

## NetSuite Certification Agreement

BY CLICKING "I AGREE" OR OTHERWISE ACCEPTING, YOU ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTOOD AND AGREE THAT THE FOLLOWING TERMS AND CONDITIONS GOVERN THE EXAMINATION, CERTIFICATION AND ANY SERVICES UNDER THIS NETSUITE CERTIFICATION AGREEMENT ("**AGREEMENT**" AS DEFINED BELOW). IF YOU ARE TAKING THE NETSUITE EXAMINATION(S) ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU AGREE ON BEHALF OF YOUR COMPANY OR ENTITY AND, IN ADDITION, AGREE TO BE INDIVIDUALLY BOUND BY THIS AGREEMENT, EVEN IF YOUR COMPANY HAS A SEPARATE AGREEMENT WITH NETSUITE. IF YOU DO NOT AGREE WITH THE TERMS AND CONDITIONS OF THIS AGREEMENT, DO NOT CLICK "I AGREE" AND DO NOT TAKE OR ACCESS THE EXAMINATION MATERIALS. THIS AGREEMENT WILL BE EFFECTIVE WHEN YOU CLICK ON "I AGREE."

This Agreement (including all documents linked or referenced herein, collectively "**Agreement**") governs your participation in the NetSuite certification program(s), including the related examinations (or "**exams**"), any materials, policies, services, benefits, or communications provided or made available to you, and the information set forth on NetSuite's website related to certification (collectively "**Program**"). By accepting this Agreement, you acknowledge you have read and agree to these terms as well as the [Privacy Policy](#), and [Certification Policy](#) as they may be updated from time to time and all of which are made part of this Agreement by reference.

**1. Purpose.** Subject to the terms of this Agreement, you are entitled to take the NetSuite exam, and upon initial completion and ongoing satisfaction of requirements you as an individual are entitled to use the Designation (as defined in Section 4) corresponding to the applicable exam.

### **2. Examination and Certification.**

A. Materials and Examination. NetSuite or its authorized providers may provide you with exam materials and administer to you a certification exam (collectively "**Exam Materials**"). You agree to not record, share, disclose or commit to memory for the purposes of sharing or disclosing Exam Materials, with a third party. You agree you will not use or review any Exam Materials, which are not provided to you by NetSuite's Program administrators. You agree not to register for the exam or apply for Certification under more than one name or identity. You agree to provide two forms of government issued identification to authenticate yourself prior to taking the exam. You agree not to take the exam for any other person.

B. Certification. Upon completion of the requirements, satisfactorily passing the applicable NetSuite certification exam(s), and payment of any applicable fees, you are eligible for certification by NetSuite for the initial period specified in an authorized writing by NetSuite or one (1) year if no period is specified. If the exam you pass is not eligible for certification (e.g., only confers status of having successfully passed), all requirements of the Program and this Agreement apply to you unless expressly otherwise stated. Additional requirements for certification and the Program are set forth in the Certification Policy available on the NetSuite certification website.

C. Ongoing Requirements. NetSuite may require additional actions to maintain compliance with the Program. You must meet all initial and continuing requirements to participate in the Program. After the initial period, additional requirements may include i) annual new release quizzes that you must take on a regular basis (e.g., annually) to validate awareness of new NetSuite features and ii) refresh examinations, which are an update of the entire exam that you must take ***within 12 months of a new exam being announced***.

D. Changes to the Program. NetSuite may, from time to time and in its sole discretion, modify the Program, including without limitation modify certification requirements (both initial and continuing) or Designations (as defined in Section 4) or modify or cancel an exam or certification, and you agree to be bound by such modifications and the then current terms of the Agreement. Notice of changes will be given by NetSuite posting on the NetSuite certification website. You should periodically review the most up-to-date version of the documents governing the Program. NetSuite will use reasonable efforts to notify you by your email on file of changes to the Program. You are responsible for providing and maintaining your current contact and employer information with NetSuite. You must comply with the then current terms of the Agreement within a reasonable period of time not to exceed thirty (30) days or as otherwise set forth in the applicable written notice. Any failure to comply with all applicable or modified Program requirements will result in termination of this Agreement as set forth herein.

### **3. Obligations; Representations**

A. Conduct. You agree that you will conduct all of your business related to the Program in your own name and in accordance with the highest business standards, acting dutifully, in good faith and in compliance with all laws, and not perform any act which would or might reflect adversely upon the business, integrity or goodwill of NetSuite or its partners, customers, products, or services.

B. Representations. You represent and warrant to NetSuite that all services you provide and all business you conduct in connection with the Program will (i) not employ deceptive, misleading, or unethical practices; (ii) not make any representations, warranties, or guarantees to customers on behalf of NetSuite; (iii) comply with all applicable federal and local laws and regulations (including, but not limited to laws regulating your professional status and licensing requirements and U.S. export regulations) and all other applicable governmental laws, statutes and regulations; (iv) comply with all intellectual property and proprietary rights protections for NetSuite's products and services; and (v) not disassemble, decompile, reverse engineer, or otherwise reduce or seek to derive the object code for any NetSuite products or services to a human readable (source code) form. You represent and warrant to NetSuite that (i) you are the person whose name appears on the two forms of identification provided during the registration and exam process, (ii) you will not use exam questions, answers, or other variations of exam content from any source other than the Exam Materials provided by NetSuite's Program administrators, (iii) you agree to and will abide by the Agreement and all Program rules and requirements (iv) you will not record, share, disclose or commit to memory for the purposes of sharing or disclosing Exam Materials, (v) you will not register for the exam or apply for Certification under more than one name or identity, and (vi) you will not take the exam for any other person.

#### 4. Designation

A. Limited Authorization to Use. Limited use of the applicable NetSuite certification logo, branding, authorization, or other designation provided by NetSuite to you, including the authorization to refer to or hold out yourself as having passed an exam or being certified (the “**Designation**”) is awarded to you as a qualifying individual (not to your company or entity) upon completion and ongoing satisfaction of the Program requirements. Subject to your full and continued compliance with these terms and in accordance with the Program, NetSuite gives you a non-exclusive, revocable, limited authorization to use the applicable Designation(s) during the period that your certification from NetSuite is valid. You must use the Designation in its entirety solely as provided and your individual name must always accompany use of the Designation. Your company or entity is authorized only to make the verbatim statements set forth in the Agreement, including the Certification Policy. Additional requirements for use of the Designation are in the Certification Policy.

B. Individual Use. You may not share, provide access to, or enable use of the Designation with any third party, including an employer or other company or entity. If you are participating in the Program on behalf of a company or entity, your company or entity is subject to the terms of the Agreement and has rights to use or refer to your Designation only as set forth herein.

C. Restrictions/Prohibited Use. You may not use or reproduce the Designation in any manner whatsoever except as described herein and in accordance with the terms provided or made available to you by NetSuite from time to time as part of this Agreement, including the Certification Policy, or other applicable written notice from NetSuite. You may not alter or modify the Designation, including by translation, changes to color, font or text, use of a portion of the logo or text, or combination of logos or text. You may not purport to be an employee of NetSuite or authorized to legally represent NetSuite or to conduct negotiations on behalf of NetSuite. You do not have the authority to make any commitments or agreements or incur any liabilities whatsoever on behalf of NetSuite nor will NetSuite be liable for any acts, omissions to act, contracts, commitments, promises, or representations made by you. You will not use the Designation in a manner that derogates from the rights of NetSuite in the Designation, and will not take any action that may interfere with or diminish the rights of NetSuite in the Designation while these terms are in effect or after termination or expiration. Nothing in these terms shall authorize you to use any NetSuite trademarks, service marks, or logos except as expressly specified in these terms and all other terms and policies referenced herein.

D. Continued Use. As set forth in the Agreement, NetSuite may require additional actions to maintain your current exam or certification status. You must meet all continuing certification and Program requirements to continue to use the Designation and participate in the Program.

E. Remedial Action by NetSuite. NetSuite reserves all rights in its discretion to administer the Program, enforce compliance with the Agreement and take any action it deems reasonably appropriate, including without limitation to reject an application for certification, cancel an exam, invalidate an exam result, revoke an exam or certification status, terminate use of the Designation,

require you to retake an exam, ban you from the Program or terminate this Agreement. NetSuite at any time may revoke your use of the Designation and terminate this Agreement upon notice to you if you do not comply with the Program requirements, the Agreement or for any other reasonable grounds, and you agree to immediately cease use of the Designation and any NetSuite Confidential Information upon NetSuite's provision of such notice.

F. Reservation of Rights. NetSuite, including its subsidiaries, reserves all rights with respect to its trademarks, service marks, logos, trade names, trade dress and any other indicia for source of goods or services. All rights not expressly granted herein are reserved by NetSuite. You acknowledge NetSuite has sole right, title and ownership of the Confidential Information, including without limitation the Exam Materials, Designation, Program and all related content, information or derivatives, and that nothing in these terms, in your participation in the Program, or that might otherwise be implied by law, gives you any right, title, or interest in NetSuite's Confidential Information, other than the limited authorization specifically granted herein.

## **5. Disclaimers**

YOU ACKNOWLEDGE AND AGREE THAT THE PROGRAM, EXAM MATERIALS, DESIGNATION, AND ANY OTHER MATERIALS PROVIDED OR MADE AVAILABLE BY NETSUITE TO YOU PURSUANT TO THIS AGREEMENT ARE PROVIDED "AS IS" AND "AS AVAILABLE" WITHOUT ANY WARRANTY OF ANY KIND. TO THE FULLEST EXTENT PERMISSIBLE PURSUANT TO APPLICABLE LAW, NETSUITE, ITS SUPPLIERS, LICENSORS AND CONTRACTORS DISCLAIM ALL EXPRESS OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS.

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

## **6. Limitation on Liability**

IN NO EVENT WILL NETSUITE BE LIABLE TO YOU 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 IT HAS BEEN ADVISED OF THE POSSIBILITY OF DAMAGES. YOU ASSUME ALL RESPONSIBILITY FOR DETERMINING IF THE PROGRAM, EXAM MATERIALS, DESIGNATION, AND ANY OTHER MATERIALS OR SERVICES PROVIDED OR MADE AVAILABLE BY NETSUITE TO YOU PURSUANT TO THIS AGREEMENT ARE SUITABLE FOR YOUR PURPOSES. IN NO EVENT WILL NETSUITE'S TOTAL LIABILITY TO YOU EXCEED THE GREATER OF THE AMOUNTS PAID BY YOU FOR THE CERTIFICATION EXAMINATION(S) TO NETSUITE OR ITS AUTHORIZED REPRESENTATIVES RELATED TO THE PROGRAM OR US\$100.00. IN NO EVENT

WILL NETSUITE'S ACTIONS PURSUANT TO THE TERMS OF THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, TERMINATION OF THE AGREEMENT OR PROGRAM, DENIAL OR REVOCATION OF CERTIFICATION STATUS OR CHANGES TO THE PROGRAM OR POLICIES, RESULT IN LIABILITY OF NETSUITE TO YOU FOR DAMAGE, LOSS OR EXPENSE, AND YOU EXPRESSLY WAIVE SUCH CLAIMS.

## 7. Indemnification

You agree NetSuite shall have no liability to you or any of your employees, agents, clients or customers and you will indemnify, defend (at NetSuite's option and election), and hold NetSuite, its employees, board, agents, assigns, and affiliated companies, and their suppliers, licensors, and contractors harmless from and against any claims, actions, proceedings, losses, damages, and liabilities, including attorneys' fees, arising out of or related to this Agreement, including, but not limited to (i) your use of the Designation in a manner inconsistent with this Agreement, (ii) the termination of this Agreement by NetSuite, or (iii) the performance, marketing, sale or distribution of your services. You will select counsel which is reasonably acceptable to NetSuite. You will provide NetSuite with monthly, detailed updates regarding any action covered by this Section 7. You may not enter into any settlement which imposes liability on NetSuite or restricts NetSuite's rights without NetSuite's prior written consent. Notwithstanding the foregoing, NetSuite, at its sole option and discretion, reserves the right to assume full defense of any such claim with legal counsel of its choice. Upon NetSuite's request, you shall reimburse NetSuite for any expenses reasonably incurred in defending such claim, including without limitation attorney's fees and costs, as well as any judgment or settlement of such claim.

## 8. Term; Termination

A. Term. This Agreement will be in effect from the date you click "I AGREE" ("**Effective Date**") and continue until your certification status ceases to be in effect or this Agreement is superseded by an agreement covering a retake, upgrade or refresh examination, whichever occurs first.

B. Termination for Convenience. NetSuite may terminate this Agreement without cause with written notice to you.

C. Termination for Breach. In the event that NetSuite in good faith believes that you have violated this Agreement, including without limitation misrepresentation, misappropriation or disclosure of any trade secrets or Confidential Information, misuse of the Designation or failure to comply with the certification requirements (current or ongoing), or that you have otherwise acted unlawfully or inappropriately, NetSuite may take immediate corrective action, including, but not limited to, suspension or termination of your certification(s), termination of this Agreement or banning you from taking future exams.

D. Termination Liability. You agree that NetSuite will not be liable to you, or to any third party, for any corrective action in conformance with the Agreement, including Section 4E and 8.

E. Effect of Termination. Immediately upon termination of this Agreement, you will immediately cease all use of the Designation and information provided or made available to you in connection with the Program. NetSuite's termination under this Section 8 will not prejudice any rights NetSuite may have under this Agreement or in law, equity or otherwise.

F. Survival. Sections 3, 4C, 4E, 4F, 5, 6, 7, 8D, 8E, 8F, 9 and 10 shall survive termination of this Agreement for any reason.

## 9. Confidentiality; Privacy

A. Definitions. For purposes of this Agreement, "**Confidential Information**" means all confidential and proprietary information of NetSuite disclosed to you, whether orally or in writing, that is clearly identified in writing or verbally at the time of disclosure as confidential or would be understood by a reasonable person to be confidential. NetSuite's Confidential Information includes, but is not limited to, the Exam Materials, Program materials, communications from NetSuite, NetSuite's and its subsidiaries' products and services, the terms of this agreement and other material made available by NetSuite to you, whether or not marked as confidential or proprietary.

B. Obligations. You agree: (i) to keep confidential all Confidential Information of NetSuite; (ii) not to use or disclose the Confidential Information of NetSuite except to the extent allowed in Section 4.A or with NetSuite's prior written consent by an authorized representative; (iii) at all times exercise at least the same degree of care in the protection of such Confidential Information as you use to protect your own confidential and proprietary information. Except as expressly set forth herein, no license or other rights to Confidential Information is granted or implied and NetSuite retains all intellectual property and all other rights therein. Notwithstanding the foregoing, this Section 9.B 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 you first notify 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 known publicly; (ii) is generally known in the industry before disclosure; (iii) has become known publicly, without fault of you, subsequent to disclosure by NetSuite; (iv) you become aware of from a third party not bound by non-disclosure obligations to NetSuite and with the lawful right to disclose such information to you.

D. Return of Information. Upon written request, you will immediately return or destroy (and certify such destruction in writing) all Confidential Information in your possession.

E. Data and Privacy. Except as provided herein, NetSuite will protect your information in accordance with the then-current NetSuite Privacy Policy set forth on NetSuite's website and incorporated herein by reference. You agree and understand that NetSuite, the testing service provider and other related third party services, may collect, process and use your data in order to process Exam Materials and certifications, manage the Program, including provide special

services, programs, partnering or other benefits, confirm compliance with the Agreement, Program policies and applicable laws, and market and improve NetSuite's and its subsidiaries' products and services including support, training and professional services. You authorize NetSuite and such third party providers to process your information accordingly. You agree and understand that upon request NetSuite may disclose your name, and exam and certification status for the purposes of allowing your employer or others to verify your exam and certification status. If you do not want your information available in this manner, please contact [certification@netsuite.com](mailto:certification@netsuite.com). As part of the Program, NetSuite may, from time to time, pass information about you to its vendors related to the Program, customers or partners who may wish to contact you about their products or services or for your advice or assistance.

To the extent you choose to use the services of or provide your information to third party services (e.g. social media accounts where you may use your Designation), you understand and agree that you are subject to the terms and policies, including privacy policy, of such third party and, further you agree that NetSuite shall not be responsible or liable for any aspect of your relationship with the third party.

## **10. Miscellaneous.**

A. Relationship of the Parties. The parties 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. You acknowledge that nothing in this Agreement shall be construed as creating a partnership, joint venture or agency relationship between you and NetSuite. You shall not advertise, promote or suggest in any manner that services being provided to customers in connection with the NetSuite Designations(s) are provided by, sponsored by, or in any way associated with NetSuite, or that you are employed by, affiliated with or sponsored by NetSuite with the sole exception that you may state you have successfully completed all requirements for your particular certification(s), including having successfully passed the certification exam and any update or refresher examinations.

B. Financial Responsibility. Each party will bear all of its own expenses in connection with the performance of this Agreement and will not be entitled to reimbursement or refund of any such expenses by the other party. A third party vendor will collect fees for, administer and proctor the NetSuite examination(s). To use the services of the third party vendor, you must agree to the terms and policies of the vendor.

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, by NetSuite unless such waiver or consent will be in writing and signed by the NetSuite. Any consent by NetSuite 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. Assignment. NetSuite may freely assign this Agreement without your consent or notice to you. You may not assign your rights and obligations under the Agreement and any unauthorized assignment shall be void.
- F. Force Majeure. NetSuite will not be liable to you 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, internet service provider failures or delays, civil unrest, war, or military hostilities.
- 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 of this Agreement, by and under the laws of California, USA, without giving effect to conflict of laws principles thereof. If you are located in the United States, the federal courts located in the Northern District of California or state courts located in San Mateo County, California will have exclusive jurisdiction to adjudicate any dispute arising out of or relating to this Agreement and you hereby consent to the exclusive jurisdiction of such courts. If you are located outside of the United States, all disputes arising out of or in connection with the 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 said Rules. The arbitration proceedings will be conducted in the English language and take place in San Mateo, California.
- H. Injunctive Relief. Notwithstanding anything to the contrary set forth herein, 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, then, if NetSuite prevails in such action, NetSuite will be entitled to recover 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 from you.
- J. Modifications. NetSuite reserves the right to add or modify the terms of this Agreement and the Program by providing or making available notice of such additions or changes to you. Such changes will become binding on you (and incorporated herein by reference) thirty (30) days after NetSuite provides notice to you. The terms of this Agreement shall not be modified by any other agreement you or your employer or entity have with NetSuite, with the sole exception that NetSuite may grant rights for use or reference to the Designation by your employer or entity in a separate signed agreement with your employer or entity. Notwithstanding the foregoing, employees of NetSuite and its subsidiaries may also be subject to additional policies under their respective employment agreements.
- K. Contributions. By submitting ideas, suggestions, documents ("**Contributions**"), you acknowledge and agree that your Contribution does not contain confidential or proprietary



information and grant NetSuite an irrevocable, non-exclusive, worldwide, royalty-free, perpetual right to use the Contribution.

L. Entire Agreement. This Agreement and any terms incorporated by reference constitute the entire understanding of the parties with respect to the subject matter hereof and supersede all prior negotiations, discussions, undertakings and agreements between the parties. To the extent there is any conflict of terms, the order of precedence shall be as follows: Certification Policy, Certification Agreement, and Privacy Policy. The parties agree that any principle of construction or rule of law that provides that an agreement will be construed against the drafter of the agreement in the event of any inconsistency or ambiguity in such agreement, will not apply to the terms and conditions of this Agreement. 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.