

ATTENTION! ONCE YOU CLICK THE “I AGREE” BUTTON DISPLAYED HEREWITH, THE FOLLOWING TERMS AND CONDITIONS WILL BE LEGALLY BINDING EITHER UPON YOU PERSONALLY, IF YOU ARE ENTERING INTO THIS AGREEMENT ON YOUR OWN BEHALF, OR UPON THE COMPANY OR OTHER LEGAL ENTITY ON BEHALF OF WHICH YOU ARE ACTING (HEREINAFTER “YOU” OR “YOUR”). YOU SHOULD CAREFULLY READ THE FOLLOWING AGREEMENT GOVERNING THE NETSUITE REFERRAL PROGRAM BEFORE CLICKING “I AGREE.”

NETSUITE REFERRAL AGREEMENT

This NetSuite Referral Agreement (“Agreement”) is entered into in San Mateo, California, USA, as of the date on which You click the “I Agree” button displayed herewith, between You and NetSuite Inc., a Delaware corporation (“NetSuite”), with its headquarters located at 2955 Campus Drive, Suite 100, San Mateo, California 94403. Capitalized terms are defined throughout this Agreement and in Section 7. For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. AGREEMENT SUBJECT TO APPROVAL.

The effectiveness of this Agreement is subject to NetSuite’s approval in writing (via mail, fax or e-mail) of Your application for participation in the NetSuite Referral Program (“Approval”), and this Agreement shall commence on the date of the Approval (“Effective Date”). NetSuite may reject or decline to accept Your application for any or no reason at its sole discretion. NetSuite may conduct background checks and other screening measures of any sort in connection with Your application. If NetSuite approves Your application, You may refer sales leads within the Territory to NetSuite during the term and in accordance with all terms and conditions of this Agreement, to enable NetSuite to solicit orders for NetSuite products and/or services (“Products”).

2. LIMITATIONS ON ACTIVITIES.

2.1 Limitations on Activities. Your activities under this Referral Agreement shall be limited as follows:

2.1.1 You shall conduct all of Your business in Your own name and in accordance with the highest business standards, acting dutifully, in good faith and in compliance with all laws (as set forth in Section 6.6), and not perform any act which would or might reflect adversely upon the Products or the business, integrity or goodwill of NetSuite.

2.1.2 You shall not be, or purport to be, authorized to legally represent NetSuite or to conduct negotiations on behalf of NetSuite. You shall not have the authority to make any commitments or agreements or incur any liabilities whatsoever on behalf of NetSuite or register this Agreement under local registered agency law nor shall NetSuite be liable for any acts, omissions to act, contracts, commitments, promises or representations made by You.

2.1.3 You shall not use any trademarks, names or other identifiers owned or used by NetSuite (“Marks”), except that You may refer to NetSuite and the Products in conversations and written correspondence with potential customers in the same manner as NetSuite does in its own marketing materials and website. Any other use of Marks (e.g., on Your website) has to be designed in compliance with NetSuite trademark usage guidelines, including but not limited to NetSuite’s marketing guidelines as posted at [ns-partner-guideline.pdf](#) (as it may be updated from time to time in NetSuite’s sole discretion) and be pre-approved by NetSuite in writing.

2.1.4 You are an independent contractor, and nothing contained in this Agreement shall be construed to (a) give either party the power to direct and control the day-to-day activities of the other; (b) create a principal-agent or employer-employee relationship; or (c) constitute the parties as partners, joint venturers, co-owners or otherwise as participants in a joint undertaking.

- 2.1.5 All financial and other obligations associated with Your business are solely your responsibility. As an independent contractor, the mode, manner and method used by You shall be under Your sole control and You shall be solely responsible for risks incurred in the operation of Your business and the benefits thereof. You shall bear all of Your own expenses in connection with the performance of this Agreement and will not be entitled to reimbursement of any such expenses by NetSuite.
- 2.1.6 You shall not make any representations or other statements about Products, prices or business practices, except that You shall forward to potential customers (i) unmodified marketing materials provided by NetSuite and (ii) references to NetSuite's standard conditions of sale, as published by NetSuite on its website or otherwise.
- 2.2 No License. You acknowledge and agree that no license is granted under this Agreement to use or access any Products, any of NetSuite's proprietary technologies embodied therein, or any data, information or other content provided thereby. As between the parties, NetSuite retains all right, title and interest in and to the Products and all technology, data, information or other content embodied therein or provided thereby, as well as any intellectual property rights or similar rights in connection therewith, and You acknowledge that You neither own nor acquire any rights in or to the Products.
- 2.3 Nonexclusive Referral Agreement. Each party acknowledges that this Agreement does not create an exclusive agreement between the Parties. Each Party shall have the right to recommend similar products and services of third parties and to work with other parties in connection with the design, sale, installation, implementation and use of similar services and products of third parties. Notwithstanding the foregoing, once You establish a Commissionable Lead (defined below) with NetSuite, You will not refer a direct competitor of NetSuite to such Commissionable Lead. You will not enter into an agreement with a third party the effect of which would prohibit your submission of a Proposed Lead (defined below) pursuant to this Agreement.

3. REFERRALS.

- 3.1 Submission of Leads. You shall identify each potential customer ("Proposed Lead") and relevant commercial conditions relating to such Proposed Lead in a NetSuite Lead Form ("NLF"), a standard form generated by NetSuite (and available online via a link provided to You by NetSuite), or via some other method at NetSuite's option. At NetSuite's request, You shall (a) supply any additional information reasonably requested by NetSuite, (b) discuss each completed NLF in detail with NetSuite, and (c) assist NetSuite in making contact with the Proposed Lead by arranging an introduction, meeting, conference call or other means of communication with the Proposed Lead.
- 3.2 Acceptance of Leads. Within a reasonable period of time following Your submission of a NLF, NetSuite shall review the NLF to determine whether to accept the Proposed Lead as commissionable under Section 4.1 below, or reject the Proposed Lead pursuant to this Section 3.2 and will provide You with a written (including e-mail) notification of its acceptance or rejection of a Proposed Lead ("Referral Confirmation"). NetSuite will be under no obligation to accept any NLF submitted by You and may reject or decline to accept NLFs for any or no reason at its sole discretion, including, without limitation, because:
- 3.2.1 the Proposed Lead was an existing customer of NetSuite's at the time of submission of the NLF;
- 3.2.2 NetSuite was already involved in preliminary or advanced discussions relating to the sale of a subscription to the Proposed Lead at the time of submission of the NLF;
- 3.2.3 an NLF (or similar document) has previously been submitted to NetSuite by You or any third party with respect to the Proposed Lead;
- 3.2.4 the Proposed Lead (a) does not meet NetSuite's credit requirements, (b) is on a list of restricted or prohibited parties issued by the government of the United States or any other jurisdiction, or (c) is located in a country that is subject to a United States trade embargo or that is deemed a terrorist supporting country by the United States Government; or

3.2.5 the Proposed Lead is located outside the Territory, or is located in an area in which NetSuite has an exclusive arrangement for the sale of Products or which NetSuite is otherwise prohibited by agreement from accepting.

3.3 Pursuit of Leads by NetSuite. The method of contacting and following up with Proposed Leads will be determined in NetSuite's sole discretion; *provided, however*, that You shall actively support NetSuite in the sales process with Proposed Leads when requested by NetSuite. NetSuite shall have sole discretion to refuse to offer any Products to any third party without liability to You.

4. COMMISSIONS.

4.1 Commissionable Leads. A Proposed Lead qualifies as commissionable ("Commissionable Lead") only if:

4.1.1 You have submitted an NLF for the Proposed Lead in accordance with Section 3.1; and

4.1.2 NetSuite has accepted the Proposed Lead as a Commissionable Lead (*i.e.*, not rejected the Proposed Lead as set forth in Section 3.2, or otherwise).

4.2 Commissions and Payment. Subject to Your compliance with all terms and conditions of this Agreement, NetSuite will pay You commissions equal to ten percent (10%) of Lead Referral Revenue (defined below). Commission payments (less any applicable withholding taxes or other levies) will be due on the last day of the month following the quarter in which NetSuite receives payment of the Lead Referral Revenue.

4.3 Reports. Within thirty (30) days after the end of each calendar quarter during which You have submitted five (5) or more Commissionable Leads, NetSuite will issue quarterly reports to You by mail, e-mail or through an online system, which will show the Lead Referral Revenue generated by each Commissionable Lead and the commission amounts earned by You as a result. Each report shall be deemed final and accepted by You unless NetSuite receives a detailed written objection within thirty (30) days of Your receipt of NetSuite's report.

4.4 Modifications. NetSuite may modify the NLF submission process and the percentage amounts and conditions relating to commissions upon thirty (30) calendar days written notice. Such changes will only affect NLFs submitted after said thirty (30) day period.

4.5 Commissions After Termination. Except in the event of termination for breach by You, NetSuite will continue to pay You commissions for the duration of the applicable referral payment period in accordance with Section on Lead Referral Revenue received following termination of the Agreement for Commissionable Leads accepted prior to such termination, and NetSuite will continue to issue reports in accordance with Section 4.3 through such time.

4.6 No Other Payments. Except as expressly provided in this Section, You are not entitled to any fees, reimbursements or other payments. You shall promptly refund to NetSuite any overpayments (*e.g.*, Referral Fees on Lead Referral Revenue that was reduced due to returns by the customer).

5. TERM AND TERMINATION.

5.1 Term. This Agreement shall commence on the Effective Date and shall continue in effect until terminated.

5.2 Termination for Convenience. This Agreement may be terminated by either party for any or no reason upon written notice to the other party thirty (30) days prior to the desired termination date (or with such minimum advance notice as required by mandatory applicable law). Neither party shall have any expectation as to the minimum term of this Agreement.

5.3 Termination for Cause. Either party may terminate this Agreement, effective immediately, (a) in the event of a material breach by the other party, which the other party fails to cure within five (5) business days of receipt of a written request to cure from the other party, or (b) if the other party becomes insolvent, makes any assignment for the benefit of creditors, goes to liquidation or has a receiver or trustee appointed for the benefit of creditors, whether voluntary or otherwise, or seeks

the protection of, or has a proceeding instituted against it, under the bankruptcy code or any similar statute. If, at the time of Your acceptance of this Agreement or any time thereafter, NetSuite would be prohibited from doing business with You under United States export regulations and controls, this Agreement shall automatically be null and void.

- 5.4 Effect of Termination. Sections 2, 4.5, 4.6, 5.4, and 6 shall survive termination of this Agreement. Upon termination of this Agreement for any reason, You shall immediately cease the use of all NetSuite brochures, literature, documentation and other materials within Your control and shall return such materials to NetSuite within ten (10) business days. Except as provided in Section 4.5, You shall have no rights or claims against NetSuite in connection with termination, expiration or non-renewal of this Agreement; in particular, without any limitation, You hereby irrevocably waive any rights to severance or compensation for lost opportunities or investments to the maximum extent permissible under applicable law.

6. MISCELLANEOUS.

6.1 Governing Law and Arbitration.

6.1.1 This Agreement and any dispute arising out of or in connection with this Agreement (“Dispute”) will be governed as to all matters, including, but not limited to the validity, construction and performance of this Agreement, by and under the laws of California, USA, without giving effect to conflict of laws principles thereof.

6.1.2 Each party agrees that before it seeks mediation, arbitration, or any other form of legal relief it shall provide written notice to the other of the specific issues in dispute (and referencing the specific portions of the Agreement which are allegedly being breached). Within thirty days after such notice, knowledgeable executives of the parties shall hold at least one meeting (in person or by video- or tele-conference) for the purpose of attempting in good faith to resolve the Dispute. The parties agree to maintain the confidential nature of all disputes and disagreements between them, including, but not limited to, informal negotiations, mediation or arbitration, except as may be necessary to prepare for or conduct these dispute resolution procedures or unless otherwise required by law or judicial decision. The dispute resolution procedures in this Section shall not apply prior to a party seeking a provisional remedy related to claims of misappropriation or ownership of intellectual property, or trade secrets.

(a) Mediation. Except as provided herein, any and all Disputes arising out of or relating to this Agreement shall be submitted to JAMS for mediation before arbitration or any other form of legal relief may be instituted. Mediation may be commenced by a party providing JAMS a written request for mediation setting forth the subject of the Dispute and the relief requested. The parties will cooperate with JAMS in selecting a single mediator and scheduling a mediation, which should take place within 45 days following a request for mediation. The mediator shall be a retired judge who has had experience with technology disputes. The parties agree that they will participate in the mediation in good faith and share equally in its costs. The mediation shall take place in San Mateo or San Francisco County, California.

(b) Arbitration. Except as provided herein, any Dispute arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate, shall be determined by arbitration in San Mateo or San Francisco County, California and before a single arbitrator. The arbitrator selected shall be a retired judge who has had experience with technology disputes. In any arbitration arising out of or related to this Agreement, the parties agree the arbitrator is not empowered to award punitive or exemplary damages, and the parties waive any right to recover any such damages. The arbitration shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures if the amount in dispute exceeds \$250,000 USD and its JAMS Streamlined Arbitration Rules and Procedures when lesser amounts are in issue. The arbitrator shall issue a written reasoned decision. Each party shall bear their

own costs in connection with the arbitration, although the arbitrator shall award the prevailing party its reasonable costs and attorneys' fees.

- 6.1.3 Either party may, at its sole discretion, seek preliminary judicial relief in any court of competent jurisdiction (including, but not limited to, preliminary injunctive relief). Also, the provisions of this Section may be enforced by any court of competent jurisdiction.
- 6.1.4 If it is necessary for either party to retain the services of an attorney or attorneys to enforce the terms of this Agreement or to file an action to enforce any of the terms, conditions or rights contained herein, or to defend any action, then the prevailing party in any such action will be entitled to recover from the other party its reasonable fees for attorneys and expert witnesses, plus such court costs and expenses as may be fixed by any arbitration panel or court of competent jurisdiction.
- 6.2 No Waiver. The failure by either party to enforce any provision of this Agreement will not constitute a waiver of future enforcement of that or any other provision. Neither party will be deemed to have waived any rights or remedies hereunder unless such waiver is in writing and signed by a duly authorized representative of the party against which such waiver is asserted.
- 6.3 Severability. If a court of competent jurisdiction finds any provision of this Agreement invalid or unenforceable, that provision of the Agreement will be enforced to the maximum extent possible to achieve as nearly as possible the intent of the parties, and the remainder of this Agreement will remain in full force and effect.
- 6.4 Notices. Except as otherwise expressly provided herein, all notices, approvals, consents and other communications required or permitted under this Agreement will be invalid unless made in writing and given (a) by NetSuite via mail, fax or e-mail (to the address or number You provide) or by way of a posting on NetSuite's Referral Program Website (available under "Partners" at www.netsuite.com), or (b) by You via email to rpp@netsuite.com and legalnotices@netsuite.com.
- 6.5 Assignment. You may not assign, subcontract or delegate this Agreement or any of Your rights or obligations hereunder, in whole or in part, including without limitation by operation of law, without NetSuite's prior written consent. Any attempt to assign this Agreement without such consent will be null and void. NetSuite may assign this Agreement and subcontract or delegate its obligations hereunder to any third party with or without Your consent. Subject to the foregoing, this Agreement will bind and inure to the benefit of each party's permitted successors and assigns.
- 6.6 Compliance.
 - 6.6.1 You represent and warrant that (a) You will conduct Your business activities in a legal and ethical manner; (b) You have submitted and will submit complete and truthful information in connection with your application and all referrals; (c) You will submit all filings and obtain any approvals that may be necessary for You to perform Your obligations under this Agreement, (d) You will commit no act that would reflect unfavorably on NetSuite; (e) You are not a party with whom NetSuite is prohibited from doing business under U.S. export regulations and controls; and (f) You will comply with all applicable local, state, federal, and foreign laws, treaties, regulations, and conventions in connection with Your performance of this Agreement, including without limitation, privacy, anti-spam, advertising, copyright, trademark and other intellectual property laws.
 - 6.6.2 You will comply with all export control and anti-boycott laws and regulations of the United States. In particular, without limitation, You will refrain from (a) referring Proposed Leads that could be suspected of engaging in re-exports that would be illegal under U.S. law, and (b) disclosing any technical information related to Products to prohibited persons or destinations in violation of United States law. You certify that neither Products nor any technical data related thereto nor the direct product thereof are intended (a) to be used for any purpose prohibited by the applicable export laws or regulations, including but not limited to nuclear proliferation, or (b) to be shipped or exported, either directly or indirectly, to any country to which such shipment is prohibited by the applicable export laws or regulations.

- 6.6.3 You acknowledge that any sums paid to You under this Agreement are for Your own account and that, except as appropriate to carry out Your duties set forth herein in a legal manner, You did not, have no obligation to, and will not, directly or indirectly, give, offer, pay, promise to pay, or authorize the payment of money or any thing of value to any other person in connection with the performance of Your referral activities hereunder. In particular, without limitation, You agree not to take any actions that would cause You or NetSuite to violate the United States Foreign Corrupt Practices Act or any other anti-bribery law.
- 6.7 **Indemnification.** You shall indemnify and hold NetSuite harmless from and against any and all third party claims against NetSuite arising out of any act, default, misrepresentation or any omission on Your part (including, without limitation, negligence and breach of this Agreement), or any of Your agents, employees or representatives, directly or indirectly relating to this Agreement, including without limitation any claims relating to allegations, actions or proceedings for breach of contract or warranty, regulatory or other legal claims, claims for bodily injury (including death) and damage to property.
- 6.8 **Non-Solicitation.** To the extent permissible under applicable law, you are prohibited from soliciting any of the employees of NetSuite (either directly or through agents), without written permission of NetSuite, during the term of this Agreement and for a period of one (1) year following its termination.
- 6.9 **Counterparts.** This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.
- 6.10 **Entire Agreement and Amendment.** This Agreement, including all exhibits hereto, constitutes the entire agreement between the parties relating to its subject matter and supersedes all prior or contemporaneous representations, discussions, negotiations, and agreements, whether written or oral, relating to its subject matter. Any amendments or renewals to this Agreement shall be invalid unless made in writing that is signed by duly authorized representatives of both parties. In the event of any additional or inconsistent terms contained in NLFs, Referral Confirmations or other communications, the terms and conditions in this Agreement shall prevail unless NetSuite specifically identifies the section(s) of this Agreement that NetSuite intends to override in a writing signed by NetSuite.
- 6.11 **Limitations of Liability.** TO THE EXTENT PERMISSIBLE UNDER APPLICABLE LAW, NETSUITE WILL NOT BE LIABLE FOR ANY LOSS OF USE, LOSS OF DATA, INTERRUPTION OF BUSINESS, DOWNTIME, LOST PROFITS, OR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND REGARDLESS OF THE FORM OF ACTION WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT PRODUCT LIABILITY, OR OTHERWISE, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF DAMAGES. IN NO EVENT WILL NETSUITE'S LIABILITY UNDER THIS AGREEMENT EXCEED THE PAYMENTS PAID BY NETSUITE TO YOU DURING THE PRECEDING TWELVE MONTHS. THIS SECTION IS SEVERABLE AND SHALL SURVIVE ANY TERMINATION OR EXPIRATION OF THIS AGREEMENT.

7. DEFINITIONS.

“**Commissionable Period**” means, in respect of a Commissionable Lead, a period of one (1) year from Your submission of the NLF for such Commissionable Lead.

“**Commissionable Product(s)**” means the products listed as Commissionable Products on the Referral Partner Program page of NetSuite’s website, as updated from time to time in NetSuite’s sole discretion, or as specified by NetSuite in writing.

“**Lead Referral Revenue**” means any payments actually received by NetSuite from a Commissionable Lead for the first year’s fees under a subscription agreement or other ordering document between NetSuite and the Commissionable Lead entered into during the Commissionable Period for the Commissionable Lead’s first order of a Commissionable Product, minus any taxes, subsequently credited charges, write-offs, refunds or charge backs. For the avoidance of doubt, Lead Referral Revenue does not include any amounts received for follow-up orders, additional sales, renewals, or for products or services that are not

Commissionable Products at the time of the relevant Referral Confirmation, such as professional services, support services, training services or third party software products purchased by a Commissionable Lead, nor does it include amounts that are owed by the Commissionable Lead but have not actually been received by NetSuite.

“Territory” means the geographic area(s) in which Your Proposed Leads shall be located, and which shall be determined in NetSuite’s sole discretion, whose description is as follows: Worldwide, excluding Japan, Cuba, Sudan, North Korea, Iran, Syria or any other country to which the United States has chosen to embargo goods, as such list of countries may be updated from time to time.

BY CLICKING “I AGREE” YOU ARE REPRESENTING THAT (1) YOU HAVE SUBMITTED TRUE AND COMPLETE INFORMATION IN CONNECTION WITH YOUR APPLICATION AND (2) YOU ARE ENTERING INTO THIS AGREEMENT ON YOUR OWN BEHALF OR THAT YOU HAVE AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF YOUR COMPANY OR OTHER LEGAL ENTITY. IF YOU DO NOT HAVE SUCH AUTHORITY OR DO NOT WISH TO ENTER INTO THIS AGREEMENT ON YOUR OWN BEHALF, OR IF YOU DO NOT AGREE WITH THE TERMS AND CONDITIONS CONTAINED HEREIN, YOU MUST CLICK “I DECLINE” AND YOU WILL NOT BE ELIGIBLE FOR PARTICIPATION IN THE NETSUITE REFERRAL PROGRAM.