



NETSUITE INC.

TERMS OF SERVICE FOR NETSUITE APPLICATIONS

- 1. PLEASE READ CAREFULLY: THESE TERMS OF SERVICE ("TERMS") WILL CONSTITUTE A LEGAL AND BINDING AGREEMENT BETWEEN YOU AND/OR YOUR ORGANIZATION ("CUSTOMER"), AND NETSUITE INC. ("NETSUITE") UPON CLICKING "I AGREE" WHEN PRESENTED WITH THESE TERMS WHEN YOU ARE FIRST GIVEN ACCESS TO, OR BY USING THE NETSUITE ONLINE BUSINESS APPLICATION SUITE ("SERVICE") IN ANY MANNER, YOU SIGNIFY YOUR ACCEPTANCE OF THESE TERMS. IF YOU DO NOT AGREE WITH THESE TERMS, YOU MAY NOT USE THE SERVICE. THESE TERMS SUPPLEMENT THE EXECUTED SUBSCRIPTION SERVICES AGREEMENT, OR LIKE END USER AGREEMENT ("AGREEMENT") BY AND BETWEEN CUSTOMER AND EITHER NETSUITE OR AN AUTHORIZED NETSUITE RESELLER ("RESELLER"). IF YOU DO NOT HAVE SUCH AN AGREEMENT, YOU MAY NOT USE THE SERVICE. TO THE EXTENT OF ANY CONFLICT BETWEEN THE AGREEMENT AND THESE TERMS, THESE TERMS SHALL CONTROL AND GOVERN.**
- 2. Terms of Service.** Subject to the terms and conditions of the Agreement, NetSuite grants to Customer a limited non-exclusive, non-transferable (except in connection with an assignment as permitted in the Agreement) and terminable license to use the Service purchased by Customer as described in the applicable documentation solely for Customer's internal operations unless explicitly stated otherwise, any new features that augment or enhance the Service, and/or any new service(s) subsequently purchased by the Customer will be subject to these Terms.

 - 2.1 Customer Must Have Internet Access.** Customer must have or must obtain access to the Internet and software that will access and display Web-based content. Customer must also provide all equipment necessary to make such (and maintain such) connection to the Internet. T-1, T-3, DSL, cable, or other high speed Internet connection is required for proper performance of the Service.
 - 2.2 Accuracy of Customer's Contact Information.** Customer shall provide accurate, current and complete information on Customer's legal business name, address, email address, and phone number, and maintain and promptly update this information if it should change.
 - 2.3 Passwords, Access, and Notification.** Customer may designate a number of users under Customer's account that corresponds to the number of seats purchased by Customer. Customer may provide and assign a unique user name and password to each authorized user for each seat purchased. Customer is prohibited from sharing passwords and/or user names with any unauthorized user. Customer will be responsible for the confidentiality and use of Customer's user's passwords and user names. Customer will also be responsible for all electronic communications, including those containing business information, account registration, account holder information, financial information, customer data, and all other data of any kind contained within emails or otherwise entered electronically through the Service or under Customer's account. Any electronic communications that NetSuite receives via Customer's accounts will be deemed to have been sent by Customer. Customer agrees to immediately notify NetSuite if Customer becomes aware of any loss or theft or unauthorized use of any of Customer's user names, password, and/or account number.



2.4 Customer's Conduct. Customer shall comply with all applicable local, state, federal, and foreign laws, treaties, regulations, and conventions in connection with its use of the Service, including without limitation those related to privacy, electronic communications, and anti-spam legislation. Customer shall not send any electronic communications from the Service that are unlawful, harassing, libelous, defamatory, or threatening. Except as expressly permitted by this Agreement, no part of the Service may be copied, reproduced, distributed, republished, displayed, posted or transmitted in any form or by any means. Customer shall not access the Service by any means other than through the interfaces that are provided by NetSuite. Customer shall not license, rent, sell, lease, transfer, assign, distribute, display, host, outsource, disclose, or otherwise commercially exploit or make the Service available to any unauthorized user, including but not limited to, by "mirroring" or "framing" any part of the Service, or by creating Internet links to the Service which include log-in information, user names, passwords, and/or secure cookies. Customer shall not upload, post, reproduce or distribute any information, software or other material protected by copyright or any other intellectual property right (including but not limited to rights of publicity and privacy) without first obtaining the permission of the owner of such rights. Customer will not in any way express or imply that any opinions contained in Customer's electronic communications are endorsed by NetSuite. Neither Customer, nor someone acting on Customer's behalf, shall use the Service to target for solicitation any NetSuite customers for purposes of providing any competitive product. Customer shall ensure that any use of the Service by Customer's employees (or Customer's other authorized users) is in accordance with the terms and conditions of this Agreement.

2.5 Third-Party Software. Customer shall use third party software necessary for accessing the Service, including, but not limited to, "browser" software that supports a data security protocol compatible with the protocol used by NetSuite. Customer shall use software that supports the Secure Socket Layer (SSL) protocol or other protocols accepted by NetSuite and to follow logon procedures for services that support such protocols. NetSuite is not responsible for notifying Customer of any upgrades, fixes or enhancements to any such software; or for any compromise of data transmitted across computer networks or telecommunications facilities, including, but not limited to, the Internet, which are not owned or operated by NetSuite.

2.6 Transmission of Data. Customer understands that the technical processing and transmission of Customer's electronic communications is fundamentally necessary to Customer's use of the Service. Customer consents to NetSuite's interception and storage of electronic communications and/or customer data, and Customer acknowledges and understands that Customer's electronic communications will involve transmission over the Internet, and over various networks, only part of which may be owned and/or operated by NetSuite. Customer acknowledges and understands that changes to Customer's electronic communications may occur in order to conform and adapt such data to the technical requirements of connecting networks or devices. Customer further acknowledges and understands that electronic communications may be accessed by unauthorized parties when communicated across the Internet, network communications facilities, telephone, or other electronic means. NetSuite is not responsible for any electronic communications and/or customer data which are delayed, lost, altered, intercepted or stored without authorization during the transmission of any data whatsoever across networks not owned and/or operated by NetSuite, including, but not limited to, the Internet.



2.7 Links/Third-Party Data. The Service may provide, or third parties may provide, links to other websites or resources. Because NetSuite has no control over such websites and resources, NetSuite is not responsible for the availability of such external websites or resources, and does not endorse and is not responsible or liable for any content, advertising, products, or other materials on or available from such websites or resources. In addition, NetSuite is not responsible for any third-party information that may be provided to Customer through the Service (e.g., through the integration of the Service with a third party online application).

2.8 Trademark Information. NetSuite®, the NetSuite logo®, NetCRM®, NetERP™, SuiteFlex™, the NetCRM logo™ and other NetSuite service marks, logos and product and service names are marks of NetSuite (the "NetSuite Marks"). Customer agrees not to display or use the NetSuite Marks in any manner without NetSuite's express prior written permission.

2.9 Confidential Information. For purposes of this Agreement, confidential information shall include the terms of the Agreement, customer data, and any information that is clearly identified in writing at the time of disclosure as confidential ("Confidential Information"). Each party shall: (a) keep confidential all Confidential Information disclosed to it by the other party or by a third-party; (b) not use the Confidential Information of the other party except to the extent necessary to perform its obligations or exercise rights under this Agreement; and (c) protect the confidentiality thereof in the same manner as it protects the confidentiality of similar information and data of its own (at all times exercising at least a reasonable degree of care in the protection of such Confidential Information) and to make Confidential Information available to authorized persons only on a "need to know" basis. Either party may disclose Confidential Information on a need-to-know basis to its employees or contractors who have executed written agreements requiring them to maintain such information in strict confidence and use it only to facilitate the performance of their services in connection with the performance of the Services. Confidential Information shall not include information which: (1) is known publicly; (2) is generally known in the industry before disclosure; (3) has become known publicly, without fault of the recipient, subsequent to disclosure by the disclosing party; or (4) the recipient becomes aware of from a third party not bound by non-disclosure obligations to the disclosing party and with the lawful right to disclose such information to the recipient. Notwithstanding the foregoing, this Section 2.9 will not prohibit the disclosure of Confidential Information to the extent that such disclosure is permitted by law or order of a court or other governmental authority or regulation. With respect to any information received by either party from the other as a result of any other relationship between the parties other than in the course of performance hereunder (e.g., business development, partnership, alliance, etc.), the parties will abide by the terms and conditions of any applicable Nondisclosure Agreement (or similar agreement) executed between the parties.

2.10 Storage Limits. NetSuite currently limits the amount of database storage to 10GB. Any customers using database storage in excess of this limit will be charged additional fees.

2.11 License From Customer. It is NetSuite's practice to make tape back up copies of the customer data in Customer's account and stores the back up copies for approximately one year at NetSuite's offsite storage facility. Subject to the terms of this Agreement, NetSuite agrees that, as between Customer and NetSuite, customer data shall at all times be considered the property of Customer.



- 3. Ownership.** NetSuite shall own all rights, title and interest in and to all intellectual property rights in the Service. The license granted to Customer does not convey any rights in the Service, express or implied, or ownership in the Service or any intellectual property rights thereto. Any rights not expressly granted herein are reserved by NetSuite.
- 4. Disclaimer of Warranties.** EXCEPT ANY WARRANTIES PROVIDED TO CUSTOMER ARE EXPRESSLY PROVIDED IN THE AGREEMENT. EXCEPT FOR THE FOREGOING, NETSUITE DOES NOT GRANT ANY WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, BY STATUTE OR OTHERWISE, REGARDING THE SERVICE OR ANY OTHER SUPPORT OR SERVICES RELATED THERETO. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NETSUITE SPECIFICALLY DISCLAIM ANY IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY, TITLE, ACCURACY OF DATA, NON-INTERFERENCE, AND FITNESS FOR A PARTICULAR PURPOSE. NETSUITE DOES NOT REPRESENT THAT CUSTOMER'S USE OF THE SERVICE WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE OR THAT THE SERVICE WILL MEET CUSTOMER'S REQUIREMENTS OR THAT ALL ERRORS IN THE SERVICE AND/OR DOCUMENTATION WILL BE CORRECTED OR THAT THE SYSTEM THAT MAKES THE SERVICE AVAILABLE WILL BE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. CUSTOMER ASSUMES ALL RESPONSIBILITY FOR DETERMINING WHETHER THE SERVICE OR THE INFORMATION GENERATED THEREBY IS ACCURATE OR SUFFICIENT FOR CUSTOMER'S PURPOSES.
- 5. Limitations of Liability.** NETSUITE SHALL NOT BE LIABLE FOR ANY INDIRECT, EXEMPLARY, SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES OF ANY KIND (INCLUDING WITHOUT LIMITATION LOST PROFITS, BUSINESS INTERRUPTION, LOST BUSINESS INFORMATION OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES), EVEN IF NETSUITE KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF THE FORM OF ACTION OR THEORY OF LIABILITY. NETSUITE'S CUMULATIVE LIABILITY TO CUSTOMER, FROM ALL CAUSES OF ACTION AND ALL THEORIES OF LIABILITY, WILL BE LIMITED TO AND SHALL NOT EXCEED THE FEES ACTUALLY PAID BY CUSTOMER TO EITHER NETSUITE OR AN AUTHORIZED NETSUITE RESELLER FOR THE SERVICE DURING THE TWELVE (12) MONTHS PRECEDING THE DATE ON WHICH THE CLAIM AROSE. THE FOREGOING LIMITATIONS SHALL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. THE DISCLAIMER OF WARRANTY AND THE LIMITATIONS OF LIABILITY SET FORTH IN THESE TERMS MAY NOT BE PERMITTED IN CERTAIN JURISDICTIONS. IN SUCH CASE, COMPANY'S AND NETSUITE'S LIABILITY SHALL BE LIMITED TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW. The parties acknowledge that the limitations set forth in this Section are integral to the amount of fees charged in for access to the Service and that, were NetSuite to assume any further liability other than as set forth herein, such fees would of necessity be set substantially higher.
- 6. Export Laws.** The licenses granted to Customer and Customer's use of the Service is subject to all applicable export or import laws, regulations, orders, or other restrictions. Notwithstanding anything contained in these Terms or the Agreement to the contrary, Customer shall not export or import, directly or indirectly, any software or technical information to or from any country to which such export or import is restricted or prohibited or as to which such government or any agency thereof requires a license or other governmental approval at the time of export or import without first obtaining such license or approval. Furthermore, Customer shall cooperate as requested by NetSuite to insure compliance with any such export or import restrictions. Customer will hold harmless and defend, at NetSuite's option, NetSuite from any third party claim arising from Customer's failure to comply with this section.



- 7. Government End Users.** If Customer is a branch or agency of the United States Government or a contractor thereto, the following provision applies. The Service and related documentation include "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212 (Sept. 1995) and are provided to the Government (i) for acquisition by or on behalf of civilian agencies, consistent with the policies set forth in 48 C.F.R. 12.212; or (ii) for acquisition on behalf of the department of defense consistent with the policies set for the in 48 C.F.R. 227.7202-1 (Aug. 1995) and 227.7202-3 (Aug. 1995).
- 8. Suspension/Termination.**
- 8.1 Suspension For Delinquent Account.** NetSuite reserves the right to suspend Customer's access to and/or use of the Service (and that of any other customer of NetSuite that controls, is controlled by, or is under common control with Customer) (a "Customer Affiliate") for any accounts for which any payment is due but unpaid but only after NetSuite has provided Customer two (2) delinquency notices, and at least thirty (30) days have passed since the transmission of the first notice ("Delinquent Account Status"). NetSuite shall not be liable to Customer or to any Customer Affiliate or other third party for any suspension of the Service resulting from Customer's nonpayment of fees as described in this Section 8.1.
- 8.2 Suspension for Ongoing Harm.** NetSuite may, with reasonably contemporaneous oral or written notice to Customer, suspend Customer's access to the Service if NetSuite reasonably concludes that Customer is using the Service to engage in denial of service attacks, spamming, or using the Service to engage in illegal activity, and/or Customer's use of the Service is causing immediate, material and ongoing harm to NetSuite or others. If NetSuite suspends Customer's access to the Service, NetSuite will use commercially reasonable efforts to resolve the issues causing the suspension of Service. NetSuite shall not be liable to Customer nor to any third party for any suspension of the Service under such circumstances as described in this Section 8.2.
- 9. Modification to or Discontinuation of the Service.** NetSuite reserves the right at any time to modify, temporarily or permanently, the Service (or any part thereof). In the event that NetSuite modifies the Service in a manner which removes or disables a feature or functionality on which Customer materially relies, NetSuite, at Customer's written request, shall use commercially reasonable efforts to substantially restore such functionality to Customer. In the event that NetSuite is unable to substantially restore such functionality (unless enjoined from doing so by a court of competent jurisdiction or if restoring such functionality would cause NetSuite to infringe upon the intellectual property rights of a third party), Customer shall have the right to terminate the Agreement and receive a pro-rata refund of the license fees paid under the Agreement for the terminated portion of the Term. Customer acknowledges that NetSuite reserves the right to discontinue offering the Service at the conclusion of Customer's then current term. Customer agrees that NetSuite shall not be liable to Customer or to any third party for any modification of the Service as described in this Section 9.
- 10. Third Party Beneficiary Rights.** NetSuite shall be considered an intended third party beneficiary of these Terms and the EULA. As such, NetSuite may enforce these Terms and the EULA as reasonably necessary to protect its rights.



11. Governing Law. These Terms and your use of the Service shall be governed by the laws of the State of California, USA, without regard to principles of conflict of laws.

12. Modification to the Terms of Service. These Terms may be amended by NetSuite in its discretion by providing thirty (30) days advance notice to a user designated as an administrator of your NetSuite account either: (a) as a note on the screen presented immediately after completion of the log in authentication credentials at the log in screen, or (b) by email to the registered email address provided for the administrator(s) for Customer's account.