Oracle reserves the right to withdraw 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. Early Access Technologies may not be feature complete or compatible with prior or future versions of the SuiteCloud Technologies or Service.

Developer, and to the extent applicable, User, may choose to use such Early Access Technologies (and Developed Property made available through use of Early Access Technologies) in its sole discretion and at its own risk, in which case it agrees (i) to adhere to any restrictions or limitations in related documentation or otherwise identified by Oracle, (ii) not to use such Early Access Technologies in a production environment, (iii) not to make available any Developed Property containing, accessing or created using Early Access Technologies to a User unless otherwise expressly authorized or permitted by Oracle, (iv) to make use of the then-current available versions, features, or functionality of the SuiteCloud Technologies or Service if and when made available by Oracle and cease use of the associated prior versions of the same, (v) to cease use of the Early Access Technologies immediately upon the earliest of notice from Oracle, the conclusion of any testing period specified by Oracle, and Oracle's removal or deactivation of the Early Access Technologies. Notwithstanding subsection (ii) and (iii) of this Section 4(f), if an Early Access Technology is identified as "beta," Developer, and to the extent applicable, User, may use such technology in a production environment and make Developed Property created through use of such technology available to Users unless otherwise expressly restricted or limited by Oracle.

Oracle (either directly or through third party providers) may review and monitor the performance of the Early Access Technologies. Developer's feedback and all other communications related to the Early Access

Technologies will be Communications. Developer will promptly report to Oracle any defects, errors or other problems in the Early Access Technologies. If Oracle designates a point of contact, all such reporting should be provided to such contact.

(g) Testing. Upon Oracle's request and prior to making each release of a SuiteApp available to Users or other third parties, Oracle and Developer agree to (i) configure an automated testing framework for the SuiteApp, (ii) test, or have Developer test, SuiteApp with the Service and other applications for each upgrade of such application, including maintenance releases, and (iii) approve release of the SuiteApp. 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 SuiteApp. Developer will conduct load and security testing solely when requested by Oracle and as directed and in cooperation with Oracle.

5. Intellectual Property Ownership.

(a) Developer Ownership. Subject to Section 5(b), as between Developer and Oracle, Developer will retain its right, title and interest in and to Developed Properties.

(b) Oracle Ownership. As between Oracle and User, Oracle is the exclusive owner of all right, title and interest in and to the Service, the SuiteCloud Technologies, and Developed Property developed by Oracle, 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 Oracle in connection with this Agreement, the Service, and the SuiteCloud Technologies.

(c) Communications. In the event that User provides Oracle with suggestions, enhancement requests, recommendations, proposals, documents, or other feedback related to the NetSuite products or services, including the SuiteCloud Technologies and Service (collectively, "Communications"), User grants Oracle 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 Oracle, 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 Oracle reasonably believes that User has violated this Agreement, the Main Terms, or that User has otherwise acted unlawfully, Oracle 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 Oracle 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 Oracle 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 Oracle 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, including any third party or open source software, 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 export requirements, 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 Oracle 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 Oracle.

(b) In making Developed Property available to third parties, Developer will bear sole responsibility for controlling access and the terms governing access to Developed Property and the performance or non-performance of Developed Property and will make no representation or warranty on behalf of Oracle, including without limitation, any representation that Oracle 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, AND DEVELOPED PROPERTY PROVIDED BY ORACLE 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. ORACLE DOES NOT REPRESENT THAT THE SUITECLOUD TECHNOLOGIES, EARLY ACCESS TECHNOLOGIES, DEVELOPED PROPERTY DEVELOPED BY ORACLE, OR OTHER MATERIAL PROVIDED BY ORACLE 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.

ORACLE IS NOT RESPONSIBLE FOR DEVELOPED PROPERTY OR OTHER MATERIALS DEVELOPED BY DEVELOPERS OTHER THAN ORACLE. 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 Oracle’s option and election), and hold Oracle, 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 Oracle and provide Oracle with monthly, detailed updates regarding any action covered by this Section 10. User may not enter into any settlement that imposes liability on Oracle or restricts Oracle’s rights without Oracle’s prior written consent.

11. Limitation of Liability.

IN NO EVENT WILL ORACLE 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 ORACLE 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 ORACLE’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 Oracle 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 Oracle, Early Access Technologies, roadmap information for the NetSuite 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 Oracle; (ii) not to use or disclose the Confidential Information of Oracle 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 Oracle in writing sufficiently in advance to afford Oracle 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 Oracle; or (iii) was rightfully disclosed by a third party without restriction.

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

13. Amendments.

Oracle 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 Oracle website (currently, at 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 Oracle by posting on the Oracle 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, SuiteCloud Technologies and any Developed Properties 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 Oracle mark or logo without the prior written consent of Oracle.

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 Oracle.

(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 Oracle.
- (g) Governing Law. This Agreement is governed by the substantive and procedural laws of the State of California and each party agrees to submit to the exclusive jurisdiction of, and venue in, the courts in San Francisco or Santa Clara counties in California in any dispute arising out of or relating to this Agreement. The Uniform Computer Information Transactions Act does not apply to this Agreement.
- (h) Injunctive Relief. Notwithstanding anything to the contrary set forth in this Agreement, Oracle 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 Oracle 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 Oracle prevails in any such action, Oracle 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.