

## Subscription Services Agreement

This Subscription Services Agreement (“**Agreement**”) is between Oracle Canada ULC (“**Oracle**”), and the entity which has accepted this Agreement through a document which references this agreement “**Customer**”. Capitalized terms not defined elsewhere in this Agreement shall have the meaning given to them in the Definitions section below. This Agreement sets forth the terms and conditions that govern orders placed under this Agreement.

### Definitions.

“**Advanced Customer Support**” is a managed service available for purchase on a subscription basis. Advanced Customer Support is provided by Oracle for a fee to assist customers in their use of the Services or specific components of the Cloud Service.

“**Cloud Service**” means, collectively, the NetSuite online business application suite (and any optionally procured modules), including without limitation SuiteCloud Technologies, (the “**NetSuite Service**”) and the SuiteProjects Pro online Professional Services Automation application suite (and any optionally procured modules) (the “**SuiteProjects Pro Service**”) as described in the applicable User Guides that is procured by Customer from Oracle in the Estimate/Order Form and any subsequent Estimate/Order Form from time to time, including associated offline components, but excluding Third Party Applications, Support Services and Professional Services.

“**Customer Data**” means all software, data (including Personal Data), text, images, audio, video, photographs, non-Oracle or Third-Party Applications, and other content and material, in any format, provided by Customer or any of Customer’s Users that is stored in, or run on or through, the Cloud Service. Cloud Services under this Agreement, Oracle software, other Oracle products and services, and Oracle intellectual property, and all derivative works thereof, do not fall within the meaning of the term “Customer Data.” Customer Data includes any third party content that is brought by Customer into the Cloud Service by Customer’s use of the Cloud Service or any Oracle-provided tools.

“**Deliverables**” means anything developed by Oracle, including training materials, and delivered to Customer as part of the Professional Services.

“**Estimate/Order Form**” means an Oracle estimate, renewal notification or order form in the name of and executed by Customer and accepted by Oracle which specifies the Cloud Service, and any Support Services and/or Professional Services to be provided by Oracle subject to the terms of this Agreement.

“**Help Documentation**” means the online English language help center documentation describing the Cloud Service features, which may be updated from time to time. Help Documentation does not include any material, content, or information, in any format, which is obtained or derived from third party sources outside of Oracle that Customer may access through, within, or in conjunction with Customer’s use of, the Services.

“**Oracle NetSuite Written Materials**” means, collectively, the Data Processing Agreement, the applicable version of the Oracle NetSuite Hosting and Support Delivery Policies, the Oracle Services Privacy Policy, the URL Terms, the User Guides, and any other Oracle documents that are referenced in, or incorporated into, Customer’s Estimate/Order Form for Services.

“**Professional Services**” means Training Services (as defined below) and the general consulting, implementation and/or training services to be provided to Customer pursuant to the terms hereof, and an Estimate/Order Form or SOW, as applicable.

“**SOW**” means a separate document, entitled Statement of Work, between Oracle and Customer, signed by both parties, that details the Professional Services to be delivered by Oracle.

“**SuiteApp**” means a collection of customizations, data, configurations, or modifications of standard objects created using the SuiteCloud Technologies for use in the Cloud Service. For the avoidance of doubt, a bundle is one type of SuiteApp.

“**SuiteApp.com**” means the Oracle online directory of applications that interoperate with the Cloud Service, located at [suiteapp.com](https://suiteapp.com) or at any successor websites.

“**SuiteApp Marketplace**” means the directory of applications that interoperate with the Cloud Service, located in the SuiteApp site within the Cloud Service that presents available SuiteApps.

“**SuiteCloud Technologies**” means the technologies made available to Customer by Oracle that can be used to customize, automate, import, export, or integrate data or functionality into or with the Cloud 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, SuiteCloud Development Framework, and SuiteGL. To the extent that Oracle includes open source software in or with SuiteCloud Technologies, the open source licenses governing such open source software will apply to Customer’s access and use of such open source software.

“**Support Services**” means the (i) supplemental, technical support services provided pursuant to the Oracle NetSuite Hosting and Support Delivery Policies available at <https://www.oracle.com/corporate/contracts/cloud-services/netsuite/> or such other URL as specified by Oracle in the applicable Estimate/Order Form and/or (ii) Advanced Customer Support. Support Services are provided pursuant to the terms of this Agreement and may be subject to additional fees as specified in the applicable Estimate/Order Form.

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**“Third Party Applications”** means all applications, integrations, connectors, services (including implementation and/or customization), software, data, text, images, audio, video, photographs and other content and material, in any format, that are obtained or derived from third party sources outside of Oracle that Customer may access through, within, or in conjunction with Customer’s use of the Cloud Services. Examples include data feeds from social network services, rss feeds from blog posts, Oracle data marketplace and libraries, dictionaries, and marketing data. Third Party Applications includes third-party sourced materials accessed or obtained by Customers use of the Services or any Oracle-provided tools. For clarity, SuiteApps developed by Customer, or any other customer, are considered Third Party Applications under this Agreement, including without limitation SuiteApps available on [SuiteApp.com](http://SuiteApp.com) or the SuiteApp Marketplace.

**“Training Services”** means the training services provided in accordance with the “Training Service Descriptions”, found at <https://www.oracle.com/corporate/contracts/cloud-services/netsuite/>, or a SOW.

**“Users”** means individuals who are authorized by Customer to use the Cloud Service pursuant to this Agreement or as otherwise defined, restricted or limited in an Estimate/Order Form or amendment to this Agreement. Users may include but are not limited to Customer’s employees, consultants, contractors and agents.

**“User Guides”** mean the online English language user guides for the Cloud Service, accessible via login at <http://www.netsuite.com> (under “Help”) or included in the Oracle documentation identified under the “NetSuite Applications” heading available at <https://docs.oracle.com/en/>, as updated from time to time.

**“URL Terms”** means the terms with which Customer must comply, which are located at a URL, referenced in this Agreement and are hereby incorporated by reference.

**1. Services.** Subject to the terms and conditions of this Agreement, Customer shall have the non-exclusive, worldwide, limited right to use the Cloud Service, Support Services, and Professional Services ordered by Customer (collectively, the “Services”) during the applicable period set forth in Customer’s applicable Estimate/Order Form or SOW for each of the Services (the “Term”) solely for the internal business operations of Customer. Customer may allow its Users to use the Services for this purpose, and Customer is responsible for its Users’ compliance with this Agreement and Customer’s applicable Estimate/Order Form or SOW. The terms of this Agreement shall also apply to updates and upgrades subsequently provided by Oracle to Customer for the Cloud Service.

Customer shall also have the non-exclusive, worldwide, limited right to use the SuiteCloud Technologies, to create, store, and use SuiteApps in connection with Customer’s use of the Cloud Service and in accordance with this Agreement and to share such Customer developed SuiteApps with other customers of the Cloud Service.

**NetSuite OneWorld Cloud Service.** If Customer orders NetSuite OneWorld Cloud Service or has obtained the right to use the NetSuite Subsidiary Management (each a “Subsidiary Service” and collectively the “Subsidiary Services”), Customer and Customer’s majority owned subsidiaries shall have the non-exclusive, worldwide, limited right to use the Subsidiary Services ordered by Customer, during the applicable period set forth in the Estimate/Order Form under which such Subsidiary Service(s) were acquired, solely for their internal business operations. Customer is responsible for its Users’ compliance with the Agreement and the applicable Estimate/Order Form under which the Subsidiary Service(s) were ordered.

Customer acknowledges and agrees that if the Customer has obtained the rights to use the Subsidiary Service(s):

- i. the combined use of the Subsidiary Services by Customer and Customer’s majority owned subsidiaries must not exceed the quantities and usage limits described in the applicable Estimate/Order Form;
- ii. Oracle will provision an environment for Customer and will not create additional environments for Customer’s majority owned subsidiaries and all content (including Personal Data and Customer Data) of Customer and Customer’s majority owned subsidiaries will reside in that same environment;
- iii. Customer and Customer’s majority owned subsidiaries may be able to access, view, use, create, modify, delete, and transfer each other’s content (including Personal Data and Customer Data) in that same environment;
- iv. Oracle will provide the Subsidiary Services to Customer’s majority owned subsidiaries pursuant to the standard capabilities and management and under the same Customer Support Identifier assigned to Customer; and
- v. Customer acknowledges and agrees that all rights and obligations under the Data Processing Agreement, including providing instructions to Oracle, are exercisable exclusively by Customer. Notwithstanding the foregoing, Customer further acknowledges and agrees that Oracle has no obligation to ensure the compatibility or accuracy of such instructions with any other instructions received from Customer, and Oracle is not responsible for the effect of any conflicting instructions.

**2. Estimates/Order Forms.** The Services shall be ordered by Customer pursuant to Estimates/Order Forms. Each Estimate/Order Form shall include at a minimum a listing of the Cloud Service and any Support Services and/or Professional Services being ordered and the associated fees. If Customer exceeds the quantity of Services ordered, then Customer promptly must purchase and pay fees for the excess quantity.

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Any one of Customer's majority owned subsidiaries may also order Services under this Agreement by entering into an Estimate/Order Form or SOW, signed by such subsidiary and Oracle, as applicable, and agreeing to be bound by the terms of this Agreement and such Estimate/Order Form or SOW. For the purposes of such Estimate/Order Form or SOW, "Customer" as used in such Estimate/Order Form or SOW and this Agreement, shall be deemed to refer to the majority owned subsidiary executing such Estimate/Order Form or SOW.

### 3. Restrictions.

#### 3.1. General Restrictions.

**3.1.1.** Customer may not, and may not cause, aid, abet or permit others to: (a) use the Services to harass any person; cause damage or injury to any person or property; publish any material that is false, defamatory, harassing or obscene; violate privacy rights; promote bigotry, racism, hatred or harm; send unsolicited bulk e-mail, junk mail, spam or chain letters; infringe property rights; sell, manufacture, market and/or distribute any product or service in violation of applicable laws; or otherwise violate applicable laws, ordinances or regulations; (b) perform or disclose any benchmarking, availability or performance testing of the Services; or (c) perform or disclose any performance or vulnerability testing of the Services without Oracle's prior written approval, perform or disclose network discovery, port and service identification, vulnerability scanning, password cracking, remote access or penetration testing of the Services (the "**Acceptable Use Policy**"). In addition to other rights that Oracle has in this Agreement and Customer Estimate/Order Form, Oracle has the right to take remedial action if the Acceptable Use Policy is violated, and such remedial action may include, without limitation, removing or disabling access to material that violates the policy and/or terminating the Customer's Services.

**3.1.2.** Customer may not, and may not cause or permit others to: (a) modify, make derivative works of, disassemble, decompile, reverse engineer, reproduce, republish, download, or copy any part of the Services (including data structures or similar materials produced by programs); (b) access or use the Services to build or support, directly or indirectly, products or services competitive to Oracle; or (c) license, sell, transfer, assign, distribute, outsource, permit timesharing or service bureau use of, commercially exploit, or make available the Services to any third party except as permitted by this Agreement or Customer Estimate/Order Form.

**3.2. HIPAA.** Unless otherwise specified in Customer's Estimate/Order Form, Customer agrees that: (i) Oracle is not acting on Customer's behalf as a Business Associate or subcontractor; (ii) the Cloud Service may not be used to store, maintain, process or transmit protected health information ("PHI") and (iii) the Cloud Service will not be used in any manner that would require Oracle or the Cloud Service to be compliant with the Health Insurance Portability and Accountability Act of 1996, as amended and supplemented ("HIPAA"). In the preceding sentence, the terms "Business Associate," "subcontractor," "protected health information" or "PHI" shall have the meanings described in HIPAA.

### 4. Term, Fee, Payment & Taxes.

**4.1. Term.** This Agreement is valid for the Estimate/Order Forms (including SOWs) which this Agreement accompanies. The initial service period of the Services procured by Customer shall continue for the Term applicable to such Services specified in the applicable Estimate/Order Form. In the event that all of Customer's Estimate/Order Forms for Services placed under this Agreement expire or terminate, this Agreement shall similarly expire or terminate. If Customer has not entered into an Estimate/Order Form with Oracle regarding renewal of Services prior to the expiration of the initial Term or then-current renewal Term of such Services, then the subscription term for such Services shall be automatically renewed for one (1) year unless and until either party provides written notice of non-renewal to the other at least thirty (30) days before expiration of the applicable initial Term or then-current renewal Term. Notwithstanding the foregoing, such auto-renewals shall not apply to Professional Services unless (a) Professional Services are for training subscription(s) or (b) expressly specified in the SOW for such Professional Services.

**4.2. Fees and Payment.** All fees payable are due within 30 days from the invoice date unless otherwise specified in the applicable Estimate/Order Form. Except as otherwise provided on the Estimate/Order Form, SOW or this Agreement, once placed, each Estimate/Order Form and SOW is non-cancellable and all sums paid are non-refundable.

**4.3.** The fees and the term of use for additional capacity of the applicable Cloud Service metric and other items procured during a current Term will co-terminate with and be prorated through the end date of the Term for the applicable Cloud Service. Pricing for subsequent renewal Estimate/Order Forms shall be set at then current Oracle pricing, unless otherwise agreed to by the parties.

**4.4. Taxes.** Oracle 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**"). Customer is responsible for paying all Taxes, excluding only taxes based on Oracle's net income. If Oracle has the legal obligation to pay or collect Taxes for which Customer is responsible under this Section, the appropriate amount shall be invoiced to and paid by Customer unless Customer provides Oracle with a valid tax exemption certificate authorized by the appropriate taxing authority.

### 5. Proprietary Rights.

**5.1. Ownership of Customer Data.** As between Oracle and Customer, all title and intellectual property rights in and to the Customer Data is owned exclusively by Customer. Customer acknowledges and agrees that in connection with the

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provision of the Services, Oracle may store and maintain Customer Data for a period of time consistent with Oracle's standard business processes for the Services. Following expiration or termination of the Agreement or a Customer account, if applicable, Oracle will deactivate the applicable Customer account(s) and delete any data therein. Customer grants Oracle the right to host, use, process, display and transmit Customer Data to provide the Services pursuant to and in accordance with this Agreement and the applicable Estimate/Order Form or SOW. Customer has sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of Customer Data, and for obtaining all rights related to Customer Data required by Oracle to perform the Services.

**5.2. Oracle Intellectual Property Rights.** All rights, title and interest in and to the Services (including without limitation all intellectual property rights therein and all modifications, extensions, customizations, scripts or other derivative works of the Services provided or developed by Oracle) and anything developed or delivered by or on behalf of Oracle under this Agreement (including without limitation, Deliverables and SuiteCloud Technologies) are owned exclusively by Oracle or its licensors. Except as provided in this Agreement, the rights granted to Customer do not convey any rights in the Services, express or implied, or ownership in the Services or any intellectual property rights thereto. Customer grants Oracle a royalty free, worldwide, perpetual, irrevocable, transferable right to use, modify, distribute and incorporate into the Services (without attribution of any kind) any suggestions, enhancement request, recommendations, proposals, correction or other feedback or information provided by Customer or any Users related to the operation or functionality of the Services. Any rights in the Services or Oracle's intellectual property not expressly granted herein by Oracle are reserved by Oracle. Oracle, NetSuite and SuiteProjects Pro service marks, logos and product and service names are marks of Oracle (the "**Oracle Marks**"). Customer agrees not to display or use the Oracle Marks in any manner without Oracle's express prior written permission. The trademarks, logos and service marks of Third Party Application providers ("**Marks**") are the property of such third parties. Customer is not permitted to use these Marks without the prior written consent of such third party which may own the Mark.

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## **6. Terms of Service.**

**6.1. 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.

**6.2. Notice.** Any notice required under this Agreement shall be provided to the other party in writing. If Customer has a legal dispute with Oracle or if Customer wishes to provide a notice under the Indemnification Section of this Agreement, or if Customer becomes subject to insolvency or other similar legal proceedings, Customer will promptly send written notice to: Oracle Canada ULC, 100 Milverton Drive Mississauga, Ontario L5R 4H1, Attention: General Counsel, Legal Department.

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## **6.5. Third-Party Applications; Customer Developed SuiteApps.**

**6.5.1** The Services may enable Customer to link to, transfer Customer Data to, or otherwise access, Third Party Applications. Oracle does not control and is not responsible for Third Party Applications, regardless of whether or not such Third Party Applications are provided by a third party that is a member of an Oracle partner program or otherwise designated by Oracle as "Built For NetSuite," "certified," "approved" or "recommended." If Customer installs or enables Third Party Applications for use with the Cloud Service, Customer agrees that Oracle may enable such third party providers to access Customer Data for the interoperation of such Third Party Applications with the Cloud Service, and any exchange of data or other interaction between Customer and a third party provider is solely between Customer and such third party provider pursuant to a separate privacy policy or other terms governing Customer's access to or use of the Third Party Applications. Customer is solely responsible for complying with the terms of access and use of Third Party Applications, and if Oracle accesses or uses any Third Party Applications on Customer's behalf to facilitate performance of the Cloud Services, Customer is solely responsible for ensuring that such access and use, including through passwords, credentials or tokens issued or otherwise made available to Customer, is authorized by the terms of access and use for such services. If Customer transfers or causes the transfer of Customer Data from the Cloud Services to a Third Party Application or other location, that transfer constitutes a distribution by Customer and not by Oracle.

**6.5.2** Any Third Party Applications Oracle makes accessible are provided on an "as-is" and "as available" basis without any warranty of any kind. Oracle disclaims all liabilities arising from or related to Third Party Applications. Oracle shall not be responsible for any disclosure, modification or deletion of Customer Data resulting from any such access by Third Party Applications or third party providers. No procurement of such Third Party Applications is required to use the Cloud Service.

**6.5.3** If Customer was referred to Oracle by a member of one of Oracle's partner programs, Customer hereby authorizes Oracle, or its applicable affiliate, to provide such member or its successor entity with access to Customer's business information related to the procurement and use of the Cloud Service pursuant to this Agreement, including but not limited to User names and email addresses, support cases and billing/payment information.

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**6.5.4** Customer acknowledges that: (a) the nature, type, quality and availability of Third Party Applications may change at any time during the Term, and (b) features of the Cloud Services that interoperate with Third Party Applications may depend on the continuing availability of such Third Party Applications. Any change to Third Party Applications, including their unavailability, during the Term does not affect Customer's obligations under this Agreement or the applicable Estimate/Order Form, and Customer will not be entitled to any refund, credit or other compensation due to any such changes.

**6.5.5 Customer Developed SuiteApps.** Customer developed SuiteApps are considered Third Party Applications under this Agreement. Customer is solely responsible for controlling access to (including accessible attributes) Customer's developed SuiteApps. Oracle reserves the right to inspect all Customer developed SuiteApps.

### **6.6. Support Services, Professional Services and Training Services.**

**6.6.1 Support Services.** As part of the Cloud Service, Oracle will provide Customer with Help Documentation and other online resources to assist Customer in its use of the Cloud Service. Oracle also offers optional "for fee" Support Services.

**6.6.2 Professional Services.** Oracle offers optional "for fee" Professional Services. Oracle will provide Customer with Professional Services as set forth in an SOW executed by Oracle and Customer or an Estimate/Order Form executed by Customer and accepted by Oracle. All SOWs are subject to the terms of this Agreement.

**6.6.3 Training Services.** All training services, including any Deliverables, are provided for Customer's internal training purposes only. Customer may not replicate the Deliverables or use the Deliverables to develop any of the products described in such training Deliverables. Training Deliverables are not subject to any maintenance, support, or updates.

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**6.8. Updates.** During the Term, Oracle may update the Services and the Oracle NetSuite Written Materials to reflect changes in, among other things, laws, regulations, rules, technology, industry practices, patterns of system use, and availability of Third Party Applications. Oracle updates to the Services or the Oracle NetSuite Written Materials will not materially reduce the level of performance, functionality, security or availability of the Services during the Term.

### **6.9. Service Monitoring and Analyses**

**6.9.1** Oracle continuously monitors the Cloud Service to facilitate Oracle's operation of the Services; to help resolve Customer service requests; to improve and optimize Customer's use of the Services; to detect and address threats to the functionality, security, integrity, and availability of the Services as well as any content, data, or applications in the Services; and to detect and address illegal acts or violations of the Acceptable Use Policy. Oracle monitoring tools do not collect or store any Customer Data residing in the Services, except as needed for such purposes. Oracle does not monitor, and does not address issues with, non-Oracle software provided by Customer or any of Customer's Users that is stored in, or run on or through, the Services. Information collected by Oracle monitoring tools (excluding Customer Data) may also be used to assist in managing Oracle's product and service portfolio, to help Oracle address deficiencies in its product and service offerings, and for license management purposes.

**6.9.2** Oracle may (i) compile statistical and other information related to the performance, operation and use of the Services, and (ii) use data from the Services in aggregated form for security and operations management, to create statistical analyses, and for research and development purposes (clauses (i) and (ii) are collectively referred to as "Service Analyses"). Oracle retains all intellectual property rights in Service Analyses.

**6.10. Security.** Oracle shall maintain commercially reasonable administrative, physical and technical safeguards designed for the protection, confidentiality and integrity of Customer Data, as described in the Oracle NetSuite Hosting and Support Delivery Policies available at <https://www.oracle.com/corporate/contracts/cloud-services/netsuite/cloud-delivery-policies.html>.

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### **6.12. Data Protection**

**6.12.1** In performing the Services, Oracle will comply with the Oracle Services Privacy Policy, which is available at <http://www.oracle.com/html/Services-privacy-policy.html> and incorporated herein by reference. The Oracle Services Privacy Policy is subject to change at Oracle's discretion; however, Oracle policy changes will not result in a material reduction in the level of protection provided for Customer's Personal Data (as defined in Oracle's Data Processing Agreement) provided as part of Customer Data during the Term.

**6.12.2** Unless otherwise provided in the applicable Estimate/Order Form, the version of Oracle's Data Processing Agreement for Oracle Services (the "**Data Processing Agreement**") applicable to Customer's Estimate/Order Form, which is available at <http://www.oracle.com/corporate/contracts>, as of the Estimate/Order Form Effective Date, and is incorporated herein by reference, will remain in force during the Term specified in Customer's Estimate/Order Form. The Data Processing Agreement describes the parties' respective roles for the processing and control of Personal Data that Customer provides to Oracle as part of the Services. Unless otherwise provided in the applicable Estimate/Order Form, Oracle will act as a data processor, and will act on Customer instructions concerning the treatment of Customer's Personal Data residing in the services environment, as specified in this Agreement, the Data Processing Agreement and the applicable Estimate/Order Form.

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Customer agrees to provide any notices and obtain any consents related to Customer's use of the Services and Oracle's provision of the Services, including those related to the collection, use, processing, transfer and disclosure of Personal Data.

**6.12.3** The Data Processing Agreement does not apply to any (1) demonstration accounts, trials, beta releases, or other similar versions of the services or (2) any features, services or products which are provided pursuant to a separate agreement or by a party other than Oracle (e.g., where Oracle is merely a billing/collection agent) including but not limited to Celigo and Pacejet.

### **7. Suspension/Termination.**

**7.1. Suspension for Delinquent Account.** Oracle reserves the right to suspend Customer's access to and/or use of the Services if any payment is due but unpaid.

**7.2. Suspension for Ongoing Harm.** Oracle may suspend Customer's or Users' access to, or use of, the Services, including without limitation, SuiteCloud Technologies, if Oracle believes that (a) there is a significant threat to the functionality, security, integrity, or availability of the Services or any content, data, or applications in the Services; (b) Customer or Users are accessing or using the Services to commit an illegal act; or (c) there is a violation of the Acceptable Use Policy. When reasonably practicable and lawfully permitted, Oracle will provide Customer with advance notice of any such suspension. Oracle will use reasonable efforts to re-establish the Services promptly after Oracle determines that the issue causing the suspension has been resolved. During any suspension period, Oracle will make Customer Data (as it existed on the suspension date) available to Customer. Any suspension under this Section shall not excuse Customer from Customer's obligation to make payments under this Agreement.

**7.3. Termination for Cause.** If either Customer or Oracle breaches a material term of this Agreement or any Estimate/Order Form or SOW and fails to correct the breach within 30 days of written specification of the breach, then the breaching party is in default and the non-breaching party may terminate (a) in the case of breach of any Estimate/Order Form or SOW, the Estimate/Order Form and any applicable SOW under which the breach occurred; or (b) in the case of breach of the Agreement, the Agreement and all Estimates/Order Forms and SOWs that have been placed under the Agreement. If Oracle terminates any Estimate/Order Forms as specified in the preceding sentence, Customer must pay within 30 days all amounts that have accrued prior to such termination, as well as all sums remaining unpaid for the Services under such Estimates/Order Forms and SOWs plus related taxes and expenses. Except for nonpayment of fees, the nonbreaching party may agree in its sole discretion to extend the 30 day period for so long as the breaching party continues reasonable efforts to cure the breach. Customer agrees that if it is in breach under this Agreement, Customer may not use those Services ordered.

**7.4.** Customer agrees that Oracle shall not be liable to Customer or other third party for any suspension pursuant to this Section 7.

### **8. Confidentiality.**

**8.1.** By virtue of this Agreement, the parties may disclose to each other information that is confidential ("Confidential Information"). Confidential Information shall be limited to the terms and pricing under this Agreement and Customer's Estimate/Order Forms, Customer Data residing in the Cloud Service, and all information clearly identified as confidential at the time of disclosure.

**8.2.** A party's Confidential Information shall not include information that: (a) is or becomes a part of the public domain through no act or omission of the other party; (b) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (c) is lawfully disclosed to the other party by a third party without restriction on the disclosure; or (d) is independently developed by the other party.

**8.3.** Each party agrees not to disclose the other party's Confidential Information to any third party other than as set forth in the following sentence for a period of five years from the date of the disclosing party's disclosure of the Confidential Information to the receiving party; however, Oracle will protect the confidentiality of Customer Data residing in the Cloud Service for as long as such information resides in the Cloud Service. Each party may disclose Confidential Information only to those employees, agents or subcontractors who are required to protect it against unauthorized disclosure in a manner no less protective than required under this Agreement, and each party may disclose the other party's Confidential Information in any legal proceeding or to a governmental entity as required by law. Oracle will protect the confidentiality of Customer Data residing in the Services in accordance with the Oracle security practices applicable to Customer's Estimate/Order Form as described in this Agreement or such Estimate/Order Form.

### **9. Warranties, Disclaimers and Exclusive Remedies.**

**9.1.** Each party represents that it has validly entered into this Agreement and that it has the power and authority to do so. Oracle warrants that during the Term, Oracle will perform (i) the Cloud Service using commercially reasonable care and skill in all material respects as described in the Oracle NetSuite Written Materials, and (ii) any Professional Services and Support Services in a professional manner consistent with industry standards (the warranties described by the foregoing clauses (i) and (ii), collectively, the "Services Warranty"). If the Services provided to Customer were not performed as warranted, Customer must promptly provide Oracle with a written notice that describes the deficiency in the Services (including, as

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applicable, the service request number notifying Oracle of the deficiency in the Services). For Professional Services, Customer must notify Oracle of any warranty deficiencies within 60 days from performance of the deficient Professional Services.

**9.2.** ORACLE DOES NOT WARRANT THAT THE SERVICES WILL BE PERFORMED ERROR-FREE OR UNINTERRUPTED, THAT ORACLE WILL CORRECT ALL SERVICES ERRORS, OR THAT THE SERVICES WILL MEET CUSTOMER'S REQUIREMENTS OR EXPECTATIONS. ORACLE IS NOT RESPONSIBLE FOR ANY ISSUES RELATED TO THE PERFORMANCE, OPERATION OR SECURITY OF THE SERVICES THAT ARISE FROM CUSTOMER DATA OR THIRD PARTY APPLICATIONS OR SERVICES PROVIDED BY THIRD PARTIES.

**9.3.** FOR ANY BREACH OF THE SERVICES WARRANTY, CUSTOMER'S EXCLUSIVE REMEDY AND ORACLE'S ENTIRE LIABILITY SHALL BE THE CORRECTION OF THE DEFICIENT SERVICES THAT CAUSED THE BREACH OF WARRANTY, OR, IF ORACLE CANNOT SUBSTANTIALLY CORRECT THE DEFICIENCY IN A COMMERCIALY REASONABLE MANNER, CUSTOMER MAY END THE DEFICIENT SERVICES AND ORACLE WILL REFUND TO CUSTOMER THE FEES FOR THE TERMINATED SERVICES THAT CUSTOMER PRE-PAID TO ORACLE FOR THE PERIOD FOLLOWING THE EFFECTIVE DATE OF TERMINATION.

**9.4.** TO THE EXTENT NOT PROHIBITED BY LAW, THESE WARRANTIES ARE EXCLUSIVE AND THERE ARE NO OTHER EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS INCLUDING FOR SOFTWARE, HARDWARE, SYSTEMS, NETWORKS OR ENVIRONMENTS OR FOR MERCHANTABILITY, SATISFACTORY QUALITY AND FITNESS FOR A PARTICULAR PURPOSE.

### **10. Limitations of Liability.**

**10.1.** IN NO EVENT WILL EITHER PARTY OR ITS AFFILIATES BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES, OR ANY LOSS OF REVENUE, PROFITS (EXCLUDING FEES UNDER THIS AGREEMENT), SALES, DATA, DATA USE, GOODWILL, OR REPUTATION.

**10.2.** IN NO EVENT SHALL THE AGGREGATE LIABILITY OF ORACLE AND ITS AFFILIATES ARISING OUT OF OR RELATED TO THIS AGREEMENT OR CUSTOMER'S ESTIMATE/ORDER FORM, WHETHER IN CONTRACT, TORT, OR OTHERWISE, EXCEED THE TOTAL AMOUNTS ACTUALLY PAID UNDER CUSTOMER'S ESTIMATE/ORDER FORM OR SOW FOR THE SERVICES GIVING RISE TO THE LIABILITY DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH LIABILITY.

### **11. Indemnification.**

**11.1.** If a third party makes a claim against either Customer or Oracle ("Recipient" which may refer to Customer or Oracle depending upon which party received the Material), that any information, design, specification, instruction, software, service, data, hardware, or material (collectively, "Material") furnished by either Customer or Oracle ("Provider" which may refer to Customer or Oracle depending on which party provided the Material) and used by the Recipient infringes the third party's intellectual property rights, the Provider, at the Provider's sole cost and expense, will defend the Recipient against the claim and indemnify the Recipient from the damages, liabilities, costs and expenses awarded by the court to the third party claiming infringement or the settlement agreed to by the Provider, if the Recipient does the following:

- a. notifies the Provider promptly in writing, not later than 30 days after the Recipient receives notice of the claim (or sooner if required by applicable law);
- b. gives the Provider sole control of the defense and any settlement negotiations; and
- c. gives the Provider the information, authority and assistance the Provider needs to defend against or settle the claim.

**11.2** If the Provider believes or it is determined that any of the Material may have violated a third party's intellectual property rights, the Provider may choose to either modify the Material to be non-infringing (while substantially preserving its utility or functionality) or obtain a license to allow for continued use, or if these alternatives are not commercially reasonable, the Provider may end the license for, and require return of, the applicable Material and refund any unused, prepaid fees the Recipient may have paid to the other party for such Material. If such return materially affects Oracle's ability to meet obligations under the relevant Estimate/Order Forms, then Oracle may, upon 30 days prior written notice, terminate the Estimate/Order Forms. If such Material is third party technology and the terms of the third party license do not allow us to terminate the license, then Oracle may, upon 30 days prior written notice, end the Services associated with such Material and refund any unused, prepaid fees for such Services.

**11.3** The Provider will not indemnify the Recipient if the Recipient (a) alters the Material or uses it outside the scope of use identified in the Provider's user or program documentation or the User Guides, or (b) uses a version of the Material which has been superseded, if the infringement claim could have been avoided by using an unaltered current version of the Material which was made available to the Recipient. The Provider will not indemnify the Recipient to the extent that an infringement claim is based upon any Material not furnished by the Provider. Oracle will not indemnify Customer to the extent that an infringement claim is based on a Third Party Application or any Material from a third party portal or other external source that is accessible or made available to Customer within or by the Services (e.g., a social media post from a third party blog or forum, a third party Web page accessed via a hyperlink, marketing data from third party data providers, etc.).

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**11.4** This Section 11 provides the parties' exclusive remedy for any infringement claims or damages.

**12. Governing Law and Jurisdiction.** This Agreement is governed by the substantive and procedural laws of the province of Ontario and you and Oracle agree to submit to the exclusive jurisdiction of, and venue in, the courts in Toronto, Ontario in any dispute arising out of or relating to this agreement.

### **13. Export.**

**13.1** Export laws and regulations of the United States and any other relevant local export laws and regulations apply to the Services. Such export laws govern use of the Services (including technical data) and any Services deliverables provided under this Agreement, and Customer and Oracle each agree to comply with all such export laws and regulations (including "deemed export" and "deemed re-export" regulations). Customer agrees that no data, information, software programs and/or materials resulting from the Services (or direct product thereof) will be exported, directly or indirectly, in violation of these laws, or will be used for any purpose prohibited by these laws including, without limitation, nuclear, chemical, or biological weapons proliferation, or development of missile technology.

**13.2** Customer acknowledges that the Services are designed with capabilities for Customer and Customer Users to access the Services without regard to geographic location and to transfer or otherwise move Customer Data between the Services and other locations such as User workstations. Customer is solely responsible for the authorization and management of User accounts across geographic locations, as well as export control and geographic transfer of Customer Data.

### **14. General Provisions.**

#### **14.1. Entire Agreement.**

**14.1.1.** This Agreement incorporates by reference all URL Terms (as applicable), Exhibits and Estimate/Order Forms, and this Agreement, together with such referenced items, constitute the entire understanding between Customer and Oracle and are intended to be the final and entire expression of their agreement. The parties expressly disclaim any reliance on any and all prior discussions, emails, RFP's and/or agreements between the parties. There are no other verbal agreements, representations, warranties undertakings or other agreements between the parties.

**14.1.2.** Under no circumstances will the terms, conditions or provisions of any purchase order, invoice or other administrative document issued by Customer in connection to this Agreement be deemed to modify, alter or expand the rights, duties or obligations of the parties under, or otherwise modify, this Agreement, regardless of any failure of Oracle to object to such terms, provisions, or conditions. In the event of any inconsistencies between the terms of an Estimate/Order Form and the Agreement, the Estimate/Order Form shall take precedence; however, unless expressly stated otherwise in an Estimate/Order Form, the terms of the Data Processing Agreement shall take precedence over any inconsistent terms in an Estimate/Order Form.

**14.1.3.** The Agreement shall not be modified, or amended, except as expressly set forth herein, or in writing and signed or accepted electronically by the party against whom the modification, amendment or waiver is to be asserted, or by a properly executed Estimate/Order Form or SOW. Notwithstanding the above, Customer may be presented with additional click through agreements prior to enabling optional services or features. Customer acknowledges that these click through agreements as well as, the agreements found at <https://www.oracle.com/corporate/contracts/cloud-services/netsuite/>, shall apply if optional services or features are subsequently ordered or activated. For clarity, such other click through agreements will only apply to such optional services or features.

#### **14.2. Other General Provisions.**

**14.2.1.** This Agreement shall inure to benefit and bind the parties hereto, their successors and assigns. Customer may not assign this Agreement or give or transfer the Services or any interest in the Services to another individual or entity. There are no third-party beneficiaries to this Agreement.

**14.2.2.** Oracle is an independent contractor, and each party agrees that no joint venture, partnership, or agency relationship exists between the parties.

**14.2.3.** Oracle's business partners and other third parties, including any third parties with which the Services have integrations or that are retained by Customer to provide consulting services, implementation services or applications that interact with the Services, are independent of Oracle and are not Oracle's agents. Oracle makes no representation or warranty about the suitability of any Oracle business partner or any third party in connection with the provision of consulting services, implementation services or applications. Customer is solely responsible for selection of any third parties Customer engages to provide consulting services or implementation services. Oracle is not liable for, bound by, or responsible for any problems with the Services or Customer Data arising due to any acts of any such business partner or third party, unless the business partner or third party is providing Services as Oracle's subcontractor on an engagement ordered under this Agreement and, if so, then only to the same extent as Oracle would be responsible for our resources under this Agreement.

**14.2.4.** If any provision is held by a court of competent jurisdiction to be contrary to law, such provision shall be eliminated or limited to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect. A waiver of any breach under this Agreement should not constitute a waiver of any other breach or future breach.

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**14.2.5. Force Majeure.** Neither party shall be liable for loss, delay, nonperformance (including failure to meet the service level commitment but excluding payment obligations) to the extent resulting from any force majeure event, including, but not limited to, acts of God, strike, riot, fire, explosion, flood, earthquake, natural disaster, terrorism, act of war, civil unrest, criminal acts of third parties, failure of the Internet, governmental acts or orders or restrictions, failure of suppliers, labor stoppage or dispute (other than those involving Oracle employees), or shortage of materials, provided that such party uses reasonable efforts, under the circumstances, to notify the other party of the circumstances causing the delay and to resume performance as soon as possible and any delivery date shall be extended accordingly.

**14.2.6. Non-Impediment.** Nothing in this Agreement shall be construed as precluding or limiting in any way the right of Oracle to provide consulting, development, or other services of any kind to any individual or entity (including without limitation performing services or developing materials which are similar to and/or competitive with the Professional Services and/or Deliverables hereunder).

**14.2.7. Audit.** Upon forty-five (45) days written notice and no more than once every twelve (12) months, Oracle may audit Customer's use of the Cloud Services to ensure Customer's use of the Cloud Services is in compliance with the terms of the applicable Estimate/Order Form and this Agreement. Any such audit shall not unreasonably interfere with Customer's normal business operations. Customer agrees to cooperate with Oracle's audit and to provide reasonable assistance and access to information reasonably requested by Oracle. The performance of the audit and non-public data obtained during the audit (including findings or reports that result from the audit) shall be subject to the provisions of section 8 (Confidentiality) of this Agreement. If the audit identifies non-compliance, Customer agrees to remedy (which may include, without limitation, the payment of any fees for additional Cloud Services) such non-compliance within 30 days of written notification of that non-compliance. Customer agrees that Oracle shall not be responsible for any of Customer's costs incurred in cooperating with the audit.

**14.2.8.** The Section headings used in this Agreement are included for reference purposes only and shall not affect the meaning or interpretation of this Agreement in any way. Provisions that survive termination or expiration of this Agreement are those relating to limitation of liability, indemnification, payment and others which by their nature are intended to survive. This Agreement may be executed in counterparts and/or by facsimile or electronic signature and if so executed shall be equally binding as an original copy of this Agreement executed in ink by both parties.

**14.2.9.** The parties have agreed that this ordering document be drafted in English.