



NETSUITE INC.

TERMS OF SERVICE FOR NETSUITE APPLICATIONS

1. ATTENTION! THE FOLLOWING TERMS AND CONDITIONS WILL BE LEGALLY BINDING ON CUSTOMER UPON EXECUTION OF THE NETSUITE STANDARD SUBSCRIPTION SERVICES AGREEMENT. CUSTOMER SHOULD CAREFULLY READ THE FOLLOWING TERMS OF SERVICE BEFORE EXECUTING THE AGREEMENT.

2. Terms of Service. Customer acknowledges and agrees to the following terms of service, which together with the terms of the NetSuite Subscription Services Agreement entered into between Customer and NetSuite, shall govern Customer's access and use of the Service (the "Agreement"). Capitalized terms not otherwise defined herein shall have the meaning given to them in Section 9 below. In addition, Customer agrees that 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 this Agreement.

2.1. Customer Must Have Internet Access. DSL, cable or another high speed Internet connection is required for proper transmission of the Service. Customer is responsible for procuring and maintaining the network connections that connect the Customer network to the Service, including, but not limited to, "browser" software that supports protocol used by NetSuite, including 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. NetSuite assumes no responsibility for the reliability or performance of any connections as described in this Section.

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. Users: Passwords, Access, And Notification. Customer shall authorize access to and assign unique passwords and user names to the number of Users purchased by Customer on the Estimate/Order Form. User logins are for designated Users and cannot be shared or used by more than one User, but any User login may be reassigned to another User as needed. Customer will be responsible for the confidentiality and use of 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. NetSuite will act as though any Electronic Communications it receives under Customer's passwords, user name, and/or account number will 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 passwords, user names, and/or account number.

2.4. Customer's Lawful Conduct. The Service allows Customer to send Electronic Communications directly to NetSuite and to third parties. 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 comply with the export laws and regulations of the United States and other applicable jurisdictions in using the Service and obtain any permits, licenses and authorizations required for such compliance. Without limiting the foregoing, (i) Customer represents that it is not named on any U.S. government list of persons or entities prohibited from receiving exports, (ii) Customer shall not permit Users to access or use the Service in violation of any U.S.

export embargo, prohibition or restriction, and (iii) Customer shall comply with all applicable laws regarding the transmission of technical data exported from the United States and the country in which its Users are located. Customer will not send any Electronic Communication from the Service that is unlawful, harassing, libelous, defamatory or threatening. Except as 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 agrees not to access the Service by any means other than through the interfaces that are provided by NetSuite. Customer shall not do any "mirroring" or "framing" of any part of the Service, or create Internet links to the Service which include log-in information, user names, passwords, and/or secure cookies. 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, will 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 Users is in accordance with the terms and conditions of this Agreement.

2.5. Third Party Web Sites, Products and Services. NetSuite may offer certain Third Party Applications for sale under Estimate/Order Forms. Any purchase of such Third Party Applications by Customer shall be subject to the terms specified in such Estimate/Order Forms. In addition, NetSuite (through the Service) or certain third party providers may offer links to other websites, resources, Third Party Applications or services, including implementation, customization and other consulting services related to customers' use of the Service. NetSuite does not warrant any such Third Party Applications or services except as set forth in the Estimate/Order Form, whether or not such Third Party Applications are designated by NetSuite as "certified," "approved", "recommended" or otherwise, or the services are provided by a third party that is a member of a NetSuite partner program. Any purchase by Customer of any Third Party Applications or services is solely between Customer and the applicable third party provider.

NetSuite is not responsible for the availability or the quality, accuracy, integrity, fitness, safety, reliability, legality, or any other aspect of such Third Party Applications or services that Customer may purchase or connect to through the Service, or any descriptions, promises or other information related to the foregoing. If Customer installs or enables Third Party Applications or services for use with the Service, Customer agrees that NetSuite may allow such third party providers to access Customer Data as required for the interoperation of such Third Party Applications with the 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. NetSuite shall not be responsible for any disclosure, modification or deletion of Customer Data resulting from any such access by third party providers. No purchase of such Third Party Applications or services is required to use the Service.

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 expressly 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 (including but not limited to encryption and compression) 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. Customer agrees that NetSuite is not responsible for any Electronic Communications and/or Customer Data which are delayed, lost, altered, intercepted or stored during the transmission of any data whatsoever across networks not owned and/or operated by NetSuite, including, but not limited to, the Internet and Customer's local network.

2.7. Service Level. During the Term, the NetSuite Service will meet the service level specified in the "Service Level Commitment" listed on [Schedule I](#) hereto, and any OpenAir Service acquired by Customer pursuant to an Estimate/Order Form will meet the service level specified on the OpenAir website located at www.OpenAir.com/slc, or such other URL as specified by OpenAir, each of which is

hereby incorporated by reference as applicable. In the event that NetSuite and/or OpenAir fails to achieve the applicable service level, Customer will be entitled, as its sole and exclusive remedy, to a credit in accordance with the terms set forth in the applicable Service Level Commitment. NetSuite's and OpenAir's respective system logs and other records shall be used for calculating any service level events.

2.8. NetSuite's Support. As part of the Service, NetSuite will provide Customer with online User Guides, Knowledge Base and online help to assist Customer in its use of the Service. NetSuite also offers optional and "for fee" training classes, professional services consultation, and customer support services. Customer acknowledges that NetSuite has extensive experience helping Customers improve utilization and realization of benefits of the Service, and that not following the advice of NetSuite and/or not engaging NetSuite or other NetSuite authorized implementation partner in the provision of professional services may substantially limit Customer's ability to successfully utilize the Service or to enjoy the power and potential of the Service.

2.9. Security/Data Integrity. NetSuite shall maintain reasonable administrative, physical and technical safeguards for the protection, confidentiality and integrity of Customer Data (the same as NetSuite uses to protect its data). In the event of a breach of this provision, NetSuite will use commercially reasonable efforts to correct the Customer's Data or restore the Customer's Data as quickly as possible.

2.10. Confidential Information. For purposes of this Agreement, "Confidential Information" means the terms of this Agreement including the pricing and other terms reflected in all Estimates, Customer Data, NetSuite technology and technical information, product designs, business and marketing plans and business processes, and all confidential and proprietary information of a party ("Disclosing Party") disclosed to the other party ("Receiving Party"), whether orally or in writing, that is clearly identified in writing or verbally at the time of disclosure as confidential. 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 Receiving Party, subsequent to disclosure by the Disclosing Party; or (4) the Receiving Party 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 Receiving Party.

Receiving Party agrees: (a) to keep confidential all Confidential Information disclosed to it by the Disclosing Party; (b) not to use or disclose the Confidential Information of the Disclosing Party except to the extent necessary to perform its obligations or exercise rights under this Agreement, except with the Disclosing Party's prior written consent; (c) to 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 contractors and service providers 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 this Agreement. Notwithstanding the foregoing, this Section 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.

2.11. Intentionally left blank.

2.12. Customer Data. As between NetSuite 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 Service, NetSuite as part of its standard Service offering makes tape back up copies of the Customer Data in Customer's account and stores and maintains such data for a period of time consistent with NetSuite standard business processes, which period shall not be less than one year.

2.13. NetSuite Intellectual Property Rights. Customer agrees that all rights, title and interest in and to all intellectual property rights in the Service are owned exclusively by NetSuite or its licensors. Except as provided in this Agreement, 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. In addition, NetSuite shall have a royalty-free, worldwide, transferable, sub-licensable, irrevocable, and perpetual license to use or incorporate into the Service any suggestions, enhancement requests, recommendations or other feedback provided by Customer, including users, relating to the operation of the Service. Any rights not expressly granted herein are reserved by NetSuite. NetSuite and OpenAir service marks, logos and product and service names are marks of NetSuite or OpenAir, respectively (the "NetSuite Marks"). Customer agrees not to display or use the NetSuite Marks in any manner without NetSuite'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.

2.14. Federal Government End User Provisions. If User is the US Federal Government, NetSuite provides the Service, including related software and technology, in accordance with the following: Government technical data and software rights related to the Service include only those rights customarily provided to the public as defined in this Agreement. This customary license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data – Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If a government agency has a need for rights not conveyed under these terms, it must negotiate with NetSuite to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum specifically conveying such rights must be included in any applicable contract or agreement.

3. Warranties

3.1. Warranty of Functionality. NetSuite warrants that the Service (i) will achieve in all material respects the functionality described in the User Guides applicable to the products purchased by Customer, and (ii) such functionality will not be materially decreased during the Term. Customer's sole and exclusive remedy for NetSuite's breach of this warranty shall be that NetSuite shall be required to use commercially reasonable efforts to modify the Service to achieve in all material respects the functionality described in the User Guides and if NetSuite is unable to restore such functionality, Customer shall be entitled to terminate the Agreement and receive a pro-rata refund of the subscription fees paid for under the Agreement for its use of the Service for the terminated portion of the Term. NetSuite shall have no obligation with respect to a warranty claim unless notified of such claim within sixty (60) days of the first instance of any material functionality problem, and such notice must be sent to billing@netsuite.com. The warranties set forth in this Section 3.1 are made to and for the benefit of Customer only. Such warranties shall only apply if the applicable Service has been utilized in accordance with the User Guides, this Agreement and applicable law.

3.2. No Virus Warranty. NetSuite warrants that the Service will be free of viruses, Trojan horses, worms, spyware, or other such malicious code ("Malicious Code"), except for any Malicious Code contained in Customer-uploaded attachments or otherwise originating from Customer.

4. Disclaimer of Warranties. EXCEPT AS STATED IN SECTION 3 ABOVE, 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 OVERALL SYSTEM THAT MAKES THE SERVICE AVAILABLE (INCLUDING BUT NOT LIMITED TO THE INTERNET, OTHER TRANSMISSION NETWORKS, AND CUSTOMER'S LOCAL NETWORK AND EQUIPMENT) WILL BE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. THE WARRANTIES STATED IN SECTION 3 ABOVE ARE THE SOLE AND EXCLUSIVE WARRANTIES OFFERED BY NETSUITE. THERE ARE NO OTHER

WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THOSE OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS. 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. CUSTOMER AGREES THAT THE CONSIDERATION WHICH NETSUITE IS CHARGING HEREUNDER DOES NOT INCLUDE CONSIDERATION FOR ASSUMPTION BY NETSUITE OF THE RISK OF CUSTOMER'S INCIDENTAL OR CONSEQUENTIAL DAMAGES. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO ANYONE FOR LOST PROFITS OR REVENUE OR FOR INCIDENTAL, CONSEQUENTIAL, PUNITIVE, COVER, SPECIAL OR EXEMPLARY DAMAGES, OR INDIRECT DAMAGES OF ANY TYPE OR KIND HOWEVER CAUSED, WHETHER FROM BREACH OF WARRANTY, BREACH OF CONTRACT, NEGLIGENCE, OR ANY OTHER LEGAL CAUSE OF ACTION AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES TO THE MAXIMUM EXTENT PERMITTED BY LAW.

Except with regard to amounts due under this Agreement, and a party's breach of Section 2.10 (Confidential Information), the maximum liability of either party to any person, firm or corporation whatsoever arising out of or in the connection with any license, use or other employment of the Service, whether such liability arises from any claim based on breach or repudiation of contract, breach of warranty, negligence, tort, or otherwise, shall in no case exceed the equivalent of 12 months in subscription fees applicable at the time of the event. In the event of a breach of Section 2.10 (Confidential Information) of this Terms of Service, the maximum liability of either party shall be an amount equal to five (5) times the equivalent of 12 months of subscription fees applicable at the time of the event. The essential purpose of this provision is to limit the potential liability of the parties arising from this Agreement. The parties acknowledge that the limitations set forth in this Section are integral to the amount of fees charged in connection with the license of 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.

THE LIMITATIONS OF LIABILITY SET FORTH IN THIS SECTION SHALL NOT APPLY TO EITHER PARTY'S INDEMNITY OBLIGATIONS SET FORTH IN SECTION 11 BELOW. Certain states and/or jurisdictions do not allow the exclusion of implied warranties or limitations of liability for incidental or consequential damages, so the exclusions set forth above may not apply to Customer.

6. Indemnification.

6.1. Infringement. NetSuite will indemnify, defend and hold Customer harmless from and against any and all costs, liabilities, losses, and expenses (including, but not limited to, reasonable attorneys' fees) of a third party (collectively, "Losses") incurred arising out of or in connection with a claim, suit, action, or proceeding brought by any third party against Customer alleging that the use of the Service as permitted hereunder infringes any copyright, trademark, or misappropriation of a trade secret of a third party, provided that Customer (a) promptly gives NetSuite notice of the claim, suit, action, or proceeding; (b) gives NetSuite sole control of the defense and related settlement negotiations; and (c) provides NetSuite with all reasonably available information and assistance necessary to perform NetSuite's obligations under this paragraph.

Excluded from the above indemnification obligations are claims to the extent arising from (a) use of the Service in violation of this Agreement or applicable law, (b) use of the Service after NetSuite notifies Customer to discontinue use because of an infringement claim, or (c) modifications to the Services made other than by NetSuite.

If the Service is held to infringe, NetSuite will, at its own expense, in its sole discretion use commercially reasonable efforts either (a) to procure a license that will protect Customer against such claim without cost to Customer; (b) to replace the Service with a non-infringing Service, or (c) if (a) and (b) are not commercially feasible, terminate the Agreement and refund to the Customer a pro-rata refund of the subscription fees paid for under the Agreement for the terminated portion of the Term.

The rights and remedies granted Customer under this Section 6.1 state NetSuite's entire liability, and Customer's exclusive remedy, with respect to any claim of infringement of the intellectual property rights of a third party, whether arising under statutory or common law or otherwise.

6.2. Disclosure of Customer Data.

NetSuite will indemnify, defend and hold Customer harmless from and against any Losses resulting from a claim, suit, action, or proceeding brought by any third party against Customer that arises out of or results directly from NetSuite's gross negligence or willful misconduct in preventing unauthorized access to confidential Customer Data, as determined by a court of competent jurisdiction in connection with a claim by a third party alleging a breach of confidentiality.

When NetSuite is at fault but such fault does not rise to the level of gross negligence or willful misconduct, NetSuite will indemnify Customer up to an amount equal to five (5) times the equivalent of 12 months of subscription fees applicable at the time of the event, from and against any Losses incurred by Customer with respect to any third party claim, suit, action, or proceeding arising out of or relating to NetSuite's breach of Section 2.10 (Confidential Information) of this Terms of Service.

NetSuite's indemnification obligations under this Section 6.2 are expressly premised upon Customer (a) promptly giving NetSuite notice of any such third party claim, suit, action, or proceeding; (b) giving NetSuite sole control of the defense and related settlement negotiations; and (c) promptly providing NetSuite with all reasonably available information and assistance necessary to perform NetSuite's obligations under this Section 6.2. Provided that NetSuite complies with this Section 6.2, Customer shall be entitled as its sole and exclusive remedy to terminate the Agreement and receive a pro-rata refund of the subscription fees paid for under the Agreement for the terminated portion of the Term.

6.3. Customer's Indemnity. Customer shall indemnify, defend, and hold NetSuite harmless from and against any and all Losses resulting from a claim, suit, action, or proceeding brought by any third party against NetSuite that arises out of or results from a claim by a third-party (i) alleging that the Customer Data or any trademarks or service marks other than NetSuite Marks, or any use thereof, infringes the intellectual property rights or other rights, or has caused harm to a third party, or (ii) arising out of Customer's breach of Section 2.4 (Customer's Lawful Conduct) or 2.10 (Confidential Information) above, provided that NetSuite (a) promptly provides Customer notice of the claim, suit, action, or proceeding; (b) gives Customer sole control of the defense and related settlement negotiations; and (c) provides Customer with all reasonably available information and assistance necessary to perform Customer's obligations under this paragraph.

6.4. Survival. The indemnification obligations contained in this Section 6 shall survive termination of this Agreement for one year.

7. Suspension/Termination.

7.1. Suspension for Delinquent Account. NetSuite reserves the right to suspend Customer's and any Customer Affiliates' access to and/or use of the Service for any accounts (i) 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"), or (ii) for which Customer has not paid for the renewal term and has not notified NetSuite of its desire to renew the Service by the End Date of the then current term. The suspension is for the entire account and Customer understands that such suspension would therefore include Affiliate sub-accounts. Customer agrees that NetSuite shall not be liable to Customer or to any Customer Affiliate or other third party for any suspension of the Service pursuant to this Section 7.1.

7.2. Suspension for Ongoing Harm. Customer agrees that NetSuite may with reasonably contemporaneous telephonic notice to Customer suspend Customer's access to the Service if NetSuite reasonably concludes that Customer's Service is being used to engage in denial of service attacks, spamming, or illegal activity, and/or use of Customer's Service is causing immediate, material and ongoing harm to NetSuite or others. In the extraordinary event that NetSuite suspends Customer's

access to the Service, NetSuite will use commercially reasonable efforts to limit the suspension to the offending portion of the Service and resolve the issues causing the suspension of Service. Customer agrees that 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 7.2.

7.3. Termination for Cause, Expiration. Either party may immediately terminate this Agreement and all Estimates/Order Forms issued hereunder in the event the other party commits a material breach of any provision of this Agreement which is not cured within thirty (30) days of written notice from the non-breaching party.

Such notice by the complaining party shall expressly state all of the reasons for the claimed breach in sufficient detail so as to provide the alleged breaching party a meaningful opportunity to cure such alleged breach and shall be sent to the General Counsel of the alleged breaching party at the address listed in the heading of this Agreement (or such other address that may be provided pursuant to this Agreement) ("Notice"). Upon termination or expiration of this Agreement, Customer shall have no rights to continue use of the Service. If this Agreement is terminated by Customer for any reason other than a termination expressly permitted by this Agreement, Customer agrees that NetSuite shall be entitled to all of the fees due under this Agreement for the entire Term. If this Agreement is terminated as a result of a breach on NetSuite's part, NetSuite shall refund the pro rata portion of any subscription fee paid by Customer for the terminated portion of the Term.

7.4. Handling of Customer Data In The Event Of Termination. Customer agrees that following termination of Customer's account and/or use of the Service, NetSuite may immediately deactivate Customer's account and that following a reasonable period of not less than 90 days shall be entitled to delete Customer's account from NetSuite's "live" site. During this 90 day period and upon Customer's request, NetSuite will grant Customer limited access to the Service for several days for the sole purpose of permitting Customer to retrieve Customer Data, provided that Customer has paid in full all good faith undisputed amounts owed to NetSuite. Thereafter and for the period set forth in Section 2.12, upon Customer's written request, NetSuite will retrieve Customer Data on back-up tapes from archives at Customer's expense at the then applicable NetSuite hourly rate for such services. Customer further agrees that NetSuite shall not be liable to Customer nor to any third party for any termination of Customer access to the Service or deletion of Customer Data, provided that NetSuite is in compliance with the terms of this Section 7.4.

8. Modification; Discontinuation of The Service.

8.1 To the Service. NetSuite may make modifications to the Service or particular components of the Service from time to time and will use commercially reasonable efforts to notify Customer of any material modifications. NetSuite reserves the right to discontinue offering the Service at the conclusion of Customer's then current Term. NetSuite shall not be liable to Customer nor to any third party for any modification of the Service as described in this Section 8.1.

8.2 To Applicable Terms. If NetSuite makes a material change to any applicable URL Terms, then NetSuite will notify Customer by either sending an email to the notification email address or posting a notice in the Administrator's instance of Customer's account. If the change has a material adverse impact on Customer and Customer does not agree to the change, Customer must so notify NetSuite via legal@netsuite.com within thirty days after receiving notice of the change. If Customer notifies NetSuite as required, then Customer will remain governed by the URL Terms in effect immediately prior to the change until the end of the then current term for the affected Service. If the affected Service is renewed, it will be renewed under NetSuite's then current URL Terms.

9. Definitions.

"Affiliates" means any entity which directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with Customer, by way of majority voting stock ownership or the ability to otherwise direct or cause the direction of the management and policies of Customer.

"Customer Data" means all electronic data or information submitted by Customer to the Service.

“Electronic Communications” means any transfer of signs, signals, text, images, sounds, data or intelligence of any nature transmitted in whole or part electronically received and/or transmitted through the Service.

“Estimate/Order Form” means a NetSuite estimate, renewal notification or order form executed by Customer and accepted by NetSuite which specifies the Service and implementation services to be provided by NetSuite subject to the terms of this Agreement.

“Knowledge Base” means the online application known as “Knowledge Base” which is designed to present timely information that addresses more sophisticated questions that often apply to more specific circumstances. It currently contains more than 2,000 solutions that are available 24 hours a day/7 days a week.

“Service” means NetSuite’s online business application suite and modules and/or OpenAir’s online Professional Services Automation software as described in the applicable User Guides that is purchased by Customer from NetSuite in the Estimate/Order Form and any subsequent Estimate/Order Form from time to time, including associated offline components, but excluding Third Party Applications and implementation services.

“SuiteApp.com” means the NetSuite online directory of applications that interoperate with the Service, located at <http://www.netsuite.com/suiteapp> or at any successor websites.

“Third Party Applications” means online, Web-based applications and offline software products that are provided by third parties, interoperate with the Service, and are identified as third party applications, including but not limited to those listed on SuiteApp.com.

“Users” means individuals who are authorized by Customer to use the Service, for whom subscriptions to a Service have been purchased, and who have been supplied user identifications and passwords by Customer (or by NetSuite at Customer’s request). Users may include but are not limited to Customer’s and Customer’s Affiliates’ employees, consultants, contractors and agents.

“User Guides” means the detailed online guides that explain the workflow and setup of features like SFA and Marketing, Customer Service and Web Store.

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

Schedule I

SERVICE LEVEL COMMITMENT FOR SUBSCRIBERS OF NETSUITE

Service Level Commitment

NetSuite commits to provide 99.5% uptime with respect to the Customer's Service during each month of the Term, excluding regularly scheduled maintenance times.

If in any month this uptime commitment is not met by NetSuite and Customer was negatively impacted (i.e., attempted to log into or access the Service and failed due to the unscheduled downtime of the Service), NetSuite shall provide, as the sole and exclusive remedy, a service credit equal to one month's fee for the use of the Service.

Scheduled and Unscheduled Maintenance

Regularly scheduled maintenance time does not count as downtime. Maintenance time is regularly scheduled if it is communicated in accordance with the notice section set forth below at least two full business days in advance of the maintenance time. Regularly scheduled maintenance time typically is communicated at least a week in advance, scheduled to occur at night on the weekend, and takes less than 10-15 hours each quarter. NetSuite hereby provides notice that every Saturday night 10:00pm – 10:20pm Pacific Time is reserved for routine scheduled maintenance for use as needed.

NetSuite in its sole discretion may take the Service down for unscheduled maintenance and in that event will attempt to notify customer in advance in accordance with the Notice section set forth below. Such unscheduled maintenance will be counted against the uptime guarantee.

Credit Request

In order to receive a credit under this service level commitment, Customer must request it simply by emailing NetSuite at billing@netsuite.com, within five days of the end of the applicable quarter. If Customer submits a credit request and does not receive a prompt automated response indicating that the request was received, Customer must resubmit the request because the submission was not properly received and will not result in a credit. Customers who are past due or in default with respect to any payment or any material contractual obligations to NetSuite are not eligible for any credit under this Service Level Commitment. The service credit is valid for up to two years from the quarter for which the credit was issued. NetSuite shall calculate any service level downtime using NetSuite's system logs and other records.

Updates/Notice

This Service Level Commitment may be amended by NetSuite in its discretion but only after providing thirty days advance notice. Notices will be sufficient if provided 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.

Exclusion of Sandbox and Beta Accounts

NetSuite Sandbox, Beta and debugger accounts and other test environments are expressly excluded from this or any other service level commitment.